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FORMAL
OPINION

of

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No. 00-5

Alpha No. ST AG AGBAJ

Issued July 10, 2000

This opinion is issued at the request of the Colorado Secretary of State, Ms. Donetta Davidson. In her letter of April 25, 2000, the Secretary of State poses several questions that seek to clarify limitations on the number of terms that may be served by elected officials in Colorado.

The term limits addressed in this opinion are set forth in Articles V, § 3(2) and XVIII, § 11 of the Colorado Constitution. These term limits were enacted through initiatives approved by the People of the State of Colorado in 1990 (Amendment No. 5) and 1994 (Amendment 17).

QUESTIONS PRESENTED AND CONCLUSIONS

Question No. 1: If an elected official has served the maximum number of consecutive terms in an elected body as a representative of one district, may that elected official move to a different district and immediately run for election to the same body to represent the new district?

Answer No. 1: No. An elected official from a particular district who has served the maximum number of consecutive terms in an elected body is precluded from immediately running for election to that body from another district.

Question No. 2: If redistricting creates a new or reconfigured district, may a term limited elected official immediately run for election to the same body from a new or reconfigured district?

Answer No. 2: No. Redistricting does not increase the limitation on consecutive terms that may be served by an elected official in a particular elected body.

Question No. 3: If an elected official has served the maximum number of consecutive terms for an “at-large” seat in an elected body, may that official immediately run for election to a specific district seat in that body? Conversely, if a member has served the maximum number of consecutive terms as a representative from a particular district, may that member immediately run for an at-large seat to the same body?

Answer No. 3: Both questions are answered in the negative. An “at-large” member of an elected body who has served the maximum number of consecutive terms may not thereafter run for election for a specific district seat in the same body. Similarly, a member of an elected body who occupies a district seat and has served the maximum number of consecutive terms is precluded from running immediately thereafter for election to that body as a member “at-large.”

BACKGROUND

Article V, § 3(2), of the Colorado Constitution limits the number of terms a state senator or representative may hold in the Colorado General Assembly.

In order to broaden the opportunities for public service and to ensure that the general assembly is representative of Colorado citizens, no senator shall serve more than two consecutive terms in the senate, and no representative shall serve more than four consecutive terms in the house of representatives. This limitation shall apply to terms of office beginning on or after January 1, 1991. Any person appointed or elected to fill a vacancy in the general assembly and who serves at least one-half of a term of office shall be considered to have served a term in that office for the purpose of this subsection (2).

This constitutional provision is referred to as the “State Term Limit Amendment” in the discussion that follows.

A second, similar portion of Colorado’s constitution applies to officials elected to offices in political subdivisions of the state. Article XVIII, § 11, of the Colorado Constitution, referred to below as the “Local Term Limit Amendment,” states in pertinent part:

[N]o nonjudicial elected officials of any county, city and county, city, town, school district, service authority, or any other political subdivision of the State of Colorado . . . shall serve more than two consecutive terms in office¹

The two preceding provisions are referred to collectively as the “Term Limit Amendments.”

The issues addressed in this opinion are not answered by a simple reading of the Term Limit Amendments. Although a number of reported court decisions address various issues related to term limitations, we are unaware of any case in Colorado, or in any other jurisdiction, that addresses directly the questions raised in this opinion. They are matters of first impression in Colorado.

Finally, the Term Limit Amendments restrict only those who would seek election to an elected body in which they served during the immediately previous term. Nothing in this opinion addresses or restricts the ability of a term-limited elected official to seek office in a different elected body.

DISCUSSION

A single analysis, developed below, provides the foundation to answer each of the questions posed by the Secretary of State. For that reason, analyses of the separate questions are not broken out individually in this discussion.

As always, the inquiry starts with the specific words and phrases chosen in the Term Limits Amendments. In this instance, resolution of the issues presented turns on the meaning of the phrases “in the senate,” “in the house of representatives,” and “in office,” as used in these provisions. If these phrases refer only to a particular district (e.g., the District 7 representative) or seat (e.g., an “at-large” seat), then a member elected from one district or seat may run immediately for office from another district or a specific district. Conversely, if these phrases refer more broadly to the elected institutions involved, e.g., the senate, house of representatives, or city council involved, then a member who has served the maximum number of consecutive terms in the elected body involved is precluded from running immediately for another term, even from a different district or seat.

When the words and phrases used in a constitutional provision are plain and unambiguous, the legal inquiry is at an end. They are to be given their plain and unambiguous meaning. *Kane v. Town of Estes Park*, 786 P.2d 412 (Colo. 1990). In this instance, the first sentence of the State Term Limit Amendment is very specific: no senator shall serve more than two consecutive terms “in the senate” and no representative shall serve

¹ If the term is less than two years, then the member is limited to three terms. Colo. Const., Art. XVIII, § 11(1).

more than four consecutive terms “in the house of representatives.” These phrases plainly refer to the elected institutions as a whole, and not to an election from a specific district or seat.

In contrast, the use of the term “office” in the second and third sentences of the State Term Limit Amendment is ambiguous. While the references to “in the senate” and “in the house” plainly refer to the whole elected bodies, the reference to an “office” is much less specific. In some contexts, senators and representatives are associated with, and are identified by, their particular district.² Moreover, the demographics of individual districts can vary widely and these differences can be important considerations in federal Voting Rights Act cases and in constitutional law. *Sanchez v. State of Colorado, et al.*, 97 F.3d 1303 (10th Cir. 1996). If “office” is intended to refer to a particular district held by the senator or representative, then, to be consistent, “in the senate” or “in the house of representatives” must also refer to individual districts.

The use of “office” in the Local Term Limit Amendment similarly is ambiguous. Unlike the State Term Limit Amendment, however, the Local Term Limit Amendment does not contain a specific reference to an institution as a whole.³

A number of considerations suggest that the word “office” in both Term Limit Amendments refers broadly to entire elected institutions and not to individual districts or seats from which officials are elected. First, with respect to the State Term Limit Amendment, the substance of the term limit prohibition is set forth in the first sentence and is stated in terms of “in the senate” and “in the house of representatives.” The term “office” in the second sentence appears only to be a shorthand reference to the more specific phrases of the first sentence. As such, the more general term, “office,” is given meaning by reference to the more specific phrases in the first sentence (“in the senate” and “in the house of representatives”). *Burlington Northern Railroad Co. v. Stone Container Corp.*, 934 P.2d 902 (Colo. 1997) (specific terms prevail over general terms).

Second, ambiguous terms in the constitution should be construed in light of, and give effect to, the purposes of the provision involved. *See Water Rights of Park County Sportsmen’s Ranch, LLP v. Bargas*, 986 P.2d 262 (Colo. 1999) (when addressing questions of statutory construction, courts must ascertain the intent of the legislation and adopt a construction that best effectuates the purposes of the legislative scheme). I conclude that interpreting the term “office” to refer broadly to the elected institution, rather than to a particular district or seat, is more consistent with the purposes of the Term Limit Amendments, as described below.

² The senate and house of representatives are divided into districts. Article V, §§ 45 and 46.

³ The absence of a specific reference to individual institutions does not suggest that “office” is intended as a reference to a particular district or seat. There are many types of municipal institutions to which officials are elected. Listing these institutions in the Amendment would be cumbersome.

The purposes of the Term Limit Amendments can be determined by reference both to the Amendments themselves and to the ballot documents drafted at the time the initiatives were enacted. *Carrara Place Ltd. v. Arapahoe County Bd. Of Equalization*, 761 P.2d 197 (Colo. 1988); *Legislature of the State of California v. Eu*, 54 Cal.3d 492, 816 P.2d 1309 (Calif. 1991) (“Indicia of the intent of the voters with respect to initiative measure includes analysis and arguments contained in the official ballot pamphlet.”). In Colorado, the Legislative Council of the Colorado General Assembly publishes and disseminates pamphlets that analyze ballot proposals.⁴

The Term Limit Amendments state a two-fold purpose: “to broaden the opportunities for public service” and to “assure that elected officials of governments are responsive to the citizens of those governments.” Colo. Const., Arts. V, § 3(2) and XVIII, § 11(1). These twin purposes are also expressed and described in more detail in the 1990 and 1994 ballot proposal pamphlets.

In the 1990 ballot proposal pamphlet, the arguments supporting the adoption of term limits are stated as follows:

Our founding fathers believed holding elected office was a public service to be performed only for a limited time. Today, however, we refer to some elected officials as “career” or “professional” politicians and many such officials view their positions as career or lifetime jobs. This careerism stems partly from the fact that incumbents seeking reelection nearly always win. Once in office for long periods of time, incumbents tend to lose touch with the interests of their constituents and focus more of their attention on issues over which they have gained power through the seniority system. The result is a system in which political participation is discouraged, office holders are unresponsive to constituents, and elected officials spend more

⁴ The 1990 and 1994 analyses by the Legislative Council for the Colorado General Assembly are published pursuant to § 2-3-303, C.R.S. and are generally made available to the public as a guide to the statewide measures decided in the 1990 and 1994 general elections. Legislative Council of the Colorado General Assembly, *An Analysis of 1990 Ballot Proposals* (1990) (Research Publication No. 350) (“1990 Ballot Analysis”); Legislative Council of the Colorado General Assembly, *An Analysis of 1994 Ballot Proposals* (1994) (Research Publication No. 392) (“1994 Ballot Analysis”). Portions of these analyses are attached to this opinion. The Colorado State Archives also maintains audiotapes of joint “Review and Comment” meetings of the Legislative Council and Legislative Legal Services Committee. These entities meet with proponents and opponents of an initiative to review and comment on initiatives. Unfortunately, no tape exists of the joint meeting for the 1990 initiative, and the 1994 tape is inaudible. The State Archives also maintains tapes of the meetings of the Colorado Title Setting Board concerning the 1994 initiative. Our review of these tapes reveals that no discussions at these Title Board Meetings were relevant to the issues discussed in this opinion.

time on election campaigns than they do on their duties as public officials. A return to a “citizen” government through the limitations of terms is the answer to this political congestion.

Long periods of service by public office holders does provide for experience but does not necessarily provide citizens with better lawmakers. Limiting terms of office will allow more individuals, particularly those with established professions or occupations outside of public office, the opportunity to serve the public. Broadening public service will invigorate the political system by making room for new policy makers with new perspectives on addressing public policy issues. Realizing that their terms of office are limited, public office-holders will be more productive, devote more time to their duties as elected officials, and will be more bold in political decision-making without fearing the potential impact of such decision on future reelection efforts. 1990 Ballot Analysis, *supra*, at 21.

The 1994 Ballot Analysis restates many of these arguments. It declares:

Voters in Colorado adopted the concept of term limits in 1990 as a method of keeping elected officials from viewing their positions as lifetime or career jobs. By forcing turnover, new people will be able to enter the political scene and bring fresh ideas into the legislative branch of the government and to local governments. 1994 Budget Analysis, *supra*, at 54.

The purposes of Colorado’s Term Limit Amendments are similar to the purposes of term limit initiatives enacted in other states in the early and mid-1990s. *See, e.g., Schweisinger v. Jones*, 68 Cal. App. 4th 1320, 1324, 81 Cal. Rptr. 2d 183 (Calif. 1998) (“The primary purpose of Proposition 140 is to limit the advantages of incumbency and eliminate ‘a class of career politicians,’ instead of the citizen representatives envisioned by the Founding Fathers.”); *Ray v. Mortham*, 742 So.2d 1276, 1285 (Fla. 1999) (“The voters have also expressed a belief that politicians who remain in office too long may become preoccupied with re-election and become beholden to special interests and bureaucrats.”).

Construing the term “office” to refer to the institution rather than to a particular district or seat within that institution is consistent with the purposes of the Term Limit Amendments. One of the principal goals of the Term Limit Amendments is to prevent political “careerism.” Interpreting “office” to refer to a particular district would defeat this purpose. It would permit an elected official who has served the maximum number of consecutive terms in one district or seat to run for an “at-large” seat rather than a district seat,

or to run again because some portion of the district's boundary has been altered. Interpreting "office" to refer to an institution, on the other hand, prohibits elected officials from extending their political careers in such circumstances. The latter interpretation more clearly effectuates this principal goal of the Term Limit Amendments.

Moreover, the authority and responsibility of an "office" extend beyond the interests of a particular district. An elected official may vote on any matter that comes before the governing body, even though the official is elected from a particular district or seat. In many cases, issues will affect the entire electorate and not just those within the official's own district. In this sense, the boundaries of the district or the nature of the seat the elected official occupies are not significant.

This distinction between the "office," on the one hand, and the electorate from which the official is elected, on the other hand, was drawn in *Olsen v. Merrill*, 5 P.2d 226 (Utah 1931). Redistricting resulted in an elected official residing in a district different from the one in which he was originally elected. Plaintiff, seeking a court determination that the change in boundaries resulted in a vacancy in the "office," argued the incumbent should not be permitted to hold office when he lived outside the district that elected him. The court rejected the claim, observing that:

[t]he duties of the plaintiffs as members of the board of education of Provo City are in no sense confined to the municipal wards from which they were elected... Every act that a member of the board is required to perform is an act for the entire school system. The only purpose served by a division of the city into municipal wards, in so far as the school system is concerned, is that each ward shall elect one member of the board. So long as the board member resides within the boundaries of the city he has or should have a direct interest in maintaining an efficient school district within the city. *Id.*, at p. 228.

Thus, changing or reconfiguring districts or seats will not necessarily result in a "freshness of ideas" on the host of office-wide issues. On the other hand, interpreting "office" to refer to an institution necessarily brings in entirely new office holders. This latter view is more consistent with the goal of "freshness of ideas" of the Term Limit Amendments.

Defining "office" to refer broadly to the elected institution is consistent with court interpretations of term limitation provisions in other contexts. Courts have construed term limit amendments liberally to effectuate their purposes. *Schweisinger v. Jones*, 68 Cal. App. 4th 1320, 81 Cal. Rptr. 2d 183 (Calif. 1998); *League of Women Voters v. Secretary of State*,

683 A.2d 769 (Maine 1996). For the reasons discussed above, interpreting “office” to refer to the institution will more likely bring the “freshness of ideas” and mitigate the concerns of the power of special interests than an interpretation that permits elected officials to run for the same institution from a different seat or district.

Moreover, when assessing the intent and purposes of voter initiatives, courts give effect to the likely understanding of the “average voter,” and generally eschew subtle legal nuances. *See, e.g., McLaughlin v. State Board of Education*, 75 Cal.App.4th 196, 216, 89 Cal.Rptr.2d 295 (Calif. 1999) (term limit initiative construed to give effect to “what the ‘average voter’ would understand to be the intent of the law upon which he or she was voting”). An interpretation which construes “office” to distinguish between, for example, an “office” of a member at-large and an “office” of a particular seat, is not readily apparent from the language of the Term Limit Amendments, and, therefore, not likely the understanding of the “average voter.”

Courts have rejected interpretations that frustrate the apparent purposes of term limits. For example, in *Schweisinger v. Jones*, *supra*, 68 Cal.App.4th 1320, plaintiff argued that “term” should be construed to require a full term and not a partial term. The court noted that if it were to adopt that definition, an elected official could run repeatedly by resigning shortly before the end of the term and thereby frustrate the purposes of the limitation. In the present case, interpreting “office” so as to allow an elected official to hold office for additional terms in the same elected institution because, for example, some portion of the district or ward is redrawn, or because the official is now running for a district seat rather than a “at-large” seat, would be at odds with the general purpose of the Term Limit Amendment.

Finally, an interpretation of “office” to refer only to a particular district creates complexity and confusion in the application of the Term Limit Amendments. If an official can run in a new district, then there is no obvious reason why the official could not also run from the same district in which the boundary lines have been redrawn. Aside from the problem that a reconfigured district may not change in any dramatic way the demographics of the old district, a complex and, perhaps, unsolvable problem arises of determining how much of a change is required in order for there to be a “new” district.

CONCLUSION

Based upon the analyses set forth above, I interpret the phrases “in the senate,” “in the house of representatives,” and “office,” as used in the Term Limit Amendments, to refer generally to an elected institution, and not to a particular district or seat from which a member is elected. It follows that an elected official who has served a maximum number of consecutive terms cannot immediately run again to the same elected body, and avoid the effect of the Term Limit Amendments, by moving to a new or reconfigured district or seat.

Therefore, I answer each of the questions posed by the Secretary of State in the negative. Moving to a new district will not allow a term limited elected official to run immediately for election to the same body. Redistricting will not allow a term limited official to run immediately for election to the same body. Finally, a change in the at-large or specific district nature of the seat the elected official currently occupies will not allow a term limited elected official to run again immediately for election to the same body.

Issued this 10th day of July, 2000.


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**LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY**



**AN ANALYSIS OF
1990 BALLOT PROPOSALS**

**Research Publication No. 350
1990**

Limitation of Terms

AMENDMENT NO. 5 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limitation of Terms

Ballot *An amendment to the Colorado Constitution limiting the number of consecutive terms that may be served by the Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, members of the General Assembly, and United States Senators and Representatives elected from Colorado.*

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- limit the terms of office of the Governor, Lieutenant Governor, Secretary of State, State Treasurer, and Attorney General to two consecutive four year terms, effective for terms beginning on or after January 1, 1991;
- limit the terms of office of state senators to two consecutive four-year terms, and state representatives to four consecutive two-year terms, effective for terms beginning on or after January 1, 1991;
- limit the terms of office of Colorado's U.S. Senators to two consecutive six-year terms, and Colorado's U.S. Representatives to six consecutive two-year terms, effective for terms beginning on or after January 1, 1991;
- declare the support of the people of Colorado for a nationwide limit of twelve consecutive years of service in the United States Senate and House of Representatives and for Colorado public officials to use their best efforts to work for such a limit;
- declare the will of the people of Colorado to encourage the federal officials elected from Colorado to voluntarily observe the wishes of the people with respect to the limitation of congressional terms if any provision of the measure is determined to be invalid by the courts.

History

Efforts to limit the terms of elected officials have been made since the founding days of the United States of America. In 1777, the Continental Congress imposed a three-year limit on delegates under the Articles of Confederation. However, when the U.S. Constitution was drafted to replace the Articles of Confederation in 1789, term limitations were not incorporated into the constitution. At present, there are no limits on congressional terms in the U.S. Constitution, although presidential terms were limited to two four-year terms with the ratification of the 22nd Amendment to the U.S. Constitution in 1951. To date, no state has constitutionally limited the terms of its federal officeholders. The issue of whether it is constitutional for a state to limit the terms of its federal officeholders has not been decided upon by the courts.

Comments on the Proposed Amendment

The following three tables present a profile of Colorado's state and federal elected officeholders in terms of how many years they serve, the amount of turnover in elected office, and the extent to which current officeholders maintain their positions.

Limitation of Terms

TABLE I

The **average tenure**, or number of years served,
for state and federal public officeholders
between 1960 and 1988 was:

Colorado Delegation to U.S. Congress

Members of House of Representatives	6.0 years (3 terms)
Members of Senate*	9.6 years (1.6 terms)

State Offices

State Representatives	4.5 years (2.3 terms)
State Senators	6.4 years (1.6 terms)
Executive Branch Elective Office**	6.8 years (1.7 terms)

* includes unfinished terms through 1990

** includes Governor, Lt. Governor, Sec. of State,
Treasurer, and Attorney General

TABLE II

The **average turnover rate**, or ratio of newly
elected individuals to the total number of seats
in a given year, during the **1980s** was:

	<u>Colorado Congressional Delegation</u>		<u>General Assembly (100 members)</u>		<u>Executive Branch Elective Office</u>
1980	14%	(1/7)*	28%	(28/100)	no election
1982	13%	(1/8)	39%	(39/100)	40% (2/5)
1984	13%	(1/8)	25%	(25/100)	no election
1986	50%	(4/8)	34%	(34/100)	60% (3/5)
1988	0%	(0/8)	19%	(19/100)	<u>no election</u>
(Avg)	18%		29%		50%

* indicates # of newly elected/total # of seats

TABLE III

The **incumbency reelection rate**, or the rate at which
officeholders seeking reelection win, was in the **1980s**:

	<u>Colorado Congressional Delegation</u>		<u>General Assembly (100 members)</u>		<u>Executive Branch Elective Office</u>
1980	100%	(5/5)*	90%	(57/63)	no election
1982	100%	(5/5)	88%	(45/51)	100% (3/3)
1984	100%	(6/6)	92%	(57/62)	no election
1986	75%	(3/4)	88%	(53/60)	100% (2/2)
1988	100%	(6/6)	97%	(65/67)	<u>no election</u>
(Avg)	95%		91%		100%

* indicates # elected/# seeking reelection

Limitation of Terms

Three measures were introduced during the 1990 session of the Colorado General Assembly which attempted to limit terms of office for elected officials at the state and national level. None of these measures were adopted by the General Assembly. In addition to the measures introduced in 1990, six similar measures were introduced in the General Assembly between 1975 and 1989, none of which were adopted by the General Assembly nor placed on the ballot. Six measures have been introduced to date in the 101st Congress which attempt to limit or change congressional terms of office, none of which have been passed by either house of Congress.

Arguments For

1) Our founding fathers believed holding elected office was a public service to be performed only for a limited time. Today, however, we refer to some elected officials as "career" or "professional" politicians and many such officials view their positions as career or lifetime jobs. This careerism stems partly from the fact that incumbents seeking reelection nearly always win. Once in office for long periods of time, incumbents tend to lose touch with the interests of their constituents and focus more of their attention on issues over which they have gained power through the seniority system. The result is a system in which political participation is discouraged, office holders are unresponsive to constituents, and elected officials spend more time on election campaigns than they do on their duties as public officials. A return to a "citizen" government through the limitation of terms is the answer to this political congestion.

2) Long periods of service by public office holders does provide for experience but does not necessarily provide citizens with better lawmakers. Limiting terms of office will allow more individuals, particularly those with established professions or occupations outside of public office, the opportunity to serve the public. Broadening public service will invigorate the political system by making room for new policy-makers with new perspectives on addressing public policy issues. Realizing that terms of office are limited, public officeholders will be more productive, devote more time to their duties as elected officials, and will be more bold in political decision-making without fearing the potential impact of such decisions on future reelection efforts.

3) It is necessary for the voters to approve this initiated measure because it is highly unlikely that those whom it will affect—namely elected officeholders—will ever work to bring it about themselves. Asking current officeholders to vote in favor of limiting terms of office is asking them to vote themselves out of a job or livelihood which many have no plans to relinquish claim to. Since all past attempts to adopt a limit on terms in both the General Assembly and U.S. Congress have failed, it is time for the people of Colorado to take a stand and join the other states in this grass roots effort to limit terms of office.

4) That portion of the measure which limits terms of members of Congress from Colorado will be a first step in limiting United States congressional terms. Colorado will and should be the leader in this effort. The notion of limiting the powers of government is by no means a new one to the citizens of the United States—in fact, our constitutional theory is based upon limitations on the powers of government. For this reason, it is likely that other states will join Colorado in this effort. It is time to stop worrying about losing our share of the federal spoils system, and to start making our governmental system a more equitable one.

**LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY**



**AN ANALYSIS OF
1994 BALLOT PROPOSALS**

**Research Publication No. 392
1994**

Limitation of Terms

Arguments Against

1) This measure should be rejected because it fails to address what ails our political system. The problems of corruption and incumbency advantage will persist even if term limitations are instituted. If our aim is to have more competitive elections and to limit the advantages of the incumbent, we can achieve these goals without artificially limiting terms of office. For example, we can overhaul the campaign finance laws by placing a cap on campaign spending or by limiting campaign funds raised by political action committees; reduce the duration of the legislative session; reduce the mailing and travelling privileges of incumbents; reduce the large personal staff of incumbents; reduce congressional salaries; abolish the accrual of congressional pensions based on years of service; redraw district lines; and, provide more equitable media coverage of candidates and their records. These alternatives to limiting terms will bring about the same desired results without the need for constitutional amendments.

2) In a democracy, people should be able to vote for whomever they want without arbitrary limits. Term limitations would make our political system less democratic because they would infringe upon the voters' freedom of expression. Term limitations represent a distrust of the voters' ability to choose the best candidate. The voters presently choose by means of election the individuals that they wish to serve them, and remove from office those public servants who they do not want to serve them either by not reelecting them or by recall. Voters should be able to continue to exercise these rights without limitations.

3) There is nothing wrong with having long-time experience in public office. To believe otherwise is to believe that elective office is the one vocation where experience is an obstacle to good performance. It takes a great deal of time to gain the experience necessary to tackle complex governing issues. The price of this measure is to force seasoned officeholders to leave office just as they had acquired valuable experience, and to strengthen the hand of permanent bureaucrats, congressional staff and lobbyists, none of whom are elected by, or accountable to, the public. Seasoned office-holders' value stems not only from their experience, but from their ability to rise above parochial concerns and usefully temper youthful enthusiasm with a historical perspective on policies that have worked and those that have failed.

4) The citizens of Colorado would suffer under that portion of the measure which would limit the terms of the state's congressional delegation. Because Colorado would be limiting only the terms of its own Washington delegation, relative to other states it will lose its seniority and power in Congress. It is unlikely that an amendment to the U.S. Constitution limiting the terms of office of Congressmen from all 50 states will ever be adopted. Under this proposal, Colorado would stand alone in forcing its representatives to step down just as they have gained enough experience to achieve positions of leadership and authority in Washington. As a result, many issues will be decided with less influence from Colorado's Washington delegation or Colorado's citizenry.

...appropriate, given the lack of consensus concerning the effect of viewing pornography.

Amendment 17 – Term Limits

Ballot Title: AN AMENDMENT TO THE COLORADO CONSTITUTION TO LIMIT THE NUMBER OF CONSECUTIVE TERMS THAT MAY BE SERVED BY A NONJUDICIAL ELECTED OFFICIAL OF ANY POLITICAL SUBDIVISION OF THE STATE, BY A MEMBER OF THE STATE BOARD OF EDUCATION, AND BY AN ELECTED MEMBER OF THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION AND TO ALLOW VOTERS TO LENGTHEN, SHORTEN, OR ELIMINATE SUCH LIMITATIONS OF TERMS OF OFFICE; AND TO REDUCE THE NUMBER OF CONSECUTIVE TERMS THAT MAY BE SERVED BY THE UNITED STATES REPRESENTATIVES ELECTED FROM COLORADO.

The proposed amendment to the Colorado Constitution would:

- amend the term limitation provisions adopted by the voters of Colorado as a constitutional amendment in 1990 specifying the maximum consecutive terms of office, beginning January 1, 1995, as follows:

United States House of Representatives – reduce the number of consecutive terms from six to three consecutive terms, or from 12 to six years.

Local elected officials – establish a new limit of two consecutive terms of office, unless this limitation is changed by the voters of that political subdivision. (Includes elected officials of counties, municipalities, school districts, service authorities, and other political subdivisions.)

Other state elective offices – establish a new limit of two consecutive terms for members of the State Board of Education and the University of Colorado Board of Regents, a total of 12 years.

- allow the voters of a political subdivision to lengthen, shorten, or eliminate the limitations on terms of office imposed by this amendment;
- allow the voters of the state to lengthen, shorten, or eliminate the terms of office for the two state education boards included in this proposal;
- state that the people of Colorado, in adopting this amendment, are in support of a nationwide limitation of terms of not more than two consecutive terms for members of the U.S. Senate and three consecutive terms for members of the U.S. House of Representatives and that public officials of Colorado are instructed to use their best efforts to work for such limits; and
- state that the intent of this measure is that federal officials elected from Colorado will continue to voluntarily observe the wishes of the people as presented in this proposal in the event that any provision of this proposal is held invalid.

Background

As defined in existing law, "consecutive terms" means that terms are considered consecutive unless they are four years apart. Also, any person appointed or elected to fill a vacancy in the U.S. Congress and who serves at least one half of a term of office shall be considered to have served one full term in that office.

The term limits now in place in Colorado would not be changed by this proposal:

U.S. Senators – two consecutive terms or 12 years

State elected officials (Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State) – two consecutive terms or eight years

Colorado General Assembly –

Senators – two consecutive terms or eight years

Representatives – four consecutive terms or eight years

Term limits in other states. Colorado was one of the first states to adopt term limitations for elected officials when it approved an initiated proposal in 1990. Fifteen states have adopted term limits for their members of the U.S. House of Representatives: Arizona, Arkansas, California, Michigan, Montana, Oregon, Washington, and Wyoming allow members to serve three terms; Florida, Missouri, Nebraska, and Ohio limit members to four terms; and Colorado, North Dakota, and South Dakota allow their members a total of six terms.

AMENDMENT 17 – TERM LIMITS

Term limits for local governments. At the present time, no states have constitutional limits on the number of consecutive terms local officials may serve. This issue will be on the ballot in five states in 1994 with each state providing a two consecutive term limitation. The states voting on this issue in 1994 are Colorado, Idaho, Nevada, Nebraska, and Utah. In Colorado, home rule cities may establish their own term limits, either through a referred or initiated amendment to the city charter. Colorado Springs, Lakewood, Greeley, and Wheat Ridge are among the cities that have adopted term limits.

Terms of members of the U.S. House of Representatives. Fourteen persons from Colorado have served in the U.S. House of Representatives since 1970. Of these 14 members, the number of terms served ranged from a high of three members serving 12, 11, and 10 terms down to two members serving one term each. Including the terms served by these members before 1970, there were a total of 59 terms served by these 14 members, an average of 4.2 terms per member.

Term limits began for Colorado members of the U.S. House of Representatives beginning on January 3, 1991. With six consecutive terms permitted, present members of the U.S. House of Representatives could serve until January, 2003. This proposal provides that the new term limitations are to begin on January 1, 1995. With three consecutive two-year terms, a member elected to the U.S. House of Representatives this November could serve consecutive terms until January, 1999.

The ability of a state to impose term limitations on elected federal offices such as members of Congress is subject to challenge. Limitations on terms of members of Congress have been challenged in at least two other states, Arkansas and Washington. The courts ruled against the term limits for members of Congress in both states. There is no pending litigation involving the Colorado provisions on term limitations. The U.S. Supreme Court has agreed to hear the Arkansas case in its 1994-95 term, with a decision expected in 1995.

The principal reason for holding congressional term limits unconstitutional is the "qualifications clause" of the U.S. Constitution. The courts in the Arkansas and Washington decisions held that the U.S. Constitution requires only three things as qualifications for members of Congress: 1) to be 25 years of age; 2) to be a U.S. citizen; and 3) to be a resident of the state from which the member is elected. Any other limitations on eligibility of service, including the number of terms served, would represent an unconstitutional imposition of an additional qualification on candidates for federal office. Thus, the constitution of the United States, not a state constitution, would need to be amended to accomplish term limitations for federal offices.

Proponents of term limits at the congressional level argue that restrictions on ballot access are permissible as matters of state consideration under the concept of federalism. States, under the Ninth and Tenth Amendments of the U.S. Constitution, have powers reserved to them that include the ability to regulate elections for federal offices.

Term limits for education board members. This amendment adds term limits for two elected state boards, the State Board of Education, a seven-member board, and the University of Colorado Board of Regents, a nine-member board. These officers may not serve more than two consecutive terms, a total of 12 years.

Arguments For

1) Voters in Colorado adopted the concept of term limits in 1990 as a method of keeping elected officials from viewing their positions as lifetime or career jobs. By forcing turnover, new people will be able to enter the political scene and bring fresh ideas into the legislative branch of the government and to local governments.

AMENDMENT 17 - TERM LIMITS

Extending term limits to local officials, reducing the consecutive terms permitted for members of the U.S. House of Representatives, and limiting terms of the two elected state boards represents the completion of the term limit concept in Colorado.

2) A reduction in the number of consecutive terms from six to three terms for the U.S. House of Representatives will provide more competitive races for these seats in almost every election. Stronger candidates will emerge if a real possibility of winning an election is seen. Political parties will work harder at finding serious candidates when an election race is competitive and not looked at as a "throwaway" campaign. With a three-term limit, each of the elections can be vigorously contested. The problem with the six-term limit is that the first and last elections may be competitive but, in many instances, the elections in between will not be as competitive because of the advantages of incumbency. Re-election of members of Congress is almost automatic, challengers rarely defeat incumbents.

3) By implementing term limits, service in the U.S. Congress will be regarded as public service, not as a career. The three-term limit will provide the opportunity for the House of Representatives to become a citizen legislature. Many qualified individuals will be interested in serving four or six years in Washington and then returning to their home state to resume their previous careers. The turnover in representation resulting from term limitations, especially a three-term limit, will bring more "real world" private sector experience to the decisions made by Congress.

4) Primary goals of the term limitation movement are to begin to restructure the U.S. Congress and restore the idea that the U.S. House of Representatives is a legislative body of the people that acts as a barometer of public concern. A six-term House limit does nothing to change congressional incumbency because the average number of years served in the U.S. House of Representatives is 10.1 years. For Colorado members who have served since 1970, as shown on page 54, the average is 8.4 years. Thus, a six-term limit (12 years) is longer than the average stay of House members.

This proposal is a means of changing the methods by which Congress operates and of elevating the public perception of Congress as an institution. As more states adopt term limits, there will be a reduction in the importance of the seniority system. Legislators will no longer need to serve multiple terms in order to be influential.

Arguments Against

1) An additional reduction in the terms that members of the Colorado delegation to the U.S. House of Representatives may serve from six to three consecutive terms would mean that Colorado's already limited influence in that chamber would be further weakened. This would occur until other states, particularly the largest states, adopt a similar limitation. The prospect of other states doing this may be some years away. While 15 states have adopted term limits for their members of the U.S. House of Representatives, 35 have not yet acted. By adopting a three-term limit, the Colorado delegation will be subject to more severe limitations than are found in 41 states. It may be appropriate to have a limit on consecutive terms that is equivalent to two terms (12 years) of U.S. Senators, but not to have a limit that would equate to only one term of a Senator.

2) The proposal unnecessarily imposes term limitations on all local government offices rather than simply authorizing local citizens to impose local limits where needed or desired. The statewide mandate imposes uniform term limits on thousands of elected offices throughout the state. Taxpayers who wish to repeal or modify the state mandated limits must go to the trouble, time, and expense of conducting a separate

election to repeal the limits or substitute appropriate limits tailored to local conditions and desires. While the proposal allows local governmental units to exempt themselves from the term limits, a better course of action would be to simply allow local communities to act on their own if they determine that a problem of incumbency needs to be addressed.

3) The local government officials and members of the two state boards that would be affected by this proposal are not part of the entrenched, privileged groups that have created the term limit issue. For many local governments, the problem is not the long tenure of officials, rather it is a problem of securing interested and qualified individuals to serve. In smaller communities, the pool of talent available for public office is not large and turnover in office is high, not low. Local government positions are not career positions and most local government elected officials receive only a small stipend or none at all. Salaries are paid to the Denver City Council members and to county officers because these positions are considered to have either full-time or substantial part-time commitments. Members of the State Board of Education and the Board of Regents receive no salaries, and only one person on one of the two boards has served more than two consecutive terms since 1970.

4) The beneficial results claimed for term limitations are not yet known and cannot be evaluated at this time. Colorado is still four years away from the first restrictions on elected officials running for re-election. An analysis of the results of term limits should be completed before any further reductions are made, particularly when the state stands to lose influence in the U.S. Congress.

5) In a democracy, people should be able to vote for the candidates they want to have in office without arbitrary limits. Term limitations make our political system less democratic because citizens may be denied equal protection since their right to vote for their preferred candidate is limited. Further, there will be a shift in power from elected officials to lobbyists and nonelected officers, including bureaucrats and congressional staff, because term limits result in a loss of institutional memory and continuity in elected positions.