

**THE EFFECTS OF TERM LIMITS ON STATE  
LEGISLATURES AND THEIR APPLICABILITY  
TO THE EXECUTIVE BRANCH<sup>†</sup>**

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<sup>†</sup> This article draws heavily on INSTITUTIONAL CHANGE IN AMERICAN POLITICS: THE CASE OF TERM LIMITS (Karl T. Kurtz et al. eds., 2007) as well as the final report prepared by the 2010 New York City Charter Revision Commission. See N.Y. CITY CHARTER REVISION COMM'N, FINAL REPORT OF THE 2010 NEW YORK CITY CHARTER REVISION COMMISSION (2010), *available at* [http://www.nyc.gov/html/charter/downloads/pdf/final\\_report\\_2010\\_charte\\_revision\\_9-1-10.pdf](http://www.nyc.gov/html/charter/downloads/pdf/final_report_2010_charte_revision_9-1-10.pdf).

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## INTRODUCTION

The introduction of term limits in the 1990s represents the most significant institutional change in American state legislatures since the movement to professionalize legislatures in the 1960s and 1970s. Today, some form of restriction on the length of tenure in office exists in fifteen state legislatures.<sup>1</sup> Enacted primarily by voter initiatives, term limits have been both the source of a debate over the merits of restricting incumbents' ability to return to office and the subject of close examination by scholars and members of legislative service organizations interested in determining how legislatures have been affected by and have adapted to these restrictions. The body of research, drawing on national surveys and intensive state studies, has addressed questions concerning the effect of term limits on the composition of legislatures, the competitiveness of elections, the power relationships between legislators and other political actors, and the nature and quality of policies produced, as well as how legislatures have adjusted their internal organization and operating procedures to accommodate these changes.

Term limits have also been applied to executive branch officials, most notably to the U.S. President and to state governors. In the wake of the term limit movement of the 1990s, an increasing number of municipalities—though an unknown fraction of the total—have extended term limits to local officeholders.

This paper reviews the findings of research on term limits, almost all of which has examined state legislatures. We assess how well the arguments for and against term limits stand up to the evidence and discuss the applicability of these conclusions to local legislative councils and executive actors. While the debate over term limits has hardly been resolved, it seems that term limits are neither the panacea portrayed by the most fervent advocates nor the disaster depicted by the harshest critics.

## I. THE INTRODUCTION AND SPREAD OF TERM LIMITS

The idea of term limits is an old one, having been a part of the Articles of Confederation. The idea was also applied to some

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<sup>1</sup> See *The Term Limited States*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=14844> (last visited May 15, 2011).

executive and legislative offices in the 1780s (and also prior to that decade).<sup>2</sup> Likewise, term limits on state governors have a relatively long history, and, of course, U.S. Presidents have been limited to two full terms since the Twenty-Second Amendment was ratified in 1951.<sup>3</sup> More recent legislative-level restrictions and the debates that surround them, however, stem from the 1990s, when the push began to limit the tenure of state and federal legislators. Concern had arisen that legislatures were becoming overwhelmingly populated by careerist politicians and becoming unresponsive to public interests.<sup>4</sup> The term limit movement gained momentum when the Republican Party advocated for restrictions on congressional terms as part of its 1988 platform, and again in 1994, in its “Contract with America.”<sup>5</sup> During this same time, political reformers and advocacy organizations saw great success in building support for term limits among the states; between 1990 and 1994, term limits were introduced at the congressional level in twenty states and at the state legislative level in twenty-one states.<sup>6</sup> These term limits were introduced by voter initiatives to amend the state constitution, by statutory initiatives, or by direct legislative action.<sup>7</sup>

When the Republican Party gained a majority in Congress in 1994, the leadership brought a constitutional amendment limiting the terms of members in the House of Representatives and the Senate to the floor.<sup>8</sup> Unfortunately for its proponents,

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<sup>2</sup> Lloyd N. Cutler, *The Constitutionality of State-Imposed Term Limits for Federal Office*, in *THE POLITICS AND LAW OF TERM LIMITS* 99, 102–03 (Edward H. Crane & Roger Pilon eds., 1994).

<sup>3</sup> U.S. CONST. amend. XXII, § 1. Term limits on governors have been in existence since at least 1780. Bernard Grofman & Neil Sutherland, *Gubernatorial Term Limits and Term Lengths in Historical Perspective, 1790–1990: Geographic Diffusion, Non-Separability, and the Ratchet Effect*, in *LEGISLATIVE TERM LIMITS: PUBLIC CHOICE PERSPECTIVES* 279, 282 Table 17.1 (Bernard Grofman ed., 1996) (showing that gubernatorial term limits vary in their specifics, with some restricting the number of consecutive terms and others restricting the total number of terms).

<sup>4</sup> Steven F. Huefner, *Term Limits in State Legislative Elections: Less Value for More Money?*, 79 *IND. L.J.* 427, 432 (2004).

<sup>5</sup> See Jeffrey B. Gayner, Senior Fellow, Heritage Foundation, *The Contract with America: Implementing New Ideas in the U.S.*, in *THE HERITAGE LECTURES* 4 (Heritage Foundation, The Heritage Lectures No. 549, 1995), available at [http://s3.amazonaws.com/thf\\_media/1995/pdf/hl549.pdf](http://s3.amazonaws.com/thf_media/1995/pdf/hl549.pdf).

<sup>6</sup> Huefner, *supra* note 4, at 431.

<sup>7</sup> *Id.*

<sup>8</sup> See Gayner, *supra* note 5, at 4.

four versions of the term limits amendment died in the House after failing to gain the necessary two-thirds majority support. Then, in May of 1995, the Supreme Court struck down term limits imposed by the states upon their congressional delegations as unconstitutional, on the grounds that the states did not have the power to place restrictions on qualifications for federal office.<sup>9</sup> Thus, restrictions on state-level offices were left to the individual states to decide, and any limits on the tenure of federal office holders were self-imposed.<sup>10</sup> Indeed, self-enforced restrictions on tenure in office have been a popular selling point in recent elections for congressional candidates who claim to be performing a public service rather than pursuing a political career, and who hope to appeal to the popular sentiment that long-term office holders have “sold out” at the expense of their constituents’ interests.<sup>11</sup>

Between 1997 and 2003, term limits on state legislators were repealed in six states, either by legislative action or by court rulings.<sup>12</sup> Thus, term limits are in effect in fifteen states two decades after the modern movement began.<sup>13</sup> The future of term limits is not entirely secure, as legislators regularly introduce proposals to modify them or overturn them entirely.<sup>14</sup> When put to a popular vote, however, term limits have been routinely

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<sup>9</sup> See *U.S. Term Limits v. Thornton*, 514 U.S. 779, 837–38 (1995). In the 2010 midterm elections, some fifty-nine candidates for the U.S. House of Representatives and Senate signed a pledge to support an amendment to the U.S. Constitution which, if passed, would limit House members to three consecutive terms in office and Senators to two consecutive terms. However, many of these candidates lost, and it is very unlikely that Congress would vote to limit itself in this way. See *U.S. Term Limits Amendment Pledge*, U.S. TERM LIMITS AMENDMENT, <http://www.ustermlimitsamendment.org/about-us/> (last visited May 15, 2011).

<sup>10</sup> Kathleen M. Sullivan, Comment, *Dueling Sovereignties: U.S. Term Limits, Inc. v. Thornton*, 109 HARV. L. REV. 78, 78–79 (1995).

<sup>11</sup> For a list of recent and current members of Congress who have announced self-imposed limits on their service, see HAROLD W. STANLEY & RICHARD G. NIEMI, VITAL STATISTICS ON AMERICAN POLITICS 2011–2012 (forthcoming 2011) (on file with authors).

<sup>12</sup> Jennifer Drage Bowser, *The Effects of Legislative Term Limits*, in 37 THE BOOK OF THE STATES 111, 111 (Council of State Gov’ts et al. eds., 2005), <http://www.csg.org/knowledgecenter/docs/BOS2005-LegislativeTermLimits.pdf>; *The Term Limited States*, *supra* note 1.

<sup>13</sup> Bowser, *supra* note 12, at 111.

<sup>14</sup> For example, see *States Term Limits*, TERMLIMITS.ORG, <http://www.termlimits.org/content.asp?pl=18&contentid=18> (last visited May 15, 2011) (providing a list of states in which term limits have been or are currently being challenged).

supported by substantial majorities of the voting public, suggesting that they are not going to disappear quickly or quietly.<sup>15</sup> At the same time, it is not likely that term limits will be expanded to new states, as incumbent legislators in non-initiative states, such as New York, are unlikely to impose limits on their own ability to run for re-election.

Even among the fifteen legislatures with term limits, the limits vary considerably in their restrictiveness.<sup>16</sup> The most common constraint, in both upper and lower chambers, is eight years (two terms in the upper house and four in the lower house). However, the limit is as short as six years in some states and as long as twelve years in others.<sup>17</sup> In nine states, term limits apply only to consecutive terms; legislators may “sit out” for two years or for four years and then run for office again.<sup>18</sup> In Oklahoma, the twelve-year term limit applies to total service in the legislature; members who have exhausted their allowable tenure in office may not run for office in the other chamber as they often do elsewhere.<sup>19</sup>

## II. THE SCHOLARLY STUDY OF TERM LIMITS

Studies of the effects of term limits have focused almost entirely on state legislatures as opposed to executive actors. State legislatures serve as a natural experiment of sorts, providing both ample institutional variation and a sufficiently large number of observations to draw conclusions about the effects of the recent introduction of term limits in certain states. In their 2007 book, Kurtz, Cain, and Niemi describe the variation in characteristics of state legislatures, noting that:

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<sup>15</sup> In 2005, sixty-eight percent of Americans were in favor of term limits; in 2009, seventy percent were in favor. See *Many Americans Want Term Limits in Congress*, ANGUS REID PUB. OPINION, Mar. 17, 2009, available at [http://www.angus-reid.com/polls/35455/many\\_americans\\_want\\_term\\_limits\\_in\\_congress](http://www.angus-reid.com/polls/35455/many_americans_want_term_limits_in_congress) (last visited May 15, 2011); see also Jeff McDonald, *Term-Limits Proposition, and Incumbents, Win Big; Horn, Roberts Likely Will Still Face Runoffs in Fall*, SAN DIEGO UNION-TRIB., June 9, 2010, at A-9, available at <http://www.signonsandiego.com/news/2010/jun/09/county-term-limits-win-do-incumbents/> (discussing the vote on June 8, 2010 in San Diego County that imposed term limits on members of the Board of Supervisors where nearly 72 percent of the public favored the measure).

<sup>16</sup> Bowser, *supra* note 12, at 111 Table A.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

The universe of state legislatures includes

- 7,382 diverse, elected members and approximately [35,000] legislative staff;
- ninety-nine legislative chambers that vary in size from twenty members to [400];
- hundreds of legislative leaders who have different powers and responsibilities from state to state;
- ninety-nine committee systems that differ greatly in how they are appointed and operate;
- traditional part-time “citizen” organizations; full-time, highly professionalized bodies that look more like Congress than the legislatures of other states; and many variations in between.<sup>20</sup>

The evidence used to assess the effects of term limits has come from a variety of sources. Researchers have turned to large-scale quantitative studies to gauge the attitudes of legislators in term-limited and non-term-limited assemblies toward the internal structure of the legislature, the influence of other political actors, their legislative duties, and their political careers.<sup>21</sup>

Other surveys have gathered the opinions of knowledgeable observers (such as executive and legislative staff, lobbyists, reporters, and others involved in the state-level political process) from different states about changes in the way the legislature has operated over the ten-year period in which term limits were implemented in some states.<sup>22</sup> Scholars have also conducted in-depth interviews with legislators, staff, and lobbyists about legislative procedures and performed detailed case studies examining pairs of states with and without term limits.<sup>23</sup> Nonetheless, because of their recency, empirical studies of the effects of term limits are relatively few compared to those of other

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<sup>20</sup> Karl T. Kurtz et al., *Introduction*, in *INSTITUTIONAL CHANGE IN AMERICAN POLITICS: THE CASE OF TERM LIMITS* 1, 2 (Karl T. Kurtz et al. eds., 2007) [references to this collection of works are hereinafter referred to as *INSTITUTIONAL CHANGE IN AMERICAN POLITICS*].

<sup>21</sup> See John M. Carey et al., *The Effects of Term Limits on State Legislatures: A New Survey of the 50 States*, 31 *LEGIS. STUD. Q.* 105 *passim* (2006); Lynda W. Powell et al., *Constituent Attention and Interest Representation*, in *INSTITUTIONAL CHANGE IN AMERICAN POLITICS*, *supra* note 20, at 38–41, 51–53.

<sup>22</sup> See Kurtz et al., *supra* note 20, at 5; MARJORIE SARBAUGH-THOMPSON ET AL., *THE POLITICAL AND INSTITUTIONAL EFFECTS OF TERM LIMITS* 9–10 (2004).

<sup>23</sup> Rick Farmer & John C. Greene, *Introduction: Accelerating Change with Term Limits*, in *LEGISLATING WITHOUT EXPERIENCE: CASE STUDIES IN STATE LEGISLATIVE TERM LIMITS* 1, 4 (Rick Farmer et al. eds., 2007) [references to this collection of works are hereinafter referred to as *LEGISLATING WITHOUT EXPERIENCE*]; see SARBAUGH-THOMPSON ET AL., *supra* note 22, at 9–10.

institutions in American politics.

### III. EFFECTS (AND NON-EFFECTS) OF TERM LIMITS

Scholars and pundits alike continue to debate the merits of term limits. Proponents of term limits argue that they make legislatures more reflective of the constituencies they represent by increasing turnover and decreasing the electoral advantages of incumbency. Thus, these proponents assert that term limits create opportunities for more people—and a greater variety of people—to serve, thereby reducing the incentives of those in office to cater to entrenched interest groups and electorally valuable, particularistic interests at the expense of the interests of their constituents.<sup>24</sup> Opponents, on the other hand, claim that term limits result in inexperienced and therefore somewhat incompetent policy makers, and that they cripple the branch of government that is most closely linked with the citizenry. As a result, these opponents argue that term limits enhance the relative power of governors, careerist bureaucrats, and lobbyists who have been playing the political game for a longer time.<sup>25</sup>

The underlying question is, however, what have studies of the effects of term limits revealed? Below are some revelations:

**The amplifying effect of term limits on turnover rates is significant but conditional on a variety of factors.** Term limits establish minimum levels of turnover; with near certainty, this increases overall replacement levels in state legislatures. Turnover—measured as the percentage of new members in each newly elected legislature—has been documented as far back as the 1930s, when there was concern over the lack of experience in many state houses.<sup>26</sup> The data shows that average turnover declined steadily from over fifty percent in the 1930s to fewer than twenty-five percent in the 1980s.<sup>27</sup> As term limits began to take hold in the 1990s, this decline was reversed overall—clearly owing to increases in the percentage of new members in term-

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<sup>24</sup> See Alan Rosenthal, *Living with Term Limits*, in LEGISLATING WITHOUT EXPERIENCE, *supra* note 23, at 207–08.

<sup>25</sup> *Id.* at 212, 219.

<sup>26</sup> See, e.g., Charles S. Hyneman, *Tenure and Turnover of Legislative Personnel*, 195 ANNALS AM. ACAD. POL. & SOC. SCI. 21 (1938).

<sup>27</sup> Gary F. Moncrief et al., *Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures*, 29 LEGIS. STUD. Q. 357, 359 (2004).

limited states.<sup>28</sup>

Not only has average turnover increased, at times the number of new members has reached dizzying heights. In a number of instances, a majority of members were new; in the Michigan lower house in 1998, the proportion of new members reached sixty percent, and in the upper house in 2001, it was a staggering eighty-four percent.<sup>29</sup> In general, turnover rates are quite similar in lower and upper houses, though the effect is somewhat muted in the latter because new senators often have experience in the lower house.<sup>30</sup>

Term limits have other effects on turnover as well. For example, office holders in some term-limited states are more likely to exit early in anticipation of reaching the limit of their permitted tenure; however, these “anticipatory effects” are dependent on a state’s past turnover levels, the length and nature of the term limit law, the political opportunity structure, and the redistricting cycle.<sup>31</sup>

Term limits also tend to affect movement between chambers. Among states with six-to eight-year term limits, the frequency with which House members move to the Senate increased by 150 percent between 1994 and 2002.<sup>32</sup> This pattern does not exist among states with more liberal, twelve-year term limits, or among non-term-limited states. Additionally, term limits have fostered a previously unseen phenomenon in some states: in over twenty instances between 1994 and 2004, termed-out upper-chamber legislators have returned to the political arena in the lower chamber.<sup>33</sup>

**The introduction of term limits does not change the type of people who seek legislative office.** Advocates of term limits have suggested that restricting the amount of time that a single legislator can retain control of a seat would encourage candidates of more diverse and representative demographic backgrounds to enter the political arena. It has also been suggested that instituting term limits might return state governments to the supposed ideal of “citizen legislatures,” in

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<sup>28</sup> *See id.* at 366.

<sup>29</sup> *Id.* at 367, 369 (the percentages include legislators who were termed-out, as well as others who could have run again but decided not to).

<sup>30</sup> *Id.* at 363.

<sup>31</sup> *Id.* at 367, 371–72.

<sup>32</sup> *Id.* at 370 Table 5.

<sup>33</sup> *Id.* at 370.

which careerist politicians are replaced by average members of the community who enter and exit politics within a short period of time.<sup>34</sup> Empirically, there is little support for either of these notions.

Overall, the proportion of women and minority legislators is no greater in states with limits on the duration of incumbency than in states without such restrictions.<sup>35</sup> One exception to this statement is the growing number of termed-out legislators replaced by Latino politicians in districts where the underlying ethnic composition has changed over time.<sup>36</sup> It appears, however, that the only role term limits have played in this case has been to accelerate an existing trend. The same may be true in a few states for African Americans. Although the number of women elected to legislative office has increased slightly in both term-limited and non-term-limited states in recent years, analyses relying on techniques that control statistically for other variables reveal that this trend cannot be attributed to the presence of term limits.<sup>37</sup> There is no evidence that the ages or economic backgrounds of legislators are different in term-limited states than in non-term-limited states.

Although it is axiomatic that term limits increase turnover, thus removing careerist legislators from office, it also seems that their replacements are not the citizen legislators whom advocates of term limits had hoped would inherit the legislatures. For one thing, the individuals who replace termed-out legislators are

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<sup>34</sup> See THAD KOUSSER, TERM LIMITS AND THE DISMANTLING OF STATE LEGISLATIVE PROFESSIONALISM 3–4 (2005).

<sup>35</sup> See BRUCE E. CAIN & THAD KOUSSER, ADAPTING TO TERM LIMITS: RECENT EXPERIENCES AND NEW DIRECTIONS 9–14 (2004), [http://www.ppic.org/content/pubs/report/R\\_1104BCR.pdf](http://www.ppic.org/content/pubs/report/R_1104BCR.pdf); see also John M. Carey et al., *supra* note 21, at 114–15; Huefner, *supra* note 4, at 491; Viola Wild, *Term Limits and Their Effect on Women's Leadership Opportunities in State Legislatures: A Case Study*, 1 MICH. J. PUB. AFF. 1, 16 (2004), available at [http://www.mjpa.umich.edu/uploads/2/9/3/2/2932559/term\\_limits.pdf](http://www.mjpa.umich.edu/uploads/2/9/3/2/2932559/term_limits.pdf).

<sup>36</sup> CAIN & KOUSSER, *supra* note 35, at 14; Jason P. Casellas, *The Institutional and Demographic Determinants of Latino Representation*, 34 LEGIS. STUD. Q. 399, 418–19 (2009), available at [https://webpace.utexas.edu/jpc245/Casellas\\_LSQ\\_Aug09.pdf](https://webpace.utexas.edu/jpc245/Casellas_LSQ_Aug09.pdf).

<sup>37</sup> Even ignoring potential confounding factors, evidence supporting an increase in the percentage of women due to term limits is almost nonexistent. In the fifteen years prior to the introduction of term limits, women state legislators increased from about ten percent to twenty percent. In the fifteen years since term limits first began, that figure has increased only to about twenty-four percent. See CTR. FOR AMERICAN WOMEN AND POLITICS, FACT SHEET: WOMEN IN STATE LEGISLATURES 2008 (2008), available at [http://www.cawp.rutgers.edu/fast\\_facts/levels\\_of\\_office/documents/stleg08.pdf](http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/stleg08.pdf).

typically no less interested in politics and long-term political careers. They come into the job with at least as much elective office experience as those in non-term-limited states.<sup>38</sup> Unable to continue indefinitely in their current office, they move on to a variety of related positions: political party offices, elected positions in their communities, staff positions in the legislature, or to the other chamber of the state legislature.<sup>39</sup> The most common movement is for those in the lower house to move to the upper house, but, as noted earlier, there are even some instances of movement in the other direction.<sup>40</sup> Even controlling for other possible influences, it has been found that members in term-limited states are more likely to run for another office, more likely to run for office in the other chamber of the state legislature, more likely to run for open U.S. House of Representative seats, and more likely to challenge incumbents of the other party for their U.S. House seats.<sup>41</sup> There is also no evidence that the presence of term limits increases the number of legislators who enter politics with the intention of returning to their private sector careers after completing what they hope to accomplish.

There is some evidence that term-limited legislators are less linked to the particularistic interests of their districts; for example, they seem to devote less time and effort to constituency issues.<sup>42</sup> However, this does not necessarily translate into more understanding of and attention to broader matters. Quite the opposite: “[T]erm-limited members are less knowledgeable about both issues and process . . . . [They] spend less time on lawmaking and being attentive to statewide needs.”<sup>43</sup>

**Term limits do not have a simple, obvious effect on competition.** The effect of term limits on competition is closely intertwined with its effect on turnover. It would seem as if increasing turnover would necessarily increase competition. After all, preventing incumbents from running for reelection

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<sup>38</sup> JOHN M. CAREY ET AL., *TERM LIMITS IN THE STATE LEGISLATURES* 127 (2000).

<sup>39</sup> See CAIN & KOUSSER, *supra* note 35, at 15.

<sup>40</sup> Moncrief et al., *supra* note 27, at 370.

<sup>41</sup> CAREY ET AL., *supra* note 38, at 127.

<sup>42</sup> Gerald C. Wright, however, finds no evidence from voting behavior that term-limited legislators are any less representative of their districts. Gerald C. Wright, *Do Term Limits Affect Legislative Roll Call Voting? Representation, Polarization, and Participation*, 7 ST. POL. & POL'Y Q. 256, 266 (2007).

<sup>43</sup> Bruce Cain et al., *Conclusions and Implications*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 187.

leads to open seats, which tend to be more competitive.<sup>44</sup> In fact, between 1996 and 2010, more than 2,200 state legislators have been termed-out of office as a result of restrictions on the number of years they can serve, thereby creating numerous open seat elections.<sup>45</sup> The “problem,” however, is that while competition may increase when incumbents are removed from the picture, the regular schedule of turnover also creates incentives for likely candidates to wait for incumbents’ forced retirements before running. Further, term limits do not reduce the electoral advantages of incumbency; when incumbents are able to run for reelection, they continue to enjoy the benefits “of name recognition, resources of their office” and staff, and greater campaign fundraising success, thus making it sensible for challengers to wait them out.<sup>46</sup> The tendency to wait out incumbents is especially likely for those with previous political experience who are more likely to pose a legitimate threat to the incumbent.<sup>47</sup> Thus, the contradictory effects of term limits on competition may offset each other.

To date, there is little empirical evidence to indicate that term limits enhance competition. Quantitative analyses of data from state legislative elections in Michigan and California show no significant increase in competition in either open-seat elections or elections with an incumbent after the introduction of term limits. Surprisingly, overall competition decreased somewhat, and there was actually an increase in the number of landslide victories (indicative of a lack of competition) in post-term-limit California.<sup>48</sup> Further, examinations of data from both state legislative elections and city council elections reveal no evidence that the presence of term limits increases voter turnout—as we might expect under more competitive circumstances.<sup>49</sup>

**Term limits weaken the legislative branch with respect to other actors in the political process.** For one thing, term-

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<sup>44</sup> Regarding competition in open seat elections, see RONALD KEITH GADDIE & CHARLES S. BULLOCK, III, *ELECTIONS TO OPEN SEATS IN THE U.S. HOUSE: WHERE THE ACTION IS* 172 (2000) (discussing competition in open seat elections).

<sup>45</sup> See *Legislators Termed Out: 1996–2010*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=14842> (last visited May 15, 2011).

<sup>46</sup> Cain et al., *supra* note 43, at 188.

<sup>47</sup> See GARY C. JACOBSON & SAMUEL KERNELL, *STRATEGY AND CHOICE IN CONGRESSIONAL ELECTIONS* 23 (2d ed. 1983).

<sup>48</sup> SARBAUGH-THOMPSON ET AL., *supra* note 22, at 30–32.

<sup>49</sup> See ZOLTAN L. HAJNAL, *AMERICA’S UNEVEN DEMOCRACY: RACE, TURNOUT, AND REPRESENTATION IN CITY POLITICS* 161 (2010).

limited legislators have less time to learn their jobs effectively than do their counterparts in states that allow members to devote their careers to becoming experts on the policy-making process. The regular removal of the most experienced members of the legislature means that a significant proportion of a term-limited legislature lacks familiarity with the business of legislating and an understanding of legislative norms and procedures.<sup>50</sup> The fact that legislators under term limits typically have less experience with and knowledge about the political process means that other political actors—such as governors, lobbyists, and careerist bureaucrats—who have been involved in politics for a longer time and have developed extensive policy expertise, often have an informational advantage that inevitably increases their power relative to members of the legislature.<sup>51</sup>

Term limits generally have an intensifying effect on the relative power of the executive branch. Surveys reveal that legislators and knowledgeable observers in term-limited states attribute a stronger influence over policy outcomes to governors and civil servants than do their counterparts in non-term-limited states.<sup>52</sup> Three implications are of particular importance. First, the decreased influence of legislators relative to governors may result in a reduced emphasis on the localized concerns of districts.<sup>53</sup> Second, the informational advantages of bureaucrats can transfer power from elected representatives to nonelected officials within the executive branch.<sup>54</sup> Third, the introduction of term limits has resulted in a reduction of legislative oversight of bureaucratic agencies—largely due to legislators' inexperience.<sup>55</sup>

The effect of term limits on legislator-lobbyist relationships, however, is more complex. Without time for legislators to develop expertise in specific policy areas, legislators must rely more heavily on the information provided by experienced lobbyists when developing policy. Additionally, term limits have also affected personal relationships between legislators and other political actors—particularly lobbyists. Whereas lobbyists and legislators often develop familiar relationships over time in non-

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<sup>50</sup> David R. Berman, *Legislative Climate*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 108.

<sup>51</sup> Richard J. Powell, *Executive-Legislative Relations*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 136–38.

<sup>52</sup> *Id.*

<sup>53</sup> *See id.* at 146.

<sup>54</sup> *Id.* at 146–47.

<sup>55</sup> *Id.* at 143.

term-limited states, this is less often the case in term-limited legislatures, where legislator-lobbyist relationships are regularly disrupted.<sup>56</sup> One effect of this disrupted relationship has been the reduction of disproportionate influence of certain interests, where long-term relationships had been developed with powerful veteran legislators. Under term limits, lobbyists have to work harder to make their cases to legislators because a substantial proportion of them are in their first term. Further, incoming legislators tend to be more suspicious of the influence of interest groups and lobbyists, even though they must rely on them more for information about policy.<sup>57</sup> Thus, while term-limited legislators cede power to other parts of the government, there appears to be a mitigating effect on the increased power that lobbyists have due to their advantages in knowledge and experience.

**There is no clear evidence that the policies produced by term-limited legislatures differ systematically from those produced by their unrestricted counterparts.** The policy-making process itself has been made more chaotic and less professional due to the decrease in legislative experience and policy knowledge of term-limited legislatures, but the resulting policies do not appear to be different in nature or quality from those passed by legislatures without term limits.<sup>58</sup> While the quality of legislative outputs is difficult to measure objectively, evidence about the general characteristics of legislation drafted under term limits offers no support for the claim that the institution of term limits results in better or worse policy. Contrary to the simplistic and narrow-in-scope bills that amateur legislators might be expected to create, evidence from California demonstrates that bills passed by term-limited legislatures were actually broader and more complex, perhaps because of increased reliance on the drafting expertise of legislative staff.<sup>59</sup> Further, interest group ratings suggest that the newly elected legislators who replace outgoing incumbents are ideologically similar to their predecessors.

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<sup>56</sup> Christopher Z. Mooney, *Lobbyists and Interest Groups*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 126–27.

<sup>57</sup> *Id.*

<sup>58</sup> Thad Kousser & John Straayer, *Budgets and the Policy Process*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 149–52.

<sup>59</sup> See BRUCE E. CAIN & THAD KOUSSER, ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS 58 (2004), available at [www.ncsl.org/Portals/1/documents/jptl/casestudies/Californiav2.pdf](http://www.ncsl.org/Portals/1/documents/jptl/casestudies/Californiav2.pdf).

Analysis of budget-making processes and outcomes in selected states makes it clear, however, that term-limited legislators have less incentive and fewer resources with which to oversee executive decision making.<sup>60</sup> As Kousser and Straayer conclude, “budget records clearly demonstrate that term limits have led to a significant erosion of legislative independence in the state budgeting process.”<sup>61</sup>

#### IV. INSTITUTIONAL RESPONSES TO TERM LIMITS

Within legislatures, term limits have made everything faster. The fact that horizons on tenure are short means that legislators face greater incentives to make their mark in the world of politics as quickly as possible. Term-limited politicians are also less willing or able to remain on the sidelines, watching and learning, before becoming full participants in the policy process. Members become actively involved in drafting and debating legislation much sooner after joining the legislature than they would in a setting without term limits. Legislators often ascend to committee chairmanships and leadership positions in a fraction of the time it takes their counterparts in legislatures without restrictions on tenure.<sup>62</sup>

In response to these changes in the legislative process, legislatures have adapted their internal procedures and organization in a number of ways. First, legislators tend to hire more experienced staff to aid in the policy-making process.<sup>63</sup> Second, legislatures have almost universally instated training programs to educate legislators on everything from the bill-writing process, to lobbyist relations, to administrative procedures.<sup>64</sup> These programs have grown increasingly important in term-limited states, expanding in scope and duration. Third, the leadership selection process has shifted from one in which leaders naturally ascend to positions of power through experience and skill to one in which future leaders are identified quickly and

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<sup>60</sup> Kousser & Straayer, *supra* note 58, at 158.

<sup>61</sup> *Id.* at 162.

<sup>62</sup> See Bruce Cain & Gerald Wright, *Committees*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 76.

<sup>63</sup> See, e.g., Mooney, *supra* note 56, at 124–25.

<sup>64</sup> Bruce Cain et al., *supra* note 43, at 185, 194. See Alan Rosenthal, *Education and Training of Legislators*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 167, 170; Brian Weberg & Karl T. Kurtz, *Legislative Staff*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 104.

routinely so that they may be trained for leadership roles that come early in their careers.<sup>65</sup> These responses have somewhat mitigated the deleterious effects of term limits, though training programs and leadership preparation require a great deal of effort if they are to be done well, and even then they may not be enough to overcome the loss of time for learning, experiencing, and utilizing legislative processes and procedures.<sup>66</sup>

#### V. APPLICABILITY OF FINDINGS TO LOCALITIES AND EXECUTIVE ACTORS

Data on the frequency and effects of term limits in municipalities is sparse, and empirical work in this area is virtually nonexistent.<sup>67</sup> As in state legislatures, the trend toward instituting term limits in local government gained momentum primarily after 1990, both via voter initiatives and the efforts of individuals and loosely affiliated groups.<sup>68</sup> Of the 100 largest U.S. cities, forty-seven percent were reported to have some form of restriction on the duration of incumbency as of 1995; the average restriction in all term-limited cities was eight years.<sup>69</sup> Today, mayors' tenure in office is limited in nine of the ten largest U.S. cities (See Table 2), with most having limits on council members as well.<sup>70</sup>

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<sup>65</sup> See David R. Berman, *The Effects of Legislative Term Limits in Arizona: More Churning, More Chaos, and a Diminished Institutional Role for Legislators*, in LEGISLATING WITHOUT EXPERIENCE, *supra* note 23, at 90–91; Bruce Cain et al., *supra* note 43, at 194; Thomas H. Little & Rick Farmer, *Legislative Leadership*, in INSTITUTIONAL CHANGE IN AMERICAN POLITICS, *supra* note 20, at 62–63.

<sup>66</sup> Rosenthal, *supra* note 64, at 181, 184.

<sup>67</sup> Perhaps the most comprehensive report on local term limits is now fifteen years old. See generally Danielle Fagre, *Microcosm of the Movement: Local Term Limits in the United States*, 4 TERM LIMITS OUTLOOK SERIES 1 (1995), available at [http://www.heartland.org/custom/semod\\_policybot/pdf/5523.pdf](http://www.heartland.org/custom/semod_policybot/pdf/5523.pdf) (providing a “comprehensive compilation of local-level term limits data”). An on-going, unofficial compilation of new term limit laws can be found in periodic issues of *No Uncertain Terms*, a newsletter published by U.S. Term Limits. See, e.g., *Term Limits Referenda Win from Coast to Coast*, 18 NO UNCERTAIN TERMS 1, 6, (2010), <http://www.termlimits.org/files/USTL%20Nov-Dec%202010.pdf>.

<sup>68</sup> See Timothy Besley & Anne Case, *Political Institutions and Policy Choices: Evidence from the United States*, 41 J. ECON. LITERATURE 7, 21 (2003); Jeffrey A. Karp, *Explaining Public Support for Legislative Term Limits*, 59 PUB. OPINION Q. 373, 373 (1995).

<sup>69</sup> Fagre, *supra* note 67, at 2.

<sup>70</sup> The data on municipalities reported in Table 2 of this article is inconsistent with that cited by Fagre, especially since she reports that “[l]ocal limits are most

It seems likely that the effects of term limits discussed above would apply in a relatively straightforward manner to city councils, which often have procedures, organizations, and objectives similar to those of state legislatures. Extending findings from state legislatures to city-level executives is less straightforward. It seems likely, however, that as is the case in state legislatures, the introduction of term limits in mayoral offices would have no effect on the type of people who seek and win office. Nor does it seem likely that term limits would increase the overall competitiveness of mayoral elections, for reasons similar to those discussed above.

It is likely that term limits do tend to weaken executives. “Lame duck” mayor and governors approaching the end of their tenure may receive less cooperation from other political actors who know the incumbent will soon be replaced.<sup>71</sup> The nature of executive versus legislative offices, however, may mitigate some of the impact of term limits on the effectiveness of executive leaders. Regardless of their degree of professionalization, state legislatures must share limited staff resources and coordinate the efforts and preferences of a large number of individuals, a substantial portion of whom (in term-limited states) are new to the legislative process. In contrast, even in small cities, executive positions are typically full-time offices with a relatively large number of dedicated staff. It may also be the case that the learning curve is sharper for executives, thus reducing the disruptive effect of term limits. Further, local executives, and certainly state governors, probably enter office with more previous political experience than newly elected state legislators, which may allow them to step into the executive role more quickly. It is also worth noting that most states, for whatever reasons and whatever the consequences, have seen fit to limit the tenure of their top executives. That is, governors in nearly three-quarters of the states are limited in the number (usually two) of consecutive terms they may serve.<sup>72</sup>

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prevalent in Texas, California and Florida.” *Compare infra* Table 2 with Fagre, *supra* note 66, at 3. We have no explanation for this discrepancy.

<sup>71</sup> Charles D. Taylor, Assistant Professor of Political Sci., Ball State Univ., Presentation: Gubernatorial Powers and Legislative Agendas: Are Strong Governors Bold Governors? 4, 9, 23 (June 5, 2010), [http://www.sppc2010.org/Papers/taylor\\_sppc\\_2010.pdf](http://www.sppc2010.org/Papers/taylor_sppc_2010.pdf).

<sup>72</sup> Two studies have found negative fiscal effects in states with term-limited governors. James Alt et al., *Disentangling Accountability and Competence in Elections: Evidence from U.S. Term Limits*, 73 J. POL. 171, 181–82 (2011);

*A. Term Limits in New York City*<sup>73</sup>

In 1993, voters in New York City approved a change to the city charter that established a limit of two four-year terms for the mayor, the comptroller, the public advocate, the borough presidents, and members of the City Council.<sup>74</sup> In 1996, voters rejected a referendum to increase the limit to three terms.<sup>75</sup> In 2008, with Mayor Bloomberg reaching the end of his second term, the City Council passed a law that extended the limit to three terms.<sup>76</sup> Finally, in November 2010, voters had the opportunity to decide whether city officials should remain subject to the three-term limit or return to the prior limit of two terms. Unsurprisingly, the vote on the 2008 amendment to allow a one-term increase, which was in the hands of Council incumbents, was approved (though only by a vote of 29-22, as some Council members were evidently wary of how voters would react).<sup>77</sup> Equally unsurprising, the 2010 charter change, placed before voters, was also approved by a wide margin, with citizens voting three to one to restore the two-term limit.<sup>78</sup> Voters in general, as noted earlier, have remained strongly supportive of term limits. In this instance, they were likely motivated as well by dislike of the Council's action of overriding the voters' two previous votes.

Despite the evidence that voters were largely in favor of the more restrictive limit (the referenda in 1993 and 1996), as well as a poll in October 2010 showing an overwhelming majority believing that term limits should be decided by a referendum, the ballot was soft on current incumbents, only offering the option to apply the proposed change prospectively—i.e., to officials elected

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Timothy Besley & Anne Case, *Does Electoral Accountability Affect Economic Policy Choices? Evidence from Gubernatorial Term Limits*, 110 Q. J. ECON. 769, 787 (1995).

<sup>73</sup> The historical narrative in this section draws heavily on the excellent account in a two-part series by Henry Stern in specials to the *New York Sun*. Henry Stern, *Effort is Launched to Restore Two-Term Limit for Elected Officials in the City: Aim is a Referendum a Year Hence*, N.Y. SUN, Nov. 23, 2010, available at <http://www.nysun.com/new-york/effort-is-launched-to-restore-two-term-limit/87150/> [hereinafter *Effort is Launched*]; Henry Stern, *Term Limits Petition Drive Will Need 30,000 Signatures in First Round*, N.Y. SUN, Nov. 24, 2010, available at <http://www.nysun.com/new-york/term-limits-petition-drive-will-need-30000/87152/> [hereinafter *Term Limits Petition*].

<sup>74</sup> *Effort is Launched*, supra note 73.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See *Term Limits Petition*, supra note 73.

in the 2013 election and later—thus allowing those already in office to serve three terms.<sup>79</sup>

Numerous efforts to weaken or do away with term limits are par for the course in state legislative battles over such limits. It should be no surprise that similar actions occurred in New York City. Interestingly, a backlash arose almost immediately in New York City, and an effort is now being made to force a referendum in 2011 on whether the two-term limit should take effect in 2013 instead of 2021.<sup>80</sup>

### CONCLUSION

Neither the arguments of the advocates nor the opponents of term limits are entirely right. Apart from expediting ongoing changes, term limits do not have a diversifying effect on the composition of the governing bodies on which they have been imposed; most notably, term-limited and non-term-limited legislatures are similar in both the gender and ethnicity of their members. Further, the introduction of term limits makes legislatures no more likely to attract “citizen politicians.” In fact, restrictions on the duration of incumbency simply inspire career-minded legislators to seek other political offices.

Term limits do, however, increase the turnover rate in legislatures—both directly, by placing a ceiling on the legal length of tenure in office, and indirectly, by creating anticipatory exiting effects in some states. Further, term limits increase mixing between upper and lower chambers; in term-limited states, members of the lower house are more likely to go on to serve in the upper house, and there are even instances of members of the upper house moving to the lower chamber upon reaching the end of their term.<sup>81</sup>

Despite their enhancing effect on turnover, term limits do not appear to make elections more competitive; in fact, it is possible that they have the opposite effect as a result of creating a regular schedule of open seats. Nor do term limits diminish the advantages of incumbency because term-limited office holders

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<sup>79</sup> *Effort is Launched*, *supra* note 73.

<sup>80</sup> *Term Limits Petition*, *supra* note 73. The new law does place a restriction on the ability of incumbents to change the term limits provision as it relates to them. This provision was presumably inserted to assuage voters who were angry over the Council’s action in 2008. See Javier C. Hernandez, *Once Again, City Voters Approve Term Limits*, N.Y. TIMES, Nov. 3, 2010, at P12.

<sup>81</sup> Moncrief et al., *supra* note 27, at 370.

enjoy the same electoral benefits as their non-term-limited counterparts for as long as they may continue to seek office.<sup>82</sup>

Although it is difficult to gauge whether the policies produced by term-limited legislatures are better or worse than those produced by their unrestricted counterparts, policy characteristics across term-limited and non-term-limited legislatures appear to be very much the same, despite the fact that members of term-limited legislatures are, as a group, less experienced with policy making. This may be due, in part, to the fact that legislatures have responded to restrictions on tenure by reorganizing their internal procedures. This reorganization quickly prepares members to become fully engaged in legislating. An additional response to tenure restrictions is the hiring of more experienced staff to assist with the process of drafting policy.

One aspect of politics that term limits do seem to affect is power relations between legislatures and other political actors. Legislatures with restrictions on the duration of members' tenure are weaker relative to the executive and must rely more heavily on nonelected parties, such as legislative staffers and bureaucrats—some of whom are executive political appointees—in developing policy. At the same time, the effect of term limits on the extent to which lobbyists and interest groups influence the policy process appears to be small, as term limits change the nature of the interaction between legislators and special interests.<sup>83</sup>

The body of evidence on the effects of limiting incumbents' abilities to return to office continues to grow as scholars and legislative service groups observe the world of state politics in the wake of the introduction of term limits. While the debate over term limits has hardly been resolved, it seems that neither the highest hopes of advocates nor the worst fears of opponents have been realized.

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<sup>82</sup> N.Y. CITY CHARTER REVISION COMM'N, FINAL REPORT OF THE 2010 NEW YORK CITY CHARTER REVISION COMMISSION app. B-1–B-2 (2010), *available at* [http://www.nyc.gov/html/charter/downloads/pdf/final\\_report\\_2010\\_charte\\_revisi\\_on\\_9-1-10.pdf](http://www.nyc.gov/html/charter/downloads/pdf/final_report_2010_charte_revisi_on_9-1-10.pdf).

<sup>83</sup> *Id.* at app. B-2.



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