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WORKING PAPER N° 54

“WHAT TERM LIMITS DO THAT ORDINARY VOTING CANNOT”

Einer Elhauge *

February 1999

Abstract: "We already have term limits on legislators; they're called elections. So why don't we just throw the bums out?" Instead, voters simultaneously cast their ballots for senior incumbents and for term limits. They do so for two primary reasons: seniority clout and barriers to entry. No district wants to unilaterally cede the power it has, and there may be no viable alternative on the ballot. All districts have to collectively agree to turn out their senior incumbents to solve the collective problem of unrepresentative legislators.

Term limits further important values of democratic equality and freedom. Legislative term limits reduce inequalities in legislative power across districts and over time. More important, term limits (on incumbents in general) make democratic choice far freer. Term limits solve a collective action problem and lessen the seniority penalty that makes it difficult for districts to oust ideologically unsatisfactory incumbents. And term limits reduce barriers to entry that discourage challengers and thus limit ballot options. Any furthering of those values furthers core democratic objectives.

Term limits are particularly vital at a time when 99 percent of congressional incumbents who have spent more than six years in office are reelected.

The arguments against term limits, while not illogical, turn out to be so weak in fact or mixed in theory that none can rebut the strong argument that term limits will enhance the ability of electorates to have their views represented by their elected officials."

Paper submitted to the Seminar of Universidad Torcuato Di Tella Law School on November 5, 1998.

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WHAT TERM LIMITS DO THAT ORDINARY VOTING CANNOT*

Two voters are going into the polling booth. One turns to the other and says, "Do you think legislators should get term limits?" The other says, "Nah, I think they should get life without parole." The prevalence of such jokes is at once illuminating and puzzling. They show some of the rage and contempt for career politicians that fuel term limits. But the puzzlement is: Where does all this rage and contempt go in general elections? The true punch line, one might say, is that the two voters then went into the polling booth and voted for all the senior incumbents who would be ousted by term limits. Why do the same voters who vote for term limits also routinely vote to return senior incumbents to office? Why don't they vote the bums out?

The question is both empirical and normative. Empirically, we are interested in knowing just why voters behave differently when voting for legislators than they do when voting for term limits. Normatively, the question is whether we can justify term limits when voters could vote the bums out. The two questions are not necessarily the same. If, for example, voters are registering inconsistent votes because they fail to rationally connect their vote for term limits with the ouster of senior incumbents, that would explain why their behavior is different, but it would not justify term limits when the less restrictive alternative of voting incumbents out is available. To answer the question fully, then, we must identify precisely what it is that term limits accomplish that could not be furthered in a general election.

We must, in short, put aside a whole host of commonly cited reasons for term limits: that career politicians are corrupt, incompetent, unprincipled, cynical, out of touch, captured by staff and interest groups, or simply not doing what the electorate wants. Those are all excellent reasons to oust incumbents. But the problem with them is that they are equally excellent reasons to oust incumbents in general elections. They thus cannot explain why we need term limits.

Putting such reasons aside will strike many as counterintuitive because they are the reasons voters actually give when they are asked why they favor term limits. But one must here distinguish between symptoms and the underlying disease. Sick people complain about symptoms even though the disease is what they want cured. If you ask a patient with appendicitis why he has gone to see the doctor, he is likely to answer that it is because his belly hurts. But the belly pain is not the root problem; the appendicitis is. The same is true of term limits. What people notice -and justifiably complain about--are the substantive failings of their actual representatives. But, as we will see, those substantive failings are just symptoms of an underlying disease in the electoral process. People may not understand the underlying electoral disease any better than they understand complex medical diseases. But the underlying electoral disease nonetheless explains why voters vote for incumbents they want term limited. The fact that people

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may not clearly articulate the fundamental causes of their objections to the current system (though it is surprising how close they often come) is no more reason to deny them term limits than it would be to prescribe nothing but painkillers for those who have appendicitis but complain only of belly pain.

So what are the fundamental causes that not only explain why voters vote both for incumbents and for term limits but also justify imposing term limits rather than relegating voters to the remedy of just voting the bums out? That discussion follows next.¹ As we will see, those fundamental causes not only explain why voters might simultaneously vote for incumbents and term limits but also show that term limits are fundamentally pro-democratic.

I. THE FUNDAMENTAL REASON FOR TERM LIMITS: REDUCING INTERDISTRICT INEQUALITIES IN LEGISLATIVE POWER

Reducing inequalities in the distribution of legislative power is not just a democratically desirable goal; to some extent, it is also a constitutionally required one. The seminal cases of *Baker v. Carr*² and *Reynolds v. Sims*³ established a constitutionally enforceable norm of equality in the distribution of legislative power. Before then, the populations of legislative districts varied widely. As a result, the same number of persons might have only one legislator if they lived in a populous district or multiple legislators if they lived in a less populous district. Legislative power per person was thus unequally distributed. The U.S. Supreme Court found such unequal distributions of legislative power objectionable enough to warrant requiring that all legislative districts be equal in population.

Without term limits, a similar problem exists. True, each voting district has the same population (except for U.S. Senate elections), but some districts have highly senior incumbents who wield enormous power, while others have junior legislators with very little power. Thus, without term limits, similarly sized populations have significantly unequal levels of legislative power. Legislative power per person remains unequally distributed.

Term limits reduce the unequal distribution of legislative power in two ways. First, term limits reduce the possible difference in seniority. For example, under California's legislative term limits, which limit state senators to two four-year terms and members of the state assembly to three two-year terms, a district with a newcomer can have at most a four-year disadvantage. That is a far smaller gap than prevailed before term limits. Second, term limits reduce the period of time in which any one district can have a stranglehold on the positions that have the most power. To the extent legislative power flows from position rather than from seniority itself, term limits cannot reduce the inequality at any given time -the positions will still exist under term limits and some lucky districts will have them. But with term limits, the positions will be shared over

time. It is more likely that your district will have the speakership sometime in your lifetime with term limits than without.

The empirical evidence is supportive. Not surprisingly, senior legislators do have more clout than junior legislators.⁴ What might strike some as surprising is that this is not because seniority leads to better positions, like chairing important committees. Length of tenure, not formal position, is the main source of legislative influence. Indeed, in regression studies that account for both seniority and position (and thus control for the effect seniority has on position), formal position has little effect on a legislator's influence, while seniority has a significant effect.⁵ That indicates not only that term limits directly redress the major source of inequality but also that the alternative of ceasing to allocate legislative positions by seniority would not really address the problem. Senior legislators would still have better contacts, an established pattern of dealing with other legislators, and more familiarity with legislative procedure and other legislators' preferences. In any event, since the enactment of term limits in California, positions have been distributed far more equally, with junior legislators not only rising in position much faster but also often replacing their more senior colleagues.⁶

Granted, *Baker* itself is not entirely free of controversy. But those who most strongly defend it are often those most opposed to term limits. That, to my mind, has things precisely backwards. If the principle of furthering equality in legislative representation is strong enough to constitutionally require states to make all districts the same size, then it certainly is at least a desirable principle for governments to choose to further. The point is not that term limits are constitutionally required; the point is that term limits further the same democratic equality norm embodied in the constitutional mandate of one person, one vote.

One might object to the *Baker* analogy on the ground that the districts in that case lacked any political remedy for their plight, whereas districts without term limits always could preserve their relative legislative clout by reelecting their incumbents. But that objection fails on both empirical and normative grounds. Not every district is lucky enough to have a representative who lives as long as Strom Thurmond. Whether a district enjoys senior representation is often but a happenstance of its representatives' longevity, health, and willingness to stay in the job. More worrisome, districts do generally try to do just what this objection suggests -routinely reelect their incumbents. But that leads to the normative problem: it is unjust to punish voters from districts that do not routinely retain their incumbents by denying them an equal share of legislative power. Indeed, the fact that a legislative system without term limits does just that lies at the root of a second, even more serious, problem, a collective action problem that produces systemic inaccuracies in legislative representation in all districts.

Before we address the second problem, we can simply state the first answer to the sensible question, Why don't you just vote the bums out? Voting your bum out is not a solution when what you want to do is oust the other districts' bums. For that you need term limits, which oust the other districts' more senior bums and thus strongly increase

equality in legislative representation. Such an increase in equal representation is entirely pro-democratic. Of course, the appeal of throwing the other districts' bums out does not always lie in abstract principles of equity and democracy. Districts with highly senior legislators often impose externalities on other districts by securing the enactment of provisions the other districts dislike either on ideological grounds or because they bear the financial cost. Ending such externalities is often the highly practical (and entirely justifiable) goal of voters from districts with more junior representatives.

It should not have escaped notice that the first reason explains why districts with junior representatives vote for term limits but not why districts with senior representatives do. This differential appeal of term limits is in fact consistent with the evidence to date: districts with junior representatives do vote more heavily for term limits.⁷ Still, the difference is surprisingly small,⁸ and it raises the question: Why do districts with senior representatives vote for term limits at all? Another factor must also be at work. To understand it, we need to move on to the collective action problem that offers the strongest argument for legislative term limits.

II. COLLECTIVE ACTION PROBLEMS

A. *THE SENIORITY CLOUT PENALTY*

A district that ousts its senior incumbent suffers a loss of relative clout in the legislature. To avoid that loss of power, it behooves individual districts to vote to retain their incumbents. Suppose that Sally Incumbent accurately represents your district on 80 percent of the issues whereas Joe Newcomer accurately represents your district on 100 percent of the issues. You might rationally vote for Sally Incumbent because you value her extra power on 80 percent of the issues more than you suffer from the loss of 100 percent accurate representation. Of course, if every district reelects its incumbent, no district gains in relative power. But if any individual district ousts its incumbent, it suffers a huge loss of relative power. Thus, the collective action problem is that each district individually has incentives to do what is in the interests of none of the districts collectively: continue to reelect incumbents even if they drift away from the views of their electorates.

This analysis applies no matter what issues voters care about. Suppose that voters seek solely to advance their conception of the public interest and do not care at all about procuring pork⁹, constituent services, or other material benefits for their district. Such voters will still prefer a powerful senior legislator, who agrees with 80 percent of their conception of the public interest and can further its enactment, to a powerless newcomer who agrees with them 100 percent but would have no effect on legislation. Thus, even if voters vote solely to advance their ideological views, the seniority clout penalty still produces an ideological gap between voters and their representatives. The gap only widens when one considers that many voters do care about the material benefits that accrue to their districts and will vote to maintain their share of those benefits by reelecting senior legislators even when it widens the ideological gap. Indeed, it suffices if

a subset of voters large enough to swing the election result (often 10-20 percent) considers seniority clout when they vote.

This collective action problem has a collective agreement solution. If all the districts collectively could agree to oust their senior incumbents simultaneously, no district would suffer a loss of relative power and each district would gain more accurate representation. Term limits are effectively just such an agreement. Term limits oust the most senior incumbents automatically. Term limits also lower the penalty on ousting the (less senior) incumbents that remain by limiting the seniority disadvantage of newcomers.¹⁰

A useful analogy can be drawn with the problem of arms control. As long as every other nation is building up arms, it makes sense to participate in an arms race because, if your nation does not, it will lose relative military power. The arms race may be collectively stupid (since every nation spends more money on arms without altering its relative power), but unilateral disarmament would be even more stupid. However, nations can escape the arms race by collectively agreeing to reduce every nation's arms simultaneously -that is, by entering into an arms control agreement. Term limits are the political equivalent of an arms control agreement, with the routine reelection of incumbents to maintain relative legislative power the equivalent of keeping up with an arms race to maintain relative military power, and the alternative of voting the bums out the equivalent of unilateral disarmament. And slogans like "We have term limits, they're called elections" make just as little sense as saying, "We have an arms control agreement, it's called unilateral disarmament."

The empirical evidence strongly supports the second rationale for term limits. Before the enactment of term limits, the incumbency advantage in the California legislature was huge: the mere fact of being an incumbent gained a candidate 10 to 16 percent of the vote.¹¹ Moreover, the size of this incumbency vote advantage had increased in tandem with an increase in the average tenure of the legislature as a whole.¹² Further, in the four years preceding the enactment of term limits, a suspiciously high percentage -100 percent of state senators and 97 percent of members of the state assembly -was getting reelected.¹³ Yet at the same time polls showed that Californians hated their legislature.¹⁴ And the enactment of term limits showed that people were willing to act on that hatred--a fact impossible to explain with the alternative explanation that the extraordinary incumbency vote advantage and reelection rates simply reflected how much voters liked their incumbents. Further, at least anecdotal evidence suggested that senior legislators diverged more than did junior legislators from their electorates' preferences.¹⁵

After the enactment of term limits, the incumbency advantage in the California legislature plummeted to 4-5 percent.¹⁶ Incumbent reelection rates fell by 14-37 percent of a standard deviation.¹⁷ That rebuts two common arguments: (1) that term limits increase legislative competition only by creating open seats and (2) that under term limits those incumbents who are not termed out will have just as overwhelming an advantage as did incumbents before term limits. Neither argument is consistent with the evidence. Likewise, the claim that the previously high incumbency vote advantage and reelection

rates resulted from high voter satisfaction with incumbents does not explain why both statistics dropped so dramatically with the enactment of term limits.

The empirical evidence on Congress is similar. Studies have long demonstrated an incumbency advantage of 12 percent.¹⁸ The reelection rate of congressional incumbents has been above 90 percent in every election of the last 26 years (including the supposed earthquake of 1994), often reaching 96 to 98 percent. Seniority worsens matters. In 1996 junior congressional incumbents (those in office less than six years) had a reelection rate of 91 percent, whereas senior incumbents (more than six years) had a reelection rate of 99 percent!¹⁹ The margins increased with seniority, too. Whereas 72 percent of junior congressional incumbents won by more than 10 percent, an amazing 95 percent of senior incumbents did.²⁰

As is the case in California, congressional statistics do not appear to reflect any great love for incumbents. Polls showed that voters disliked Congress,²¹ and voters uniformly voted to adopt prospective congressional term limits when asked in state initiatives.²² Studies also showed that the longer a legislator's tenure, the more his voting behavior diverges from his electorate's preferences.²³ The problem in Congress thus seems every bit the equal of the prior problem in the California legislature. Unfortunately, the Supreme Court's decision in *U.S. Term Limits v. Thornton* ended the experiment with congressional term limits and thus prevents us from assessing the extent to which they would have redressed the problem.

The fact that (before Thornton) individual states enacted term limits on their congressional representatives might strike one as counterevidence of the collective action problem. But no state proved willing to actually oust its senior members of Congress unless other states would too. All successful enactments of congressional term limits were prospective, meaning they would not actually cause the enacting state to suffer a seniority disadvantage in Congress unless other states followed suit. Voters understood the difference. In the state of Washington, the voters in 1991 rejected retroactive term limits, with polls revealing that voters' main concern was that the state would lose clout in Congress.²⁴ In 1992 the initiative was changed to be prospective, and then the Washington voters adopted congressional term limits. When Colorado shortened its term limits from 12 years to 6 years, it took care to delay the starting date from 1990 to 1994 so that Colorado would not lose relative congressional seniority in the 1996 election.²⁵ The enactment of such prospective term limits can best be understood as an offer by the enacting states to oust their senior congressional incumbents if the other states would do the same as part of parallel term limits movements in every state. The hope was that either all states would enact term limits or enough states would that their (already limited) representatives in Congress would no longer have incentives to block a constitutional amendment adopting congressional term limits. Indeed, some initiatives contained that hope on their face; Colorado's said, "The people of Colorado hereby state their support for a nationwide limit [on congressional terms] and instruct their public officials to use their best efforts to work for such a limit."²⁶ If the hope did not materialize, states could always delay or rescind their own congressional term limits.

As the term limits movement matured, initiatives became more explicit about their linkage to other states' following suit. Term limit laws began to include trigger clauses explicitly making each state's term limits on congressional representatives ineffective until at least half the states imposed term limits on their federal legislators.²⁷ Such trigger clauses explicitly recognized the underlying collective action problem. Again, voters seemed to understand the difference. When Utah voters were presented with an initiative that would have dropped the trigger clause in an existing term limits law, they voted no.²⁸

B. *OTHER COLLECTIVE ACTION PROBLEMS*

Two other collective action problems can justify term limits. One is pork, which I define broadly to include not just wasteful projects but any legislation with government-wide costs exceeding its benefits that is nonetheless enacted because its benefits in a particular district exceed that district's share of the costs. To the extent that the most egregious forms of pork are possible only when some districts enjoy an enormous advantage in seniority, term limits should reduce the enactment of pork.

But, alas, enormous seniority advantages are only one cause of pork. The more dominant cause is a difference in political saliency caused by the fact that we vote for legislators by district: benefits concentrated in a given district are noticed and the incumbent rewarded, whereas costs diffused among all districts are often not noticed and are harder to blame on any specific legislator.²⁹ Thus, with or without term limits, legislators have incentives to enact pork favoring other districts if other legislators in exchange will enact pork favoring their districts. Through such logrolling, all legislators gain politically because pork benefits have greater political saliency in individual districts than diffused costs have across all districts. But the citizens lose overall because the total costs of pork exceed its total benefits.

Nonetheless, even if term limits do not alter legislators' incentives to enact pork, term limits can reduce their ability to do so. Individual items of pork cannot command the support of a majority of legislators and thus depend on legislators' willingness to vote for pork that harms their districts in exchange for other legislators' willingness to vote in the future for pork that favors the first legislators' districts. Term limits disrupt that pattern of logrolling by reducing each legislator's prospective time in office--thus lowering the odds that other legislators will be around to hold up their end of a deal³⁰--and by reducing average past tenure--thus hampering the mutual familiarity that makes it easier to strike deals and creates reputations for fulfilling or enforcing deals.

If shorter tenure does reduce pork in this fashion, the enactment of term limits solves another collective action problem. All voters should desire the government-wide reduction of pork, since by definition its total costs exceed its total benefits. (Voters may well differ on what they consider pork since they likely have different metrics of what count as costs and benefits, but a majority should object to some significant set of legislation as pork.) However, voters also know that if they oust their own incumbent in

an ordinary election, they will significantly reduce their district's share of pork while having little effect on government-wide levels. And the cost savings of any marginal reduction in total pork levels will be shared with other districts whether or not they oust their own senior incumbents. Enacting term limits avoids this collective action problem.

The other collective action problem results whenever districts suffer more from the contrary ideological views of senior legislators from other districts than they gain from the conforming ideological views of their own representatives. For example, voters in Massachusetts might dislike Jesse Helms more than they like Ted Kennedy, while voters in North Carolina might dislike Ted Kennedy more than they like Jesse Helms. If so, a mutually advantageous bargain could be struck whereby Massachusetts gives up Ted Kennedy if North Carolina gives up Jesse Helms. But the bargain cannot be struck or enforced in ordinary elections because every district will have incentives to renege and retain its own incumbent. Term limits solve this problem by ousting each district's senior representatives simultaneously. True, each district might replace its departing senior representative with someone holding ideological views equally noxious to other districts. But the power of the departing senior legislators to enact noxious legislation, and thus their adverse effect on other districts, is greater than that of their replacements.

These collective action problems may well be powerful reasons for term limits, but that is difficult to confirm with empirical evidence. Whether term limits actually reduce pork is hard to determine without some accepted measure of pork. And pork cannot be measured without some agreement on what constitutes the benefits and the costs of legislation, which is an inherently political question. Although everyone should agree that some legislation is pork -that is, that some legislation has costs that exceed its benefits but is enacted because the benefits are concentrated in certain districts- we may not all agree about which legislation falls into this category. Likewise, it is difficult to assess when voters might ideologically benefit more from ousting other districts' legislators than from keeping their own. Nonetheless, these two supplemental collective action problems are both powerful theoretical grounds for term limits even if difficult to substantiate empirically.

C. CONCLUSION REGARDING THE COLLECTIVE ACTION PROBLEM

Even leaving aside the supplemental collective action problems, the primary collective action problem still provides a clear second answer to the question, Why don't you just vote the bums out? There is a penalty on ousting bums. Districts that oust their incumbents suffer a loss in relative legislative clout. The fact that voters routinely reelect their incumbents just means that they prefer their bums to suffering the penalty, not that they would not prefer to get rid of everyone's bums simultaneously by enacting term limits. By reducing the penalty on free voter choice, term limits again further fundamental democratic principles.

This provides what I regard as the strongest rationale for term limits on members of legislatures or other bodies to which districts elect members. But neither it nor the first

rationale offers any explanation for term limits on presidents, governors, or other officials elected by the entire citizenry of the relevant jurisdiction. What this underscores is that, although we are more used to term limits for governors and presidents, in fact the argument is far stronger for legislative term limits. Legislative term limits are more unfamiliar, not less justifiable. But why have executive term limits at all? For that we turn to the next rationales, which also apply to legislatures.

III. THE ENTRY BARRIER PROBLEM

During the time they are in office, incumbents enjoy the benefit of a public platform that provides the equivalent of years of free political advertising. Senior officials have had opportunities to make speeches, take public positions, hold press conferences, appear on radio or television, participate in ceremonies like school openings, and otherwise be in the news and public eye. To compete at all, challengers have to overcome that inherent edge with enormous amounts of paid political advertising. Not surprisingly, this creates a huge entry barrier. And that entry barrier keeps a lot of desirable challengers out.

Term limits lower entry barriers by reducing the years of effectively free political advertising an incumbent can enjoy.³¹ That in turn encourages additional challengers, thus benefiting the political system in two ways: (1) by better defining the issues of the day and (2) by providing new ballot options that voters often prefer to the incumbent. Some of the additional challengers are in fact politicians termed out of other offices, which makes elections far more competitive by creating a race between two politicians who have had the advantage of a public platform.

The empirical evidence strongly supports the existence of such political entry barriers. Before term limits in California, a challenger had to spend from \$300,000 to \$500,000 on political advertising just to be competitive with an Assembly incumbent.³² Even more had to be raised to compete with an incumbent state senator. The entry price for realistically competing with congressional incumbents was \$1 million as long ago as 1989.³³ Not surprisingly, the high cost of entry deterred most challengers. Before term limits in California, there were few challengers and many uncontested elections.³⁴ In 1990, 19.5 percent of incumbents in the U.S. House of Representatives faced no major-party challenger at all, and an astonishing 91.9 percent faced no serious challenger—defined as a challenger able to raise at least half the funds the incumbent raised.³⁵ Worse, this definition of a serious challenger is actually overly rosy because in reality a challenger must normally spend far more than the incumbent to overcome the incumbent's inherent edge in publicity.

The statistics are even worse for primary races: there it is even more common for congressional and California legislative incumbents to face no challenger. There are two points worth noting about this difference between primary and general election competition. First, it fits well with the present analysis. In general elections, the incumbent's inherent advantages may sometimes be offset by voters' hope of gaining greater clout by electing a challenger who belongs to what voters expect will be the

majority party. In primaries, there is no difference in party affiliation to offset the seniority advantage of the incumbent. Second, the lack of any meaningful primary competition is highly worrisome because it is in primaries that the real elective choice is generally made, with the results of general elections largely dictated by the party composition of the district.³⁶ If no one challenges the incumbent in a primary, and the incumbent's party has 60 percent of the registered voters in the district, the election process is effectively over before it even begins.

The extent of these entry barriers is manifested in the revealing political lingo used to refer to those few seats for which no incumbent is running: they are called "open seats," reflecting the widely held belief that seats held by an incumbent are "closed" to competition. Desirable challengers and even well-established politicians focus mainly on positioning themselves for the next open seat.³⁷ Challenges to incumbents are left to idealists, the foolhardy, and others less serious about their political careers. The lengths to which incumbents will go to position themselves for an open seat are striking. For example, redistricting changed the district of one of the legislative incumbents challenging California's term limits in a way that made her new district overlap with that of a more senior incumbent. Even though she was herself a legislative incumbent, she was sufficiently fearful of challenging a more senior incumbent that she sold her house and moved to a new district so she could run for an open seat.³⁸

Have California's term limits helped solve entry barrier problems? The strong evidence is that they have. Since the enactment of term limits, campaign spending has declined by 44 percent.³⁹ The number of challengers has increased 25-50 percent, with the number of major-party candidacies increasing by 24 percent of a standard deviation.⁴⁰ The number of uncontested elections has plummeted by 89 percent of a standard deviation.⁴¹ As predicted, termed-out legislators began challenging incumbents in other offices, especially in the other legislative chamber; a total of 81 percent ran for other offices in 1994.⁴² And different persons are getting elected, too. The number of women legislators has increased by 25 percent; the number of Hispanic legislators has increased by 250 percent; the number of Asian legislators has increased from 0 to 2 legislators; the number of former business owners has tripled; and the number of former local officials has quadrupled.⁴³ The big decrease has been in the proportion of legislators who were formerly legislative staff. That again fits this paper's analysis since, before term limits, legislative staff were best positioned to spot open seats in advance and to receive some of the benefits of departing incumbents' advantage in political recognition by getting the incumbents' endorsements and taking over their political machinery.

In short, we have the third answer to the question: Why don't you just vote the bums out? You can't vote the bums out when serious alternatives are not on the ballot. Or, more completely, voting the bums out does not accomplish what term limits can: adding more desirable options to the ballot by lowering entry barriers. That voters in jurisdictions without term limits routinely vote for incumbents may mean, not that the incumbents are doing a great job, but that more desirable options never make it to the ballot. Nor can there be any meaningful democratic choice when there is often only one real option on the

ballot. Entry barriers make both executive and legislative races less competitive and less democratic than they should be -and than they can be with term limits.

In legislative races (but not executive races) this entry barrier problem is exacerbated by the collective action problems noted above. This is consistent with the evidence that reelection rates are much higher in legislative races than in executive races. For example, since 1974, while congressional incumbents have been winning reelections at a rate of 90-98 percent, presidents have been winning reelection at a rate of only 40 percent. Indeed, the odds of a congressional incumbent losing reelection are now lower than the odds of a president facing impeachment proceedings. It seems implausible that the average legislator is doing that much better a job than the average executive is, especially given how poorly legislatures (and Congress in particular) were doing in polls over this period. The existence of collective action problems unique to legislatures provides a far more plausible explanation for this dramatic difference in reelection rates.

IV. THE RISK-AVERSION PROBLEM

Once one party or wing gets control of an office or legislature, that party or wing tends to stay in power for a longer time than its inherent political appeal would warrant. Political power tends to perpetuate itself in part because a majority party has most of the incumbents and thus benefits most from the seniority clout and entry barriers noted above. Parties also tend to perpetuate themselves in office because they deliver patronage, because campaign donors want to be on the winning side, and because districts want the extra clout that comes from voting for the winning party. Thus, we get phenomena like Congress being controlled by Democrats for 40 years. And now that Republicans have taken over, it looks like it may be a long time before the Democrats get back in because the incumbency advantage has shifted. Term limits reduce the tendency for self-perpetuation because they cause a forced turnover of incumbents.

Now, suppose you are a risk-averse voter who belongs to one of two equally matched political parties and must choose between two political systems. Under the system without term limits, certain pivotal political moments mean that one political party will capture the office or legislature for the foreseeable future. Your party has a 50 percent chance of being that party, but it also has a 50 percent chance of being shut out of office for the foreseeable future. Under the system with term limits, forced turnover eliminates pivotal moments that mean either victory or defeat for the foreseeable future. Instead, during the foreseeable future each party will probably hold the office or control the legislature for 50 percent of the time.

Plainly, risk-averse voters would prefer having their party in office 50 percent of the time to a 50-50 chance of having another party in office for all of the foreseeable future.⁴⁴ The system without term limits offers the chance for more political victories over one's lifetime but also the chance for more devastating political defeats. Term limits even out the ups and downs, securing at least a share of political power over one's lifetime. Term limits should thus appeal to risk-averse voters.

Indeed, the benefits of more frequent cycling of political dominance extend beyond mere risk aversion. Parties that hold political office for long periods without any realistic expectation of relinquishing it are likely to veer toward arrogant or tyrannical uses of governmental power.⁴⁵ They may begin to exploit the minority party because they no longer expect to ever be the minority party. And they may use governmental power to close the avenues by which minority parties might rise to office because that possibility has become more and more unthinkable. More frequent cycling of office between parties under term limits is likely to remind those in office that in the near future they and their party are likely to be out of power and receive whatever sorts of treatment they now are dishing out to others.

True, one might wonder why such voters would vote for term limits if their party were already in power. But this is another reason that term limits are prospective, kicking in 6-12 years down the line, when each voter is less sure whether his party (or senior legislator) will be in office. Such long prospectivity puts voters closer to a choice behind the veil of ignorance, where their current vested interests are less relevant.

Thus we have a fourth answer to the question: Why don't you just vote the bums out? We disagree about who the bums are and would rather have a bum 50 percent of the time than a 50 percent chance of enduring a bum all the time. We prefer that because we are averse to being out of political power for the foreseeable future and because we would like parties in office to be chastened by the risk that they may be out of office soon. Further, this results in a more equitable distribution of legislative power between parties over time.

V. TYING ONESELF TO THE MAST

In the rationales above, voters are not enacting term limits to restrain themselves but rather to restrain some feature of the political system that either coerces or limits their ballot choices or results in unequal distributions of political power between districts or over time. Is there a persuasive justification for why voters might want to restrain their own voting behavior through the enactment of term limits?

Perhaps. In the tale of Odysseus and the Sirens, Odysseus tied himself to the mast because he knew he would not be able to resist temptation once he heard the Sirens, but he could resist that temptation in advance. A more modern example might be signing up for Weight Watchers. People with poor eating habits join Weight Watchers all the time. Is it irrational to sign a Weight Watchers contract at the same time one is having seconds of cheesecake? Not necessarily. One can wish to commit oneself to long-term goals from which one has short-term incentives to deviate. Alternatively, one might have preferences about what preferences one wants to have.⁴⁶

Such cases raise the question whether respecting the autonomous choices of individuals requires us to respect the past or present exercise of autonomy. Should we give binding

effect to the past exercise of autonomy implicit in binding oneself to the mast or signing up for Weight Watchers, or instead give binding effect to the present exercise of autonomy expressed by pleas to be untied or given pepperoni pizza? Leaving aside the above examples, the general presumption is that we should give weight to the present exercise of autonomy when no one else's interests are at stake. The present person knows his circumstances better than the same person in the past could have known them, and indeed the present person may in some senses be a different person, with preferences and identity different from those of same person in the past.⁴⁷ One thus cannot enter into legally binding contracts with oneself.

To rebut this presumption, we need some reason to believe that the present person suffers from some relevant incapacity that makes his judgment suspect. In the case of Odysseus, the incapacity is plain--the Sirens' call is hypnotic and a person under its spell is just as incapacitated as someone under the influence of drugs or alcohol. In the case of Weight Watchers, the alleged incapacity is short-term temptation -that the person will not be able to resist the consumption of food he knows to be against his long-run interests. The incapacity here is, of course, less compelling. The person might, after all, instead be viewed as having been incapable of resisting the unrealistic hope of being slender when he signed up for Weight Watchers even though he is not really willing to pay the dietary cost of losing weight. No court would enforce a person's order (against himself) directing that he be forcibly detained at a fat farm until he was skinny, though one could probably create significant financial penalties for oneself by contracting to forfeit payments to the fat farm if one left.

To the extent term limits are merely intended to constrain voters' own behavior, they seem to more closely resemble the Weight Watchers' commitment. Voters might reason that they know they don't want the same bums back. But they also know that when they go into the polling booth, they will vote for incumbents out of habit.⁴⁸ Or they realize that, in the large number of cases in which they have no idea what the candidates on the ballot really stand for, they will be unable to resist the temptation to appear to be exercising some judgment by voting for the name they recognize (the incumbent) rather than abstaining until they are actually informed enough to vote knowledgeably. Or at least they know that they (or a sufficient share of the electorate) give in to such habit or temptation often enough that it affects voting outcomes in favor of incumbents, especially long-term incumbents. Term limits might be seen as a way voters could bind themselves not to give in to temptation or habit in the future.

I ultimately find this theory unconvincing, but others have had different views. One problem is that, as with the Weight Watchers example, the alleged incapacity is not very severe--it is mere temptation. And one prone to questioning voter judgment could alternatively posit a temptation to favor populist term limit solutions even when voters have no reason to believe the candidates will get any better. An even bigger problem is that an electorate is not an individual but a collection of individuals that changes identity over time as persons move, die, or come of age and register to vote. Thus, even if an individual ought to be able to bind herself, an electorate that binds itself in the future is in

fact often binding different persons. This we allow only when the electorate does so through the super-consensus judgment needed to enact a constitutional provision. But even without this last rationale, the first four rationales provide compelling reasons to favor term limits as ways of increasing the freedom and equality of voter choice, and thus viewing term limits as strongly pro-democratic. I turn now to the rebuttal of the arguments against term limits.

VI. THE WEAKNESS OF THE OBJECTIONS TO TERM LIMITS

Arrayed against term limits is a hodgepodge of objections. None really challenges the affirmative reasons for term limits. Almost all purport to show that term limits will have a bad side effect. The objections are not entirely devoid of merit, and one could readily imagine a rational person's being persuaded by them to reject term limits. Nonetheless, on close examination these objections turn out to be relatively weak. Before examining them one by one, two general orienting remarks are in order.

First, how should we treat issues on which neither opponents nor proponents of term limits can offer more than conflicting intuitions, anecdotes, and normative assertions? On many such issues, my intuitions run with the proponents. But rather than assert that my intuitions should be credited and that such issues are affirmative arguments for term limits, I conclude that such issues offer both a weak justification and a weak objection to term limits since they lack any strong theory or systematic empirical evidence one way or the other. Many of the issues also involve conflicting assertions about what voters should value that should properly be resolved by voters, who have consistently voted for term limits. Since their vote for term limits cannot be said to be plagued by the kind of ballot coercion and constriction that distort the reelection of senior legislators, their votes for term limits must be regarded as a truer reflection of how voters wish to be represented than are their votes reelecting senior legislators.

Second, for objections on which we are in doubt, where should the presumption lie? I conclude that the above analysis supports a strong presumption in favor of term limits. Given that analysis, the system without term limits is analogous to a system that fines voters \$50 for voting against incumbents and fines challengers \$500,000 for running against incumbents. A reform that eliminated those fines (like a reform adopting term limits) would correct a fundamental interference with voters' ability to elect representatives who share their views. Such a reform should thus enjoy a presumption that is strong in two senses. It should be rebuttable only by strong theory and empirical evidence, not weak intuitions and anecdotes. And it should not be rebuttable by claims of mere side effects (like a reduction in experience) that are not remotely comparable to fundamental issues of equal and accurate representation. After all, no one would say that monetary fines or voting or running against incumbents should be preserved because eliminating them would result in the election of legislators with less experience. As you consider the following objections, ask yourself whether you would find them at all persuasive if they were offered to justify a system that monetarily fined voting or running against incumbents.

Or, if you prefer, consider the matter one of relative risks. The situation without term limits is dire. Voters rarely see serious alternatives to the incumbent on the ballot and feel coerced to vote for the incumbent even when they do. Ninety-two percent of congressional races feature no serious challenger, and the senior incumbents who would be precluded by term limits win reelection in 99 percent of those races.⁴⁹ Small wonder that political experts can safely predict the results of congressional races years before elections. Small wonder, too, that most voters are too apathetic to vote even though they dislike their legislature and it deviates from voter preferences.⁵⁰ Most elections are effectively over before the campaigns have begun. Given those entirely predictable consequences of current entry barriers and seniority clout penalties, do the risks that the following objections might be realized really outweigh the risks of staying with the present system?

VII. THE PURPORTED LOSS OF EXPERIENCE AND UNDESIRABLE SHIFTS OF POWER

The most prominent set of objections centers on the claim that term limits will produce inexperienced legislators.⁵¹ One objection is that loss of experience is undesirable in and of itself. Other objections are that it produces an undesirable shift of power to staff, to the executive branch, or to special-interest groups. We begin with the foundational premise on which all the objections in this set depend: that term limits reduce relevant experience.

A. THE PURPORTED LOSS OF EXPERIENCE

It is important to define just what sort of experience one is worried about losing. Since any year spent in government is a year not spent outside it, the real claim must be that experience in government is preferable to experience outside it. Is it? For making policy, the experience of being subject to legislation might be just as valuable as, if not more valuable than, the experience of promulgating it. Consider that California's term limits have produced a sharp increase in legislators who are women, minorities, former local officials, and private business persons, along with a drop in legislators who are former staffers.⁵² The result is a legislature far less insular and better able to understand and communicate the effect of legislation. Moreover, the real choice is not between legislative experience and nonlegislative experience, for even under term limits most legislators have some years of legislative experience. The choice is between a legislature with a diversified portfolio of experience inside and outside the legislature and a legislature with deeper but highly undiversified experience inside the legislature. Some legislative experience may be valuable, but surely it (like everything else) has diminishing returns, and at some point a marginal increase in legislative experience is less valuable than some nonlegislative experience. Is a banking committee consisting entirely of long-term legislators really better than a committee that includes a few legislators who actually have experience with the banking industry?

Yes, some might persist, we would lose something irreplaceable if we lost long-term governmental officials. Only they know the long history of policy discussions and negotiations on the issues and have developed true policymaking expertise. Some also think that those who make a career of public service are likely to act more nobly and disinterestedly than those who dip in and out of government. Plausible intuitions, but convincing ones? Legislative experience is not the exclusive source of policymaking expertise or noble motivation -we academics like to think we have our share of both, and I suspect others do, too. Further, many believe that long-term experience in office affirmatively worsens legislators' capacity and motives, making them cynical, stale, unprincipled, arrogant, resistant to reform, captured by the bureaucracy, corrupt, sympathetic to special-interest groups, disinterested in their electorates, and increasingly cavalier about spending the government's money.⁵³ Intuition and anecdotes abound on both sides. Some points are supported by empirical evidence but normatively ambiguous. For example, empirical studies do show that willingness to spend government funds increases with tenure for legislators from both parties,⁵⁴ but a supporter of increased spending could cite that as evidence that experienced legislators develop the policy expertise to recognize the wisdom of increasing spending. Other evidence suggests that term limits increase legislative innovation,⁵⁵ but the desirability of that depends on whether one likes or dislikes the innovation in question. Likewise, the persuasiveness of claims that term limits increase or decrease compromise, the introduction of bills, the enactment of legislation, or breaks from party positions turns not only on whose anecdotes you credit but on whether you regard those as good or bad things in particular cases.

Even if one resolves the conflicting intuitions and assertions about the desirability of the expertise and motives of career politicians, the implications for term limits are unclear. For, as Beth Garrett (an opponent of term limits) has persuasively argued, even lifetime term limits will likely produce a government run not by citizen-legislators but by career politicians who rotate from one political office to another.⁵⁶ True, they won't have served in the particular legislative house as long. But most legislators will continue to have long-term governmental experience and whatever policy expertise that entails. Indeed, the increased diversification of policy backgrounds should also help the legislature not only to make policy but to deal with other political branches.

In short, what we lose under lifetime term limits is not really policy expertise or governmental experience but rather long-term chamber-specific experience in the narrow tactical skills of navigating that chamber's particular procedures and making deals with other long-term legislators.⁵⁷ Moreover, most term limits are not lifetime term limits; they require termed-out legislators to sit out only a term or so before running for the same seat. Such limits on consecutive terms do not deprive legislatures of even narrowly defined long-term intra-chamber experience.

Still, under lifetime term limits, is the loss in procedural and deal-making skills worrisome? Not really. First, we must recall from the analysis above that differences in narrow intra-chamber tactical skills are precisely what create unequal distributions of

district power and, more worrisome, coercion to reelect incumbents who do not accurately represent the electorate. We cannot gain any benefit that might flow from such increased intra-chamber skills without paying the heavy cost of unequal representation by ideologically divergent legislators. Worse, those skills may exacerbate the problem because such legislators can use them to enact legislation contrary to the views of the electorate. Indeed, there is a general cloud over the whole expertise argument: expertise exercised in the service of views the electorate does not hold can hardly be desirable.

Second, it is not clear that citizens suffer from an even-handed decrease in procedural skills. Garrett argues that such a decrease will reduce the production of contested legislation, but her argument depends critically on her claim that experience improves legislators' ability to enact legislation more than it improves their ability to block it.⁵⁸ She bases that claim on the observation that Congress's current procedural rules make it easier to block than to enact legislation.

But the claim does not logically follow from the observation. The fact that it is easier to learn to block than to enact may mean precisely that tenure can affect blocking ability but has relatively little effect on enacting ability. A homey analogy: In baseball it is harder to hit (even the best hitter fails 60 percent of the time) than to play defense (the worst defender fails less than 5 percent of the time) or pitch (the worst pitcher fails less than 40 percent of the time). That does not mean that increasing the number of rookies (e.g., through expansion) decreases scoring. It increases it. Experience apparently has more effect on the easy jobs (pitching and defense) than on the hard one (hitting). Contrary to Garrett, my intuition is that senior legislators are more expert at blocking legislative action than at enacting it. Jesse Helms's blocking of William F. Weld's nomination to be ambassador to Mexico springs to mind. And this intuition had some indirect empirical support: the very empirical study of interest groups that Garrett cites suggests that they use their greater expertise in politics more successfully to block than to enact legislation.⁵⁹ Moreover, senior legislators enjoy a particular advantage over newcomers in the difficult task of procedurally blocking legislation that has strong bipartisan support, which is far more worrisome than an ability to block closely contested legislation.

But suppose my intuition and empirical evidence are wrong and senior legislators do have greater ability to circumvent procedural obstacles. Why should that be celebrated? The whole point of procedural obstacles is to prevent bad legislation. If the procedural obstacle makes any sense, it prevents more bad legislation than good, and increasing expertise at circumventing the obstacle decreases social welfare. If the procedural obstacle unwisely prevents more good legislation than bad, the procedural obstacle is what needs to be changed. And the odds of changing it seem better under a term-limited legislature, for one thing associated with senior legislators is the creation of more procedural obstacles. Senior legislators have incentives to create such obstacles because they confer an expertise advantage that increases their power and ability to get reelected, and they give senior legislators a veto they can waive in exchange for political benefits. Term-limited legislators have less time to accomplish anything in office and will thus probably wish to reduce unwise procedural obstacles.

Nor, third, should one worry about the loss in dealmaking ability. Objectors are right that senior legislators have greater dealmaking ability because of their mutual familiarity, reputational effects, and likelihood of future repeat interaction. But, as explained above, those are precisely the factors that support the prediction that term-limited legislators will enact less undesirable pork. The loss of dealmaking ability should have a much greater effect on pork than on other legislation. That is because pork by definition benefits only a small subset of districts, and is thus impossible to enact without dealmaking. In contrast, legislation truly in the public interest should generally appeal to most legislators and not require dealmaking. Some nonpork legislation might be hard to enact without the extra dealmaking ability senior legislators provide, but the effect is weak and normatively ambiguous: it all depends on whether one regards the enactment of more such legislation as desirable or undesirable.

Even if you remain unconvinced by this analysis, you are not home free, for you must then ask yourself if your contestable judgment about experience is something that should be imposed on voters. For this is precisely what a system without term limits does: by penalizing districts that oust incumbents and erecting barriers to entry by challengers, it causes voters to elect legislators who have more experience in that office than voters would otherwise elect. And if you are willing to impose ballot coercion and constriction to reach a higher level of legislative experience than voters would prefer, why not go further and add monetary fines on those who vote or run against incumbents? After all, if you are relying not on voter judgment but on some independent normative standard of the experience legislators should have, it seems implausible that the pre-term-limits status quo just happened to embody the optimal mix of experience.

It seems clear that the level and sorts of experience legislators should have are political issues that should be left to voters. We cannot presume that the experience of legislators without term limits is what voters regard as optimal because their choice to reelect incumbents is coerced and constrained. If voters did regard that experience as optimal, they would be happy with their legislators. But polls show that they are not. Instead, they enact term limits, which indicates voters do not share the strongly favorable view of the experience of unlimited legislators reflected in this objection.

By the same token, the justification for term limits is not that legislative experience is bad and that this judgment should be imposed on voters. It is rather that, without term limits, voter choices are coerced and constrained, and that sacrificing the freedom to choose legislators with greater intra-chamber experience is a price worth paying to reduce coercion and constraint. The point here is merely to suggest that any price seems small and ambiguous, not that it constitutes an affirmative justification. That is why it is no embarrassment to the theory if term limits fail to produce a legislature full of citizen-legislators. That is not the objective of term limits, properly understood. The objective is rather to produce a legislature that equally and accurately represents the electorate.

B. THE PURPORTED SHIFT OF POWER TO STAFFS

A related objection to term limits is that they will shift power from legislators to their staffs. The reasoning is that newcomer legislators will be ignorant about procedures and issues, and thus dependent on their more knowledgeable staffs. There is more than a little tension between the last claim -that expertise is so valuable that it is worth enduring politically insulated legislators to keep it -and this claim -that power in the hands of staffers with great expertise is intolerable because they are too politically insulated because only indirectly (through legislators) accountable to the electorate. Moreover, the factual claim of a shift of power to staff relies on several dubious premises.

We have already seen the problems with the premise that newcomer legislators are "inexperienced." Legislators do not come to the legislature directly from the womb--they have had considerable life experience before attaining office. Many were legislative staff members themselves. Others gained significant relevant expertise in business, local government, or other branches of government. And legislators can always direct staff to use their logistical skills in the service of the legislators' policy views. There is no reason to expect that term-limited legislators would have any more problem controlling legislative staff than cabinet secretaries have controlling executive staff. Indeed, cabinet secretaries manage even though they serve far less time (typically 2-4 years) than the 6-12 years provided under legislative term limits.

Even more dubious is the premise that staff would last longer than term-limited legislators. In fact, after the enactment of term limits, 73 percent of California staff remained three years or less.⁶⁰ In Congress, the average stint of House staff is only 5.0 years.⁶¹ Thus, even under six-year term limits, legislators would last longer than the average staff person. The average stint for Senate staffers is 5.7 years, which is far less than the 12-year limit on senators that term limits would impose.

Also problematic is the assumption that staff influence decreases over time. The opposite hypothesis seems if anything more likely: that over time senior legislators become dependent upon and captured by their staff. Newcomer legislators, on the other hand, seem more ready to act on principle and shake things up, against staff advice. We don't have useful direct empirical data on this point, since it is heavily influenced by what one regards as "capture." But we do have one telling piece of indirect data: in polls, 85 percent of congressional staffers and roughly 78 percent of state staffers oppose term limits.⁶² It seems unlikely that staffers would oppose term limits if they thought term limits would strongly increase their own influence.

In any event, if excessive staff influence is a problem, there is a more direct solution. Staff can have their terms limited, or their numbers cut. Indeed, the California initiative that adopted term limits simultaneously cut legislative staff.

C. THE PURPORTED SHIFT OF POWER TO THE EXECUTIVE BRANCH

Another related objection is that legislative term limits will shift power from legislatures to the executive branch. The premise of the objection--that term-limited legislatures lack policy expertise--has all the problems noted above. Under term limits, legislators will at least have relevant nongovernmental expertise and will likely be career politicians rotating through different offices who have developed just as much governmental expertise as they would have had without term limits. What they are likely to lose -intra-chamber tactical skills--will have no evident effect on the balance of power between legislature and executive. And the expertise they will gain--by serving in other governmental offices--is likely to only help in inter-branch negotiations. After all, if you were a firm negotiating with Microsoft, would you rather have a negotiating team consisting solely of your long-term employees or a team that included some former Microsoft employees who could tell you how Microsoft thinks?

Moreover, what we value is not the exercise of legislative power for its own sake but its exercise in the electorate's interests. Term limits further this by reducing the ideological gap between incumbents and the electorate. Indeed, because term limits force legislators to hew more closely to their constituents' views, they should make the legislative branch, if anything, tougher in negotiations with the executive.

If legislative term limits do shift power, we can simply apply term limits to the executive branch, too. Indeed, just about every government that has adopted legislative term limits has also adopted executive term limits. Such evenly applied term limits imply no shift in power. What critics seem fixated on is that many states (and the federal government) adopted executive term limits some time ago, so adding legislative term limits would change the prior status quo. But other than mindless favoring of the prior status quo, it is unclear why we should think that the prior allocation of power was somehow magically at the ideal point. And this status-quo-driven argument would not provide any grounds for opposing term limits in states, like California, that simultaneously adopted term limits for their legislature and executive.

Even if term limits did shift power to the executive, it is unclear why that should be regarded as undesirable. To be sure, many people worry about an imperial presidency, or fear the executive as the most dangerous branch. But it makes more sense to address those problems with executive term limits or reforms directly reducing executive power. Nor does executive power seem any less worrisome than the legislature's power of the purse, and ultimate power over statutory enactments. Indeed, there is a powerful reason to think any shift in power to the executive branch would be beneficial. Because executives are elected by all the government's voters, rather than those in a particular geographic subsection, executives have far less incentive to favor pork, which by definition imposes more costs than benefits on the governmentwide electorate to which executives are accountable.

In any event, there are many possible allocations of power among governmental branches, and decisions about how best to allocate that power properly belong to the people. Having chosen to change the original constitutional scheme by adopting executive term limits, they should be able to change it again by adding legislative term limits.

D. THE PURPORTED SHIFT OF POWER TO INTEREST GROUPS

Another objection is that term limits will increase interest-group influence. Again, this rests on the premise that term limits will produce inexperienced legislators who are more dependent on information provided by others, here lobbyists. The reasons already noted for finding that premise weak--that term-limited legislators are likely to have more diversified experiences and be career politicians who rotate through different offices--also undermine the claim that term-limited legislators will be more dependent on interest groups.

Moreover, the objection rests on the dubious premise that interest-group influence decreases over time. Like the similar premise regarding staff influence, there is reason to doubt this premise. Many observers believe that long tenure and exposure to interest-group information and pressure tend to capture and corrupt senior legislators and make them more subject to special-interest influence.⁶³ Again, this is a hard issue to resolve with direct empirical evidence. But there is an interesting piece of indirect empirical evidence: interest groups typically lobby against term limits.⁶⁴ While those groups no doubt wish to protect the investments they made to cultivate current incumbents, it is unlikely they would spend so much lobbying against term limits if term limits really promised a significant increase in interest-group influence.

There is one sense in which term limits will increase interest-group influence. Namely, because term limits reduce the political insulation of incumbents, those limits make incumbents more accountable to all political influences in society, of which interest groups are undoubtedly a major part. But there is no reason to think that a general increase in accountability will increase interest groups' advantage over other political groups. Nor is there any way to determine whether interest groups have "disproportionate" influence without some normative baseline for specifying what degree of influence is "proportionate" to their legitimate interest, and it is precisely the making of such normative judgments that is the purpose of the political process.⁶⁵ And even if we could identify when interest groups enjoy disproportionate influence in the political process, insulating politicians from all political accountability hardly seems an improvement.

VIII. THE PURPORTED ADVERSE CHANGES IN INCENTIVES

Another set of objections focuses less on the ability of legislators than on their incentives. Term limits supposedly worsen legislators' incentives in various ways.

A. *THE PURPORTED INCREASE IN SHORT-TERM THINKING*

Professors Matt Spitzer and Linda Cohen of the University of Southern California argue that term limits make legislators too short-term oriented.⁶⁶ The theory is basically this: voters vote for incumbents solely on the basis of what they delivered in the two years preceding an election. However, because (without term limits) politicians are insulated from voters, politicians can expect to remain in office and will thus consider the long-term effects of legislative action on voters in future years. Term limits reduce the expectation of future years in office and thus lead government officials to excessively favor the short term.

This theory rests on various questionable premises. The first is that voters are voting wrong. If voters correctly weighed the long- and short-term effects of legislative actions when they voted, legislators would have incentives to enact legislation that optimally traded off those long- and short-term effects. Legislators' complaints that voters insufficiently weigh long-term benefits are more predictable than persuasive. They remind me of corporate managers' complaints that shareholders insufficiently weigh the long-term benefits of current corporate strategies and thus should not be allowed to accept certain tender offers. In case after case, such managerial complaints have been disproven when the tender offer was defeated and continuing the corporate strategy proved unable to fulfill managerial promises of long-term benefits. In both the corporate and political cases, complaints about shareholder/voter short-termism often reflect the incumbent managers' or legislators' bias in favor of overestimating the long-term benefits of their actions. This bias is particularly strong when incumbents can use such overestimations to justify insulating themselves from accountability to voters or shareholders. In any event, the premise that voters are voting wrong--and that the political system should be structured to insulate politicians from voter preferences--is profoundly undemocratic. It is nothing less than an objection that term limits make politicians represent voter preferences too accurately. It should thus be rejected on principle.

Another dubious premise is that there is a "correct" discount rate by which we can judge voter behavior. But decisions about how to trade off future and present effects are fundamentally political questions--there is no "correct" answer to them. On political questions, we find out what the correct discount rate is through the democratic process. On economic questions, we find out through market processes. Each is a different way of aggregating individual preferences; there is no scientific method for determining the "correct" rate.

A related unfounded premise is that somehow, magically, we were at the correct discount rate before the enactment of term limits, and that term limits thus necessarily take us further away from that correct discount rate. This again seems to reflect little more than a bias in favor of the status quo prior to term limits. Opponents of term limits often just seem to assume that change (at least if caused by term limits) must be bad.

Finally, the theory rests on the unwarranted assumption that making political action more short-term oriented is necessarily bad. But a political system without term limits encourages putting off what could be resolved today. Because legislators without term limits always know they will be around later, they have no immediate drive to accomplish something now and will often delay addressing issues. In contrast, term-limited legislators know they have just a short window within which they will have political influence, so they might as well act now. The anecdotal evidence from California, Arkansas, Ohio, and Maine is that term-limited legislatures have become far more decisive about issues that (before term limits) had been mired in legislative gridlock for years.

But suppose one is convinced that there are objective standards for judging how long-term oriented the electorate should be, and that the political system should be structured to encourage more long-term thinking. That is hardly a decisive objection to term limits. If a longer term view were desirable, the logical reform instead would be to have longer terms in office. There is no reason to instead have more frequent elections that are not meaningful, which is what we have without term limits. We could, in the extreme, elect legislators to lifetime terms so that they could be long-term oriented without pesky concerns about being reelected by our allegedly too-short-term-oriented electorate.

This analysis points to a general problem: there is a tradeoff between encouraging a longer view and maintaining political accountability. The framers of our constitutional scheme chose the option of having some political representatives serve two years, others four or six years. And they made that choice at a time when average tenure was short and elections were thus far more competitive and meaningful. There is no particular reason to think another tradeoff is better, or that we should effectively strike another tradeoff by preserving political changes that have rendered the elections we do have relatively meaningless.

In short, greater short-termism may not be bad, and, if it is bad, it is better redressed by longer terms. But even if I am wrong about this, greater short-termism is at worst an adverse side effect well worth bearing to ensure the greater political accountability that this objection (by its very logic) concedes term limits would provide. After all, the magnitude of the short-termism problem created by legislative term limits of 6-12 years can be no greater than the short-termism problem of having U.S. cabinet secretaries who on average serve only 2-3 years. In comparison, a lack of political accountability is far more worrisome. It can produce not just a legislative discount rate that is different from the electorate's for the long-term pursuit of shared objectives but (much more menacing) the legislative pursuit of objectives that the electorate does not favor at all--in the long or short run. Having the right objectives is far preferable to using the right time frame to pursue the wrong objectives.

B. *THE PURPORTED FINAL-PERIOD PROBLEM*

Term limits mean that many officials will be in what they know is their final term. This raises the serious concern that they will be unaccountable during that term. But this concern turns out to be more theoretically troubling than practically relevant. Repeated empirical studies show that politicians who are in their final term because they have announced retirement do not significantly change their voting behavior.⁶⁷

There are two explanations for this phenomenon--retrospective and prospective. The retrospective explanation is that retiring politicians hold to the positions that got them elected to their final term either because they believe in them or because they feel obliged to carry out their promises. There is no reason to believe this tendency will be any less under term limits, but there is every reason to think it will be more beneficial. Because term-limited legislators are less politically insulated when they run for their final term, the prior positions they maintain are less likely to diverge from those of their constituents.

The prospective explanation is that politicians leaving one office often do so to run for another office. They thus remain prospectively accountable, and indeed the evidence is that they deviate less from their or electorates' original views than do politicians running for reelection.⁶⁸ How could that possibly be? The likely reason is that their seniority clout gives them greater political insulation when running for reelection than when running for a new office. That is, the political insulation of seniority makes politicians deviate from their electorates' views more than being (prospectively) accountable to a different electorate does! That seems to confirm this paper's analysis of the magnitude of seniority advantages. But whatever the reason, it remains a fact. And it is a fact particularly supportive of term limits because term-limited legislators are more likely (compared with legislators retiring under a regime without term limits) to be young and seeking other offices. Term-limited legislators are thus less likely than non-term-limited legislators to demonstrate a serious loss of political accountability in their final term.

Finally, most term limits are consecutive term limits that do not create a final term but require only that the incumbent leave office for a term or so before returning. The prospect of returning to office should help restrain departing incumbents from disregarding their electorates' preferences. Indeed, because of this, the final-period problem is clearly less severe under consecutive term limits than under a system without term limits. The final-period problem thus is at worst a reason to favor consecutive term limits over lifetime term limits; it is no reason to favor no limits over consecutive term limits.

C. *THE PURPORTED CORRUPTION BY POST-LEGISLATIVE EMPLOYMENT PROBLEM*

A serious concern, voiced among others by Alexander Hamilton, Gary Becker, and Nelson Polsby, is that term-limited legislators will be influenced by the private employers they plan to work for after leaving the legislature.⁶⁹ That seems plausible in theory but

turns out to have little empirical support. The available evidence is that retiring legislators who plan to take another job after leaving the legislature do not vote significantly differently from retiring legislators who plan to stop working altogether.⁷⁰

There are several explanations for this empirical fact. Offering legislative favors in exchange for jobs remains illegal, and legislators leaving office are likely to have attractive job opportunities without running the risk of selling or misusing their office. And disloyalty to an electorate is not likely to be attractive to private employers, who value loyal employees. Indeed, the persons that lobbyists most want to hire are often former political officials who opposed them because those former officials have more credibility with the persons the lobbyists need to persuade. Finally, the group of firms that might be benefited by an ex-legislator's favors have collective action problems that make it difficult for them to organize to make consistent job offers in exchange for those favors, especially since they cannot do so explicitly. Being prohibited from making binding contracts, each firm individually has incentives to leave to other firms the costly endeavor of hiring ex-legislators to reward past favors, with the result that no firm may do it.

Moreover, to the extent there is a problem, it is not clear that it is worsened by term limits. Term limits lower the duration and thus the value of legislative connections, making ex-legislators less useful to lobbyists seeking political influence. If you served under six-year term limits, everyone you knew in the legislature would be gone within four years, and two-thirds would be gone after two years. Indeed, the shortness of contact time under term limits makes this problem easier to address with a two- to four-year ban on post-legislative lobbying by former legislators. In contrast, a two- to four-year ban has only a minor effect on someone who was a legislator for 20 years under a system without term limits.

More generally, the underlying problem that makes corruption of any sort possible is the existence of some degree of political insulation (often called ideological slack) that makes action against the public interest possible. The possibility of post-legislative employment cannot increase total ideological slack, which mainly results from legislators' incumbency advantage. It can only alter the ends for which that slack is used. Reducing the overall amount of ideological slack by enacting term limits should advance the public interest far more than altering the ways that slack is exercised because of offers of post-legislative employment.

IX. THE LAWYERLY OBJECTIONS

A. *THE PURPORTED SLIPPERY SLOPE PROBLEM*

A more lawyerly objection to term limits is that if they are justified in order to reduce the advantages of senior incumbents, then states would also be justified in banning lawyers, college graduates, celebrities, gifted speakers, or persons with high IQs from running for

office because they, too, have advantages over other candidates. Term limits, in short, would put us on the slippery slope of trying to rectify all candidate disadvantages.

But term limits are easily distinguishable from this parade of horrors. All of the candidate bans listed above would pose a much heavier and more discriminatory burden on voting rights because they would foreclose a far greater number of candidates who in aggregate are likely to lean toward distinctive political viewpoints. Those candidate bans thus resemble the ban on minister candidates that was declared unconstitutional in *McDaniel v. Paty*.⁷¹ Term limits in contrast only foreclose one candidate in each district from one office--thus leaving a wealth of other candidate options open to voters--and apply equally to senior legislators of all political viewpoints.

There is also no strong regulatory reason for banning the above categories of candidates, and certainly no reason to think such bans would actually lessen burdens on voting rights in the way that term limits do. None of those categories of candidates has huge advantages over other categories that are comparable to the seniority clout and public platform advantages that senior legislators have. Nor, empirically, does one see lawyers, college graduates, celebrities, gifted speakers, or persons with high IQs winning elections at anything resembling the 100 percent rate of incumbent California senators before term limits, or the 99 percent rate at which senior members of Congress win now. Indeed, excluding such potent categories of candidates would instead entrench incumbents even more than they are entrenched now.

Most important, even if those categories of candidates did have a significant advantage, if they deviated from the electorate's wishes they could be challenged by many other persons in the same category with political views closer to the electorate's. The left-wing lawyer could be opposed by the right-wing lawyer or the moderate lawyer or by some lawyer with just about any political viewpoint. In contrast, there is only one senior incumbent per district who can deviate from his electorate's preferences without fear of being challenged by a senior incumbent with similar electoral advantages.

In addition, senior incumbents differ from other sorts of candidates because their advantage accrues by virtue of their having had the privilege of being in public office. Because the public creates the benefit of the political connections and public platform bestowed by time in governmental offices, the public is justified in limiting how long it confers that benefit. The advantages of celebrity or legal education are, in contrast, created by the candidates themselves.

B. THE PURPORTED LESS RESTRICTIVE ALTERNATIVES

Another lawyerly objection often raised against term limits is that there are less restrictive alternatives for accomplishing the same goals. We could abolish the seniority system for allocating legislative positions, eliminate the franking privilege and other legislative perks, remove legislatures' ability to gerrymander, and adopt stricter campaign finance

regulation instead. None of those options, however, turns out to be a less restrictive alternative for accomplishing the goals of term limits.

- As already noted, the evidence is that abolishing the seniority system for allocating legislative positions would not eliminate the extra clout of senior legislators, which rests far more on tenure than on position.⁷² Consistent with this, after the seniority reforms of 1974, rates of incumbent reelection to Congress increased rather than decreased.⁷³ And reducing differences in seniority would not redress entry barrier or risk-aversion concerns. Further, a seniority rule for allocating positions has important advantages that a term-limited legislature might sensibly want to retain: (1) It offers a means of allocating power that is neutral and avoids political infighting, possible bias in selection, and the centralization of legislative power in the legislative leader. (2) Even under a term-limited system, it may well be preferable to have a person with some procedural experience heading important committees rather than someone who just arrived on the job. Those advantages would be lost by the abolition of the seniority system.

- Although the franking privilege and large staffs can certainly be misused to give incumbents an unfair advantage, all the fundamental problems motivating term limits would continue to exist even if these particular advantages were eliminated since none of the problems described at the beginning of this piece depend on the existence of a franking privilege or large staffs. Further, a strategy of reducing franking and staff has limits. There are, after all, good reasons to give incumbents some ability to communicate with their districts and to have large enough staffs to keep up with legislative issues. And once that minimum mailing and staff privilege is allowed, it is hard to prevent it from being used to build up incumbency advantages.

- Another alternative reform would transfer the power to redistrict from legislatures to some neutral commission. While this may well be salutary, it does nothing to redress the seniority clout, entry barrier, or risk-aversion concerns addressed by term limits. Ending gerrymandering does not reduce an incumbency advantage; it reduces a majority-party advantage.⁷⁴ Consistent with this, studies show that rises in the incumbency advantage and declines in electoral competitiveness are both unrelated to whether or not redistricting occurred.⁷⁵ Nor can ending gerrymandering do anything to curb the deeper problem: the lack of any real competition in party primaries.

- Opponents of term limits sometimes assert that if we really want to end the unfair advantages of incumbents, we should adopt more stringent campaign finance regulation. But while campaign finance regulation may advance other worthy goals, it plainly does not redress the problems remedied by term limits. Campaign finance regulation does nothing to reduce the differences in legislative power between senior and junior legislators, differences that produce both inequity between districts and coercion to reelect incumbents in every district. Nor does it address the concerns of risk-averse voters who prefer to encourage cycling between political parties.

As for entry barrier problems, campaign finance regulation not only fails to correct them, it tends to exacerbate entry barriers to the extent it mandates or encourages equal campaign spending by candidates. Because senior incumbents start with the large edge that their public platform has given them -the equivalent of years of free political advertising--a challenger must generally spend far more than an incumbent if the challenger hopes to win. A rule that mandates or encourages equal spending prevents a challenger from doing so and thus effectively freezes into place the incumbent's starting advantage. Consistent with that, the federal campaign finance regulation enacted in the early 1970s was followed by a significant increase in average congressional tenure.⁷⁶ Finally, it bears notice that term limits have done more than has any campaign finance regulation to reduce campaign spending. In California term limits reduced campaign spending from \$309,000 per legislative election to \$215,000.⁷⁷

X. THE CLAIM THAT TERM LIMITS ARE STILL UNDEMOCRATIC

There remain two objections that term limits are undemocratic. They rest on opposing conceptions of democracy. Both objections are ill-founded.

A. *VOTERS WON'T BE ABLE TO RETAIN THE TERMED-OUT INCUMBENT*

The first objection, which rests on the same conception of democracy that this article does -that it is democratic to accurately represent the electorate's wishes- is that term limits prevent electorates from reelecting termed-out legislators if they wish. This is the main objection of opponents of term limits and the core rationale for the Supreme Court's decision invalidating congressional term limits.

This objection fails to come to grips with the fact that voters are not free without term limits to vote however they please. A vote to oust an incumbent is penalized by a loss of seniority clout, and entry barriers exclude meaningful alternatives from the ballot. The question is thus not whether voters should be able to vote as they please but which regime maximizes voters' ability to choose whom they please. Moreover, to the extent some districts are electing highly senior legislators who exploit other districts, the voters in those other districts have a legitimate interest in having a legislature more representative of all the persons subject to its powers.

True, term limits will sometimes exclude the candidate who happens to be the best available representative of the relevant electorate, with "best" referring to whatever mix of ability, character, and views the electorate would favor without any ballot coercion or limitation at all. But how often will that be? Without term limits the seniority clout penalty coerces voters to reelect incumbents and entry barriers exclude meaningful alternatives from the ballot. The incumbents who would remain in office without term limits will thus often be far worse than the "best" representative.

And how bad will the result be when that happens? An electorate deprived of its best representative can elect the second-best willing candidate. In districts with hundreds of

thousands if not millions of persons, the drop-off will not be great. Generally, there will be equally able candidates with the same views. Nor is the electorate truly deprived of exceptional candidates, for they can still run for any other political office. The electorate that loses a senator may gain a governor. Indeed, under consecutive term limits, such candidates can even run for the same political office after sitting out a term or so.

All this objection shows is that, like all rules, a term limits law can have overinclusive applications. And, as with all rules, the real question is whether the benefits of the rule exceed the adverse effects in the overinclusive cases. Here, there is every reason to think they do. Freeing electorates of systemic pressures to elect incumbents even when they are far worse than the best representative outweighs the fact that in some rare cases term limits will require electorates to switch from the best to the second-best candidate. Preserving the ability to oust those who govern us is much more important than preserving the ability to retain them.

Moreover, even in the overinclusive cases, term limits will still further the goals of reducing unequal distributions of political power between districts and across time. An electorate that is risk averse, or favors equal distributions of political power, should generally prefer the benefits of term limits over retaining their incumbent in the rare overinclusive case.

Finally, it must be remembered that the legislative term limits we have were enacted by voter initiative, and voters can always lift term limits by initiative if voters change their minds later. The voters must thus have decided that their chances of being equally and accurately represented were improved by term limits, and if experience with term limits produces a different conclusion, a future electorate can always act on it.

B. DIFFERENT CONCEPTIONS OF DEMOCRACY

My premise throughout this paper has been that equally and accurately representing the electorate is pro-democratic. One might object that this conception of democracy is wrong, that a system too responsive to voters' wishes might produce worse results than the alternatives. The alternative conception of democracy might be deliberative, or Burkean, or simply hold that political systems must be judged by their propensity to produce just laws.

Some deliberative or Burkean visions of democracy are perfectly consistent with my conception of democracy as equally and accurately representing the electorate. Voters would be entirely rational to conclude that, because they lack information on many issues, their preferences are less likely to be satisfied by instant plebiscites than by a representative democracy structured to deliberate and reach Burkean decisions that may conflict with polls but conform to what the voters would want if fully informed by deliberation. That is one reason why voters are wise to focus on the character of representatives and not just their views on policy. But nothing in term limits prevents voters from (in their own self-interest) voting for legislators who are deliberative and

Burkean in this sense. In contrast, the ballot coercion and limitation present without term limits can prevent that kind of voting, thus forcing voters to elect representatives who pursue their personal preferences even when the electorate's informed preferences would differ.

Other conceptions of democracy strike me as wrongheaded. Some believe that a Burkean representative should not make the decisions that a fully informed electorate would make but rather decisions that are just and in the public interest. Or some believe that any political change (like the adoption of term limits) can only be judged democratic if it produces laws that are more just and in the public interest. Such alternative conceptions of democracy seem to me to suffer from three fatal flaws. First, they make "democracy" a mere synonym for "desirable," and thus deprive the term of independent utility. Second, they are hopelessly vague: just what is "just" or "in the public interest"? Third, people in society disagree about what is "just" or "in the public interest" or complies with any other formulation of the proper social objective. My ideal system would adopt my definitions, and yours would adopt yours, but obviously everyone cannot be a policy dictator. The best we can do is to join a democracy that accurately and equally weighs our different definitions of the social good. Why should you accept such a democracy even when it produces consequences you would regard as "unjust" or "against the public interest"? Because, in exchange, others accept it even when it produces consequences you would regard as good but they would regard as bad. And if everyone accepts this social compact, the expected good consequences outweigh the bad for each of us. A government that is democratic according to my conception cannot produce a world where everyone's conception of the good is furthered, because that result is impossible. But a government that is democratic according to my conception can produce the best result that is feasible: a world that minimizes the expected dissatisfaction that results from the polity's differing conceptions of the good.

But even if you subscribe to one of the alternative conceptions of democracy, that would not justify opposing term limits. True, one might think that experience generally helps legislators make "better" decisions and that voters (as evidenced by their vote for term limits) undervalue experience. But, as noted above, it is not at all clear that legislators will have less relevant or political experience under term limits. Moreover, this objection would also support a system that fined voters for running against incumbents, and it is hard to see how that could possibly be democratic. In any event, while experience might generally help, and ballot coercion and the limitations that discourage voting against incumbents certainly increase the experience of legislators, such ballot coercion and limitations also pressure voters to reelect legislators who have no propensity or ability for deliberation or Burkean decisionmaking. Suppose that, under any alternative conception of democracy you care to specify, an incumbent lacks the requisite ability, propensity, or "correct" views. The electorate would still feel pressured to reelect that incumbent because of seniority clout penalties and a ballot that was, thanks to entry barriers, often devoid of serious alternatives. Because the pressures to reelect incumbents without term limits apply regardless of whether the incumbent furthers any particular alternative

conception of democracy, no such conception can justify the conclusion that term limits would be undemocratic.

XI. CONCLUSION

Term limits further important values of democratic equality and freedom. Legislative term limits reduce inequalities in legislative power across districts and over time. More important, term limits (on incumbents in general) make democratic choice far freer. Term limits solve a collective action problem and lessen the seniority penalty that makes it difficult for districts to oust ideologically unsatisfactory incumbents. And term limits reduce barriers to entry that discourage challengers and thus limit ballot options. Any furthering of these values furthers core democratic objectives. But term limits are particularly vital at a time when senior incumbents have come to enjoy such overwhelming advantages that voters generally have no meaningful choice on their ballot. The arguments against term limits, while not illogical, turn out to be so weak in fact or mixed in theory that none can rebut the strong argument that term limits will enhance the ability of electorates to have their views represented by their elected officials.

Notes

1. The analysis will draw on evidence from California, which has the most extensive data and is the largest jurisdiction to successfully impose term limits on its legislators. *Bates v. Jones*, 131 F.3d 843 (1997) (en banc) (reversing district court decision and vacating panel decision, each of which had held state legislative term limits unconstitutional), cert. denied, 118 S. Ct. 1302 (1998). Citations to Tr. and ER hereafter refer, respectively, to the Trial Transcript and the Appellate Excerpt of Records in that case. I was the lead counsel for the secretary of state of California defending the constitutionality of its legislative term limits before the U.S. Court of Appeals for the Ninth Circuit.
2. 369 U.S. 186 (1962).
3. 377 U.S. 533 (1964).
4. Tr. at 36, 193-94, 204-7, 212-15, 342-43; and ER at 998.
5. See John R. Hibbing, *Congressional Careers: Contours of Life in the U.S. House of Representatives* (Chapel Hill: University of North Carolina Press, 1991), pp. 162-65; and John R. Hibbing, "Contours of the Modern Congressional Career," *American Political Science Review* 85 (1991): 422-24.
6. Tr. at 32, 208-9.
7. Daniel Friedman and Donald Wittman, "Why Voters Vote for Incumbents but against Incumbency," *Journal of Public Economics* 57 (1995): 75.
8. *Ibid.* (The difference in California between districts with senior and junior representatives was only 1-3 percent). The smallness of the difference no doubt reflects, in part, the fact that the term limits were prospective, thus not kicking in till 1996 (for the assembly) or 1998 (for the senate). Thus the question is not which districts had senior legislators at the time of the 1990 vote (which is what Friedman and Wittman measured) but which districts expected to have senior legislators in 1996-98.
9. I define "pork" at the beginning of the next section.
10. See Einer Elhauge, "Are Term Limits Undemocratic?" *University of Chicago Law Review* 64 (1997): 83; and Einer Elhauge, John R. Lott Jr., and Richard L Manning, "How Term Limits Enhance the Expression of Democratic Preferences," *Supreme Court Economics Review* 5 (1997): 59.
11. Tr. at 372-73, 420-21; and ER at 449. This figure actually understates the advantage because it excludes races from which the incumbency advantage scared off all challengers.
12. Tr. at 99-100, 372-73; and ER at 404, 406, 416, 449.
13. Tr. at 541-43; and ER at 776.
14. Tr. at 120, 693.
15. Tr. at 205-7.
16. Tr. at 372-73; and ER at 449.
17. Kermit Daniel and John R. Lott Jr., "Term Limits and Electoral Competitiveness: Evidence from California's State Legislative Races," *Public Choice* 90 (1997): 179.
18. Tr. at 98-99, 547-48; and Andrew Gelman and Gary King, "Estimating Incumbency Advantage without Bias," *American Journal of Political Science* 34 (1990): 1157-58.

19. Center for Voting and Democracy, "Monopoly Politics," Washington, July 1997, pp. 4, 6.
20. *Ibid.*
21. F. Paul Calamita, "Solving the Voters' Dilemma," *Journal of Law and Politics* 8 (1992): 560.
22. The only time voters failed to adopt prospective legislative term limits (Mississippi in 1995), the initiative lacked congressional term limits because of *U.S. Term Limits v. Thornton* (514 U.S. 779 (1995)). Further, that initiative was defeated mainly because it included local officials like police chiefs for whom term limits are less justifiable because such local nonlegislative offices feature no seniority clout penalties, weak entry barriers, and a smaller pool of desirable alternatives to the incumbent. See Reed Branson, "Term Limits Backers Vow Narrower Effort," editorial, *Commercial Appeal*, November 9, 1995, p. B2; and "Scaring Mississippi Voters," editorial, *Wall Street Journal*, October 30, 1995, p. A18.
23. Joseph P. Kalt and Mark A. Zupan, "The Apparent Ideological Behavior of Legislators: Testing for Principal-agent Slack in Political Institutions," *Journal of Law and Economics* 33 (1990): 118-20, 126; see also Steven D. Levitt, "How Do Senators Vote?" *American Economics Review* 86 (1996): 436 (first-term senators are more than twice as responsive to voter preferences as are later term senators).
24. Twenty-one percent of voters voting no said that the reason for their vote was that the state would lose clout, 19 percent that the state would be enacting term limits alone, 8 percent that the state would be losing the Speaker of the House, and 4 percent that the state would lose influence on various federal issues affected by clout. Olson, pp. 65, 85.
25. See Colo. Const. art. XVIII, § 9a.
26. *Ibid.*
27. See Alaska Stat. § 15.30.80; Missouri Const. art. III, § 45(a); N.H. Legis. ch. 108 (1995); and Utah Stat. § 20-A-10-301. See also Wash. Rev. Code Ann. §§ 29.68.015-16 (triggered when a total of 10 states enacted term limits for their federal legislators).
28. Tony Semerad, "Term Limits Aren't Dead," *Salt Lake City Tribune*, November 10, 1994, p. A1.
29. Einer Elhauge, "Does Interest Group Theory Justify More Intrusive Judicial Review?" *Yale Law Journal* 101 (1991): 41.
30. See Peter Bernholz, "On the Stability of Logrolling Outcomes in Stochastic Games," *Public Choice* 33 (1978): 65. At the extreme, term limits eliminate the incentives to cooperate altogether by creating an incentive to defect in the final period, knowledge of which creates an incentive to defect in the penultimate period, which by extension unravels all cooperation back to the first period. See L. G. Telser, "A Theory of Self-Enforcing Agreements," *Journal of Business* 53 (1980): 27.
31. Elhauge, "Are Term Limits Undemocratic?" pp. 154-70; and Elhauge, Lott, and Manning, pp. 65-70.
32. Tr. at 417-18.
33. See Stephen E. Gottlieb, "The Dilemma of Election Campaign Finance Reform," *Hofstra Law Review* 18 (1989): 222.
34. ER at 777-78, 1027.

35. John H. Fund, "Term Limitation: An Idea Whose Time Has Come," in *Limiting Legislative Terms*, p. 225.
36. Center for Voting and Democracy, p. 1 (73 percent of general elections can safely be predicted to result in a margin of victory of 10 percent or more for one party).
37. Tr. at 47-51, 168-69, 231, 520-25, 552, 564-65; ER at 779-80, 966-67; Peverill Squire, "Challengers in U.S. Senate Elections," *Legislative Studies Quarterly* 14 (1989): 533 (Senate challenges); and Gary C. Jacobson and Samuel Kernell, *Strategy and Choice in Congressional Elections* (New Haven, Conn.: Yale University Press, 1981), p. 32 (House challenges).
38. Tr. at 49-51.
39. Daniel and Lott, p. 174.
40. Dan Greenberg, "Term Limits: The Only Way to Clean Up Congress," *Heritage Foundation Background* no. 994, August 10, 1994, p. 8. See also Daniel and Lott, p. 182.
41. *Ibid.*
42. Elhauge, "Are Term Limits Undemocratic?" p. 160 n. 273; and ER at 787-89.
43. See B. Drummond Ayres Jr., "State Term Limits Are Transforming the Legislatures," *New York Times*, April 28, 1997, p. A1; Tr. at 593; ER at 785; and Steven Hayward, "Same As the Old Boss?" *Reason*, December 1997, p. 20.
44. See Edward Glaeser, "Self-Imposed Term Limits," *Public Choice* 93 (1997): 389.
45. See Alexander Tabarrok, "A Survey, Critique, and New Defense of Term Limits," *Cato Journal* 14 (1994): 345-47.
46. Cf. Cass Sunstein, "Interference with Private Preferences," *University of Chicago Law Review* 53 (1986): 1135.
47. Cf. Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), pp. 202-17, 329-39.
48. Cf. Sunstein, pp. 1161-66 (arguing that habit or myopia might be justification for restricting the exercise of individual preferences).
49. See Center for Voting and Democracy; and Fund.
50. See Tr. at 120, 693, 205-7; Calamita; Kalt and Zupan; and Levitt.
51. See, for example, Nelson W. Polsby, "Constitutional Mischief: What's Wrong with Term Limitations," *American Prospect*, no. 6 (Summer 1991): 41-43; Nelson Polsby, "Some Arguments against Congressional Term Limitations," *Harvard Journal of Law and Public Policy* 16 (1997): 104-6; and Nelson Polsby, "Restoration Comedy," *Yale Law Journal* 102 (1993): 1523-25.
52. See Ayres; and Hayward.
53. See Tr. at 536, 693; George F. Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy* (New York: Free Press, 1992), pp. 40-41; and Mark P. Petracca, "Rotation in Office: The History of an Idea," in *Limiting Legislative Terms*, pp. 20-28.
54. See James L. Payne, *The Culture of Spending* (San Francisco: ICS, 1991), pp. 81-87, 176-78; and Stephen Moore and Aaron Steelman, "An Antidote to Federal Red Ink: Term Limits," *Cato Institute Briefing Paper* no. 21, November 3, 1994.
55. Tr. at 698-99.

56. Beth Garrett, "Term Limitations and the Myth of the Citizen-Legislator," *Cornell Law Review* 81 (1996): 623, 626-28 n. 11, 633-57. Preliminary evidence supports this claim: after term limits, 32 former California Assembly members moved to other political offices. Ayres, p. A1.
57. Garrett, pp. 670-77.
58. *Ibid.*, p. 677.
59. *Ibid.*, p. 677 n. 178.
60. Hayward, p. 21.
61. See Will, p. 57.
62. See Gallup Poll, "Attitudes toward Proposed Policy Changes for Members of Congress," September 1992; and Drew Leatherby, "The Truth about Term Limits," <http://www.csg.org/sgn/dec97/limits.html>.
63. See Will, pp. 17-36; James L. Payne, "Why Government Spending Grows: The 'Socialization' Hypothesis," *World Politics Quarterly* 44 (1991): 487-89; and Mark P. Petracca, "Term Limits Will Put an End to Permanent Government by Incumbents," *Public Affairs*, November 1990, p. 8.
64. See W. Robert Reed and D. Eric Schansberg, "The House under Term Limits: What Would It Look Like?" *Social Sciences Quarterly* 76 (1995): 711; and Olson, pp. 76, 86-89
65. Elhauge, "Does Interest Group Theory Justify More Intrusive Judicial Review?" pp. 48-66.
66. See Linda Cohen and Matthew Spitzer, "Term Limits," *Georgetown Law Journal* 80 (1992): 477.
67. John R. Lott Jr., "Political Cheating," *Public Choice* 52 (1987): 183; John R. Lott Jr. and W. Robert Reed, "Shirking and Sorting in a Political Market with Finite-lived Politicians," *Public Choice* 61 (1989): 87; Mark A. Zupan, "The Last Period Problem in Politics," *Public Choice* 65 (1990): 176; James R. VanBeek, "Does the Decision to Retire Increase the Amount of Political Shirking?" *Public Finance Quarterly* 19 (1991): 444; John R. Lott Jr. and Michael L. Davis, "A Critical Review and an Extension of the Political Shirking Literature," *Public Choice* 74 (1992): 479; John R. Lott Jr. and Stephen G. Bronars, "Time Series Evidence on Shirking in the U.S. House of Representatives," *Public Choice* 76 (1993): 126; and Bruce Bender and John R. Lott Jr., "Legislator Voting and Shirking: A Critical Review of the Literature," *Public Choice* 87 (1996): 68, 72-79.
68. Zupan, pp. 173-75, 178, nn. 14, 16, 18. See also Lott and Bronars, pp. 136-43; and Van Beek, pp. 450-56.
69. *Debates on the Adoption of the Federal Constitution*, ed. J. Elliot, 1863, vol. 2, p. 320 (quoting Hamilton); Gary S. Becker, "Reforming Congress: Why Limiting Terms Won't Work," *Business Week*, August 6, 1990, p. 18; and Polsby, "Constitutional Mischief," p. 43.
70. Lott, "Political Cheating," pp. 177-79.
71. 435 U.S. 618 (1978).
72. See Hibbing, *Congressional Careers*; and Hibbing, "Contours of the Modern Congressional Career."

73. See Gerald Benjamin and Michael J. Malbin, Table B-2, in *Limiting Legislative Terms* (Washington: Congressional Quarterly, 1992), p. 293.
74. Tr. at 72 (testimony of Professor Morris Fiorina of Harvard University).
75. Tr. at 101, 110; and Charles R. Kesler, "Bad Housekeeping: The Case against Congressional Term Limits," in *Limiting Legislative Terms*, p. 246.
76. See W. Robert Reed and D. Eric Schansberg, "The Behavior of Congressional Tenure over Time: 1953-1991," *Public Choice* 73 (1992): 184.
77. See Daniel and Lott, p. 174.