

HUR 2



STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: February 13, 1992  
 Title: "... limiting the number of terms a person may serve ..."  
 Sponsor: Representative Navarre  
 Requestor: House State Affairs

Department Affected: Department of Law  
 BRU: Legal Services  
 Component: Operations  
 COMPONENT SERIAL 

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.) Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
 Division: Administrative Services  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: February 13, 1992  
 Date: February 13, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies)

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HJR 2

ANALYSIS: (continued)

House Joint Resolution No. 2 proposes amendments to the Constitution of the State of Alaska limiting the number of terms a person may serve in the legislature and in the United States Congress.

First, Section 1 would amend Article II of the state constitution to provide that no person may serve more than four full terms as a representative and two full terms as a senator in the legislature. This limitation would not apply to partial terms.

Second, Section 2 would amend the state's constitution by adding a new section to provide that no person may serve more than four full terms as a representative in the Congress of the United States, and that no person may serve more than two full terms as a senator in the Congress of the United States. This limitation does not apply to partial terms.

Third, Section 3 would amend the state's constitution to provide that the proposed amendments limiting the number of years a person may serve as a legislator and limiting the number of terms a person may serve in the Congress of the United States apply only to terms beginning after the effective date of the amendments.

These proposed constitutional amendments would be placed before the voters at the next general election, after the resolution is approved by the legislature.

Similar proposals to limit the terms of legislators and members of the United States Congress are being considered in several states. There is some uncertainty whether a state, on its own volition, can limit the number of terms a person can serve in the United States Congress, or whether such a limitation requires a change in the United States Constitution. Because of the provision that the limitations apply only to terms beginning after the effective date of the amendments, the issue of limited federal representation should be resolved due to actions in other jurisdictions, and there should not be a fiscal impact for the Department of Law.

COMMITTEE COPY

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL: No. 1  
Bill Version: CSHJR 2(JUD)  
(H) Publish Date: 5/5/92

Revision Date: 01/13/92 Department Affected: Office of the Governor-Elections  
Title: Amendment to the Constitution RE: Limit Legislative Service to 12 Years BRU: Division of Elections  
Sponsor: Representative Navarre Component: 11-Primary and General Elections  
Requestor: House State Affairs

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) \* This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziedler, Deputy Director Phone: 465-4611  
Division: Elections Date: 01/13/92  
Approved by Commissioner: *Charles E. Henderson*  
Agency: Office of the Governor Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/D8R, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

No. 3  
 Bill Version: CSHJR 2 (JUD  
 (H) Publish Date: 5/5/92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: Proposing amendments...limiting the  
number of...a person may serve in the Legislature...  
 Sponsor: Representative Navarre  
 Requestor: House State Affairs

Department Affected: Legislative Affairs Agency  
 BRU: Legislative Council

Component: Legislators' Salaries & Allowance

COMPONENT SERIAL NO: 776

Expenditures/Revenues: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE FUND SOURCE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director  
 Division: Administrative Services

*Pamela A. Stoops*

Phone: 465-3850  
 Date: 2/12/92

Approved By: Warren W. Endicott, Executive Director  
 Agency: Legislative Affairs Agency

*Warren W. Endicott*

Date: 2/12/92

Distribution (by preparer): Leg \_\_\_\_\_

**COMMITTEE COPY**

, & Impacted Agency(ies).

Page 1 of 1

CS FOR HOUSE JOINT RESOLUTION NO. 2 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES NAVARRE, Ellis, Ulmer, Brown, Finkelstein, Taylor, Donley

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to terms of  
2 representatives and limiting tenure in the legislature.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. Article II, sec. 3, Constitution of the State of Alaska, is amended to read:

5 SECTION 3. ELECTION AND TERMS. Legislators shall be elected at general  
6 elections. Their terms begin on the fourth Monday of the January following election unless  
7 otherwise provided by law. The term of representatives [SHALL BE TWO YEARS,] and the  
8 term of senators shall be [,] four years. One-half of the representatives and one-half of the  
9 senators shall be elected every two years. No person may serve more than two full or partial  
10 consecutive terms as a representative and two full or partial consecutive terms as a senator.  
11 In addition, no person may serve during more than sixteen consecutive full or partial years  
12 in the legislature.

13 \* Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding new sections to read:

14 SECTION 29. TENURE OF LEGISLATORS. The 1992 amendment limiting tenure in  
15 the legislature (Section 3 of Article II) applies only to periods served in the legislature after the  
16 effective date of the amendment.

1           SECTION 30. TERMS OF REPRESENTATIVES. The 1992 amendment changing the  
2 terms of representatives to four years (Section 3 of Article II) does not apply to the term of a  
3 representative that begins in 1993. At the 1994 State general election one-half of the  
4 representatives shall be chosen for two-year terms and one-half of the representatives shall be  
5 chosen for four-year terms. The director of elections shall determine by lot which seats are for  
6 two-year terms and which seats are for four-year terms.

7 \* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state  
8 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and  
9 the election laws of the state.

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 165-3991  
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February 13, 1991

## MEMORANDUM

TO: Representative Mike Navarre

FROM: Deborah L. Davidson *DL*  
Legislative Analyst

RE: Legislative Turnover in the Alaska Legislature Since Statehood  
Research Request 91.127

You asked about the turnover of the Alaska House and Senate since statehood. Tables 1 and 2, attached, show the number and percentage of non-incumbent legislators in the House and Senate for each legislature since statehood. In addition, notations have been made regarding appointed legislators and those who previously served in the legislature. This information was compiled using the Legislative Affairs Agency publication *Alaska Legislature, Roster of Members, 1913-1988*, and current legislative membership.

You also asked for information regarding the turnover of the Alaska Congressional delegation since statehood. Listed below are the Congressional delegates and their dates of service.

U.S. House of Representatives:	Ralph J. Rivers	1959 - 1966
	Howard W. Pollock	1967 - 1970
	Nicholas J. Begich	1971 - 1972
	Donald Young	March 1973 - Present
U.S. Senate	E.L. Bartlett	1959 - 1968
	Ted Stevens	1969 - Present
	Ernest Gruening	1959 - 1968
	Mike Gravel	1969 - 1980
	Frank Murkowski	1981 - Present

I hope this information is useful to you. If you have any questions or would like additional information, please call.

Attachment

TABLE ONE  
 TURNOVER IN THE ALASKA HOUSE OF REPRESENTATIVES SINCE STATEHOOD

Legislature	Incumbents	Freshmen	% Freshmen	Notes
2nd (1961-1962)	17	23	57.5%	2nd session appointee replaced a freshman--did not return in 1963.
3rd (1963-1964)	23	17	42.5%	4 freshmen previously served in the house. 2nd session appointee replaced an incumbent--did not return in 1965
4th (1965-1966)	16	24	60.0%	2 freshmen previously served in the house (1 by appointment); 2 in the senate. Appointee replaced an incumbent--was elected in 1967
5th (1967-1968)	15	25	62.5%	2 freshmen previously served in the house; 1 in the senate. Appointee replaced freshman 2/68--was elected in 1969
6th (1969-1970)	23	17	42.5%	3 freshmen previously served in the house; 2 in the senate
7th (1971-1972)	19	21	52.5%	4 freshman previously served in the house. Appointee replaced freshman 1/72--did not return in 1973.
8th (1973-1974)	20	20	50.0%	4 freshmen previously served in the house. Appointee replaced an incumbent 1/74-- did not return in 1975
9th (1975-1976)	18	22	55.0%	1 freshman previously served in the house; 1 was appointed 1/75--was elected in 1977. Appointee replaced an incumbent 4/75-- was elected in 1977; appointee replaced an incumbent 1/76--was elected in 1977.
10th (1977-1978)	25	15	37.5%	1 freshman previously served in the house; Appointee replaced incumbent in 4/77-- did not return in 1979.
11th (1979-1980)	23	17	42.5%	2 freshmen previously served in the house
12th (1981-1982)	28	12	30.0%	
13th (1983-1984)	17	23	57.5%	1 freshman previously served in the house. Appointee replaced a freshmen 5/84--was elected in 1985
14th (1985-1986)	21	19	47.5%	1 freshman previously served in the house; 1 in the senate
15th (1987-1988)	27	13	32.5%	1 freshman previously served in the house
16th (1989-1990)	33	7	17.5%	Appointee replaced an incumbent 1/90--was elected in 1991
17th (1991-1992)	26	14	35.0%	1 freshman had previously served in the house; 1 was appointed 1/91

TABLE TWO  
TURNOVER IN THE ALASKA SENATE SINCE STATEHOOD

Legislature	Incumbents	Freshmen	% Freshmen	Notes
2nd (1961-1962)	15	5	25.0%	
3rd (1963-1964)	12	8	40.0%	1 freshman previously served in the house; 1 was appointed in 1962--was elected in 1964; 1 was appointed in 1963--was elected in 1965
4th (1965-1966)	16	4	20.0%	1 freshman previously served in the senate; 2 in the house
5th (1967-1968)	6	14	70.0%	1 freshman previously served in the senate; 6 in the house
6th (1969-1970)	16	4	20.0%	3 freshmen previously served in the house; appointee replaced an incumbent 3/70--was elected in 1971
7th (1971-1972)	14	6	30.0%	5 freshmen previously served in the house; appointee replaced incumbent 1/72--was elected in 1973
8th (1973-1974)	15	5	25.0%	5 freshmen previously served in the house; appointee replaced incumbent 4/73--did not return in 1975
9th (1975-1976)	11	9	45.0%	5 freshmen previously served in the house; appointee (from house) replaced incumbent 1/75--was elected in 1977
10th (1977-1978)	18	2	10.0%	1 freshman previously served in the house.
11th (1979-1980)	13	7	35.0%	3 freshmen previously served in the house
12th (1981-1982)	16	4	20.0%	2 freshmen previously served in the house; appointee replaced incumbent 3/82--did not return in 1983
13th (1983-1984)	14	6	30.0%	1 freshman previously served in the senate; 2 in the house
14th (1985-1986)	16	4	20.0%	1 freshman previously served in the senate; 2 in the house
15th (1987-1988)	15	5	25.0%	4 freshmen previously served in the house; appointee replaced incumbent 2nd session--did not return in 1989
16th (1989-1990)	16	4	20.0%	4 freshmen previously served in the house
17th (1991-1992)	15	5	25.0%	4 freshmen previously served in the house; appointee (from house) replaced incumbent 1/91

Prepared by the Legislative Research Agency, February 1991 (91.127)

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
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Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

**MEMORANDUM**

April 27, 1992

**SUBJECT:** Limitation on Terms of Office in Congress

**TO:** Representative Dave Donley, Chair  
House Judiciary Committee

**FROM:** Tamara Brandt Cook  
Director *TBC*

You have asked whether the state may limit the number of terms a person may serve in the United States Congress. While the precise issue has not, so far as I know, been considered by the court, it is likely that the court will find that the qualifications for office in Congress set out in the United States Constitution are the only qualifications that apply to that office and that a state may not impose a limit on terms or otherwise modify those qualifications. (Powell v. McCormack, U.S. (1969))

Recently the voters of Colorado approved an amendment to that state constitution that would limit congressional terms as well as terms of state officials. According to the Legislative Drafting Office of that state, the amendment purports to limit the terms to 6 consecutive terms in the House of Representatives and 3 consecutive terms in the Senate. No limit is placed on the total terms that may be served in Congress and the limit applies only to terms beginning after the effective date of the amendment. I checked with the office of the Secretary of Stat in Colorado this morning, and the term limit has not yet been challenged in court.

I have attached a recent article form the Congressional Quarterly on the subject of term limits.

TBC:gc  
92-320.glc

Enclosure

## COVER STORY

# National Drive To Limit Terms Casts Shadow Over Congress

*New Supreme Court may look afresh at constitutional issues, and impact will be felt even without a law*

**A**s the heavy bell of the term-limit movement has tolled across the country over the past year, most members of Congress have assumed it did not toll for them. But the din is getting harder to dismiss.

In 1991, term limits in various forms were introduced as bills in 45 states, according to the National Council of State Legislatures. In 1992, at least 11 states are expected to have congressional term limit initiatives on their ballots — and the number could go as high as 18. (*Map, p. 3103*)

The California Supreme Court on Oct. 10 upheld that state's 1990 election law tightly limiting the length of state legislators' careers. While the law did not apply to federal officeholders, the 6-1 ruling in its favor was sweeping enough to raise the blood pressure of incumbents everywhere.

But the most portentous development to date may be the one coming Nov. 5, when Washington state is expected to approve Initiative 553 — by far the toughest term limit measure yet. Polls have shown support for it as high as 73 percent among those surveyed. Will it really pass?

"The more critical question is by what margin," says Seattle Post-Intelligencer columnist Shelby Scates, an opponent of 553.

Washington's is not the first term-limit measure to apply to Congress. Colorado voted in such a limit in 1990. (*1990 Weekly Report, pp. 3796, 3144*)

But Washington's is the first retroactive measure. Its three-terms-and-out rule would retire Speaker Thomas S. Foley and every other Washington House member by the end of 1994.

Foley, a Democrat, has pronounced the measure "patently unconstitutional." He and his colleagues have downplayed their opposition to it. They

*By Ronald D. Elving*



Speaker Thomas S. Foley's seat could become the test case on the constitutionality of term limits.

have preferred not to make it a referendum on themselves, relying on the courts to strike it down — at least as it pertains to them.

The initiative's victory margin could be important because it may soon go before the state Supreme Court. A landslide could well be meaningful to the court, which is popularly elected.

But even if the constitutional fire wall at the state or federal level proves impenetrable — which is what most legal scholars expect — the term limit movement may prove impossible for members to shake.

The movement may reshape congressional politics without ever impos-

ing term limits by law. It has created great ferment in several statehouses (including California's), where ambitious politicians will be driven to seek new jobs by displacing congressional incumbents.

Many in Washington already blame the shadow of 553 for Democratic Gov. Booth Gardner's decision not to run for a third term in 1992 (a term he would be denied if 553 were approved and upheld). (*Story, p. 3147*)

The movement also could work its will by making permanent incumbency an ever-more-salient election issue. In a July 1991 Public Opinion Strategies poll, 63 percent thought congressional careers should be 10 years or less, and only one respondent in three thought there should be no limit at all.

Even those who might not have had a good word to say about term limits before are devising a new vocabulary.

Senate Republican leader Bob Dole of Kansas told an NBC-TV audience Oct. 20 that limits were unnecessary and "not a good idea" for Congress. But he quickly added: "That's not to say they're not going to happen. I think if you had a vote in my state and asked the voters out there, do you think there ought to be term limits, the answer would be yes."

Supporting term limits is already in vogue for candidates: Witness the concept's prominent mention in former California Gov. Edmund G. "Jerry" Brown Jr.'s presidential announcement Oct. 21. (*Story, p. 3148*)

Advocates and critics say term limits could become the symbol around which negative attitudes toward Congress not only coalesce but gain empowerment. For example, a pledge to limit one's terms could be to the politics of the near future what the no-new-taxes pledge was to the politics of the recent past.

## A Good Idea?

Much of the term limit debate has pitted incumbent legislators (primarily Democrats) against anti-tax groups and other critics of government who tend to be Republican, conservative or libertarian.

Incumbents are, of course, self-interested: term limit advocates often seem motivated by a political agenda (party control of Congress) or a policy agenda (cutting taxes and shrinking government).

"I'm told term limits would cost us our most experienced legislators," says Ed Crane of the libertarian CATO Institute. "All I can say is I hope so."

It can be difficult to find an objective assessment of term limits' actual effects on the institutions and functions of a state or federal legislature.

A conference on the subject was held Oct. 11-12 in Albany, N.Y., at the Rockefeller Institute of Government, the public policy research arm of the State University of New York (SUNY). On hand were advocates, opponents, journalists and scholars who have made a study of the subject.

Mark P. Petracca of the University of California at Irvine stressed the principle of rotation in office. Petracca cited Thomas Jefferson's support for rotation and followed its roots back to ancient times. Petracca attributed opposition to term limits among political scientists and journalists in part to "infatuation" with elected officials.

But most of the scholars were dubious, pointing to practical pitfalls and unintended consequences.

"One generation's reform becomes another generation's problem," said David Everson of the Illinois Legislative Studies Center, noting that "career legislators" resulted from efforts to professionalize legislatures.

Linda Fowler of Syracuse University suggested that increasing competition in legislative elections might well inhibit statesmanship in office.

Gerald Benjamin of SUNY New Paltz said term limits offered voters "a terrific opportunity to strike out at a legislative institution without striking at an individual legislator they might happen to like."

Michael J. Malbin, director of the SUNY Center for Legislative Studies and a former congressional aide, questioned the underlying supposition that "representative democracy is not working well." He said limits might encourage cross-party coalition-building on given issues. But he said that their effects on party and leadership strength would be hard to predict and that "entrepreneurial grandstanding" and electioneering in office would continue.

Conference participants also discussed the possibility that term limits would function as term guarantees, with potential challengers holding off until an incumbent was forced to vacate.

Ultimately, strong support for term limits could create a climate in which Congress and the legislatures could be induced to amend the Constitution.

Much the same progression of efforts led to the 17th Amendment, which provided for the direct election of U.S. senators by the voters rather than by the state legislatures.

Agitation for direct election of senators commenced at the beginning of the Republic. But it picked up in the Civil War era and gained steam with each decade, becoming part of the Democratic Party platform in 1900.

Some state legislatures regularly called for a constitutional convention on the issue. The House began to pass measures calling for a constitutional amendment. Finally, in 1912, the nec-

essary two-thirds vote of the Senate was obtained (64-24). Within a year, the necessary three-fourths of the state legislatures had ratified the amendment.

### Faith in Court

If Congress has been slow to take term limits seriously, its reasons are rooted in the first Article of the Constitution. By restricting voters' choice, many believe, term limits violate the document's democratic principles.

"Is it open and shut? Certainly the Speaker thinks so," says Foley spokesman Jeff Biggs.

The Speaker is far from alone.

"I think it would take an amendment to the Constitution," says Sen. Daniel Patrick Moynihan, D-N.Y.,

probably speaking for the majority in both parties in both chambers.

All 11 pending term limit bills in the House propose amending the Constitution. And it has long been legal scholars' preponderant view that so profound a change in electing Congress would not withstand constitutional scrutiny.

"It would take a constitutional amendment to do it — I think that's abundantly clear," says Walter Berns, a Georgetown Law Center professor and adjunct scholar at the American Enterprise Institute.

Berns cites the 1969 U.S. Supreme Court ruling in *Powell v. McCormack*, which held that the Congress had unlawfully refused to seat a member who met the simple qualifications for office set forth in Article I. By doing so, the court found, Congress added to the constitutional qualifications for office. (*Story*, p. 3104)

It is also often noted that the term limit issue was considered when the Constitution was written.

"Given that we have evidence that the framers did consider and did in fact reject term limits, it is much harder to make the case that term limits would be constitutional without an amendment," says Robert A. Katzmann, a visiting fellow in governmental studies at the Brookings Institution.

At the same time, *Powell* stops "one step short" of disposing of term limits, according to A. E. Dick Howard, a constitutional law professor at the University of Virginia.

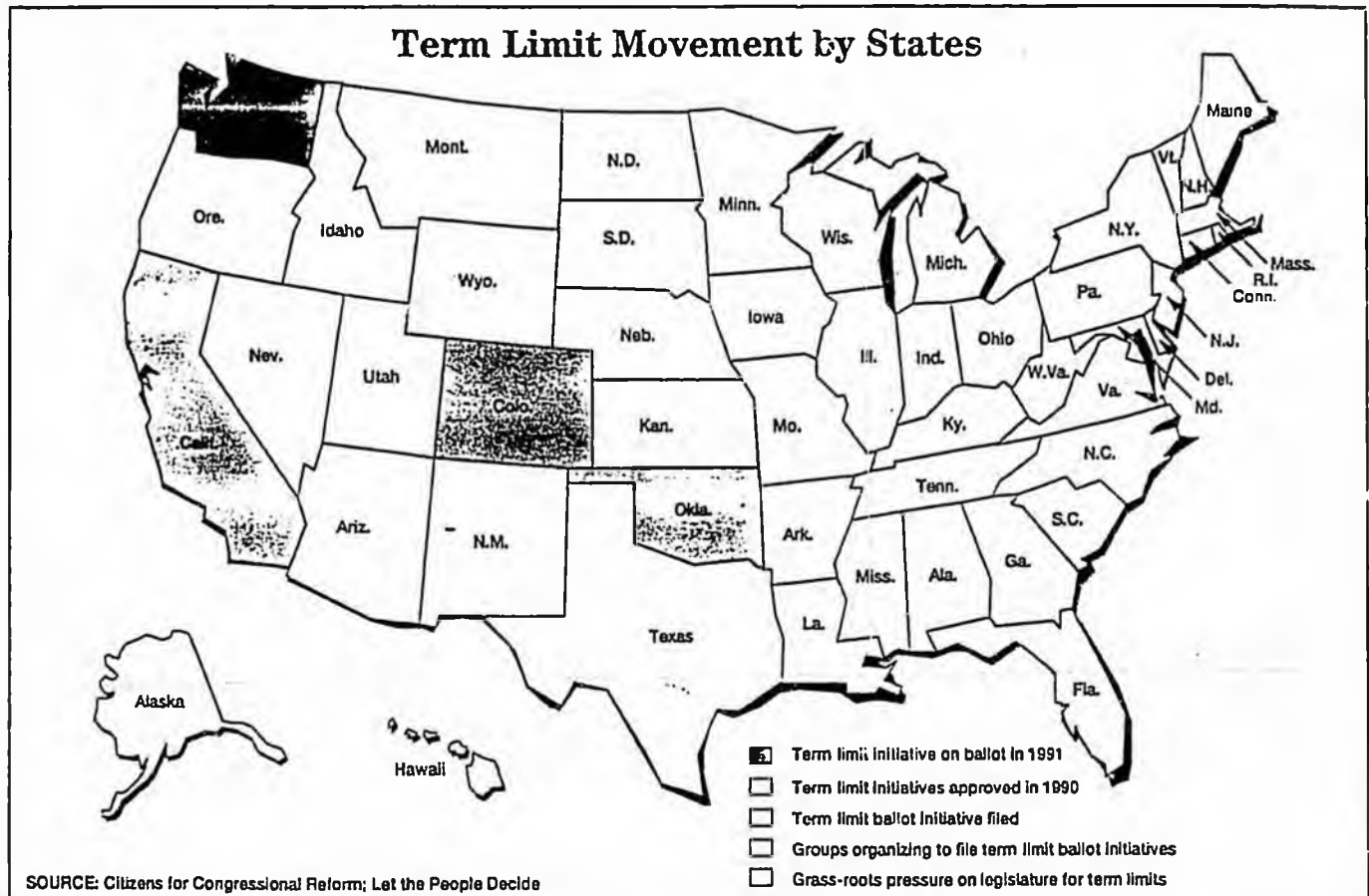
"*Powell* clearly limits what the House might do, but it does not necessarily answer the question of what a state might do," says Howard.

Wallace M. Rudolph, a constitutional law professor at the University of Puget Sound Law School in Tacoma, Wash., goes further.

Rudolph notes that although *Powell* mentions just three qualifications for office, the Constitution also recognizes a prohibition against holding other federal offices while serving in Congress. Many states also have barred felons from running for office or even voting.

"We see the constitutional qualifications as a minimum — not a maximum — number for federal representatives," says Rudolph. "I think we can show historically there have been all kinds of ballot qualifications imposed and enforced and upheld."

The outlook also may have changed in the past 22 years as the Supreme Court's composition has changed. Byron R. White is the only justice left from when *Powell* was decided.



"Looking at the existing court, you've got a whole bunch of people who ... take the view that the states' power to regulate stands except where specifically prohibited by the Constitution," says Rudolph. "I think [Chief Justice William H.] Rehnquist and [Antonin] Scalia and the newer judges in general would take that kind of position."

David J. Olson, a professor of political science at the University of Washington, says, "It's easy to speculate that the courts will turn this down, but when you look at the current composition of the court, I am not convinced."

Adds Howard: "This court certainly respects state power, courts and institutions. If the issue is placed in terms of state interest, they might be inclined to uphold [term limits]."

Washington state members were disappointed over the summer when their state's highest court adjourned without ruling on their effort to strike 553 from the ballot. The court said it did not have time to address the issue in its current session, but its lack of action created an uneasy feeling nonetheless.

Another harbinger came from California this fall, when the highest court in the largest state ruled that term limits did not violate the state constitution.

The California ruling held that there was no constitutional right, federal or state, to run for a given office or to vote for a given person. The court said term limits were a valid protection "against an entrenched, dynastic legislative bureaucracy."

#### Consigned To Languish

Term limit proposals are perennial in the House, but they are promptly consigned to languish in the Judiciary Committee without a hearing.

The only term limit votes ever taken in Congress were in the Senate. One came in 1947, when Sen. W. Lee "Pappy" O'Daniel, a Texas Democrat, proposed amending the two-term limit on presidents (then being debated) to apply a single six-year term to all federal elected officials. His proposal failed on a vote of 1-82. In 1991, freshman Republican Sen. Hank Brown of Colorado tried to amend the campaign finance bill to impose a two-term limit on senators who used public campaign funding. It was tabled (killed) on a 68-30 vote. (*Weekly Report*, p. 1351; *Vote* 69, p. 1410)

The term limit idea has gained more currency among House Republicans in recent years as frustration with their party's seemingly permanent minority

status has grown. Rep. Joel Hefley was a cosponsor of such bills prior to 1990 but later decided voters' choice should not be restricted. Separate term limit bills have been introduced in the House in this Congress by seven Republicans and three Democrats.

#### The Washington Model

The crescendo of term limit activity has many points of origin. But perhaps its most fateful impetus came from a failed campaign against veteran Rep. Norm Dicks in the 1990 Democratic primary in his Tacoma-based district.

Accustomed to winning re-election with two-thirds of the vote, Dicks was little concerned with Democratic challenger Mike Collier — at first. But a coalition of liberal activists long unhappy with Dicks' pro-defense profile rallied behind Collier. They mounted enough of a campaign that Dicks returned home, campaigned hard and spent money on broadcast advertising for the primary. Collier wound up with 22 percent of the primary vote.

Collier's partisans were disappointed that the League of Women Voters did not hold debates and the local media paid little attention.

## Powell v. McCormack (1969)

When constitutional scholars talk about term limits on federal legislators, they usually talk about one Supreme Court case decided nearly a generation ago: *Powell v. McCormack*.

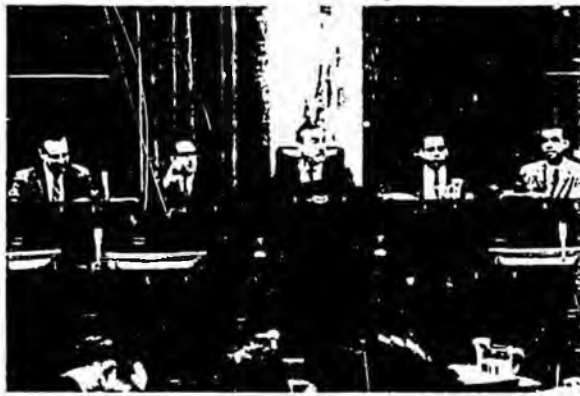
The case arose after the House voted in 1967 to exclude Adam Clayton Powell Jr., D-N.Y., who had represented Harlem for 22 years beginning in World War II. Powell was a flamboyant and controversial figure, repeatedly prosecuted for tax evasion and other alleged offenses and held in contempt of court. He was also criticized for lavish travel at government expense and for various abuses of his office accounts.

After an investigation found Powell misusing the Education and Labor Committee funds, the House Democratic Caucus voted in January 1967 to remove him from the committee chairmanship. Powell called the action "a lynching, Northern style."

But his problems were far from over. The next day, Jan. 10, the House adopted a resolution (offered by Republican leader Gerald R. Ford of Michigan) denying Powell his seat, pending an investigation of his conduct by a select committee. The vote was 363-65, with a majority of both parties in support.

A select committee held hearings in February and submitted a report recommending that Powell be stripped of his seniority, censured for "gross misconduct" and fined \$40,000 (a punishment without precedent in congressional history). The House rejected those recommendations and instead voted 307-116 (with Southern Democrats joining Republicans) to deny Powell his seat for the duration of that Congress (1967-68).

At the hearings, Powell would answer only questions regarding his age, citizenship and residency. He and his lawyers contended that those were the only questions relevant to his being seated as a duly elected member.



The House could take Powell's gavel but not his seat.

After his exclusion, Powell sued (naming Speaker John W. McCormack among other defendants). His suit eventually was heard by the Supreme Court, which ruled 7-1 on June 16, 1969, that Powell had been improperly excluded because Congress could not add to the basic three qualifications set forth by the Constitution (25 years of age, seven years of citizenship and residency in the state to be represented).

The court's opinion was written by Chief Justice Earl

Warren. It held that Powell was elected by the voters and "was not ineligible to serve under any provision of the Constitution," referring specifically to the basic three qualifications. So, the court ruled, "the House was without power to exclude him from its membership."

In other words, the well-worn constitutional phrase — "Each house shall be the judge of the election, returns and qualifications of its own members" — was not considered a license for Congress to set qualifications beyond those explicit in the Constitution.

The only dissent came from Justice Potter Stewart, who said the case was moot because the 90th Congress had ended and the court should let such sensitive matters alone. Legal scholars have since cited *Powell* as confirmation that the Constitution's basic points of qualification are not to be altered without amending the Constitution. That would preclude the states from limiting the terms of their representatives in Congress, although not those of representatives in their own legislatures.

After the decision, Powell was sworn in and seated (having been re-elected in the interim). But he rarely attended, preferring to stay at his retreat in Bimini. In 1970, Charles B. Rangel defeated Powell in the Democratic primary to claim the seat, which he has held since. Powell died in Miami in 1972.

—Ronald D. Elving

"There are only two parties left, the incumbents and the rest of us," said Sherry Bockwinkel, a former photojournalist who had worked for Collier.

The day after Collier's defeat, Bockwinkel and an associate, Gene Morain, read about Oklahoma's passage of a term limit initiative. So they formed LIMIT (Legislative Initiative Mandating Incumbent Terms) and started gathering the 150,001 signatures needed to get a term limit initiative on the next statewide ballot.

In December, Bockwinkel and Morain attended a conference in San

Jose, Calif., sponsored by Citizens for Congressional Reform (CCR), a national term-limit organization affiliated with the anti-tax group Citizens for a Sound Economy.

In San Jose, the two Washington activists met others from their state interested in limiting terms. They also made contact with Americans to Limit Congressional Terms, a national group founded by GOP consultant Eddie Mahe and chaired by former Rep. James K. Coyne of Pennsylvania (1981-83), and Americans Back in Charge (ABIC). ABIC is the successor group to

Coloradans Back in Charge, organizers of the term limit measure in that state. Activists also heard John Fund, an editorial writer for *The Wall Street Journal* who has written a term-limit treatise for the libertarian CATO Institute and speaks widely as an advocate for the concept.

Bockwinkel and Morain returned home and consolidated their state term limit movement under LIMIT. By the end of February, backers of several competing initiatives to impose less stringent limits were supporting what had been numbered Initiative 553.

But by April 10, LIMIT had raised less than \$20,000, and its petition drive was lagging. At that point, CCR stepped in. Over the next three months, the national organization would contribute nearly \$177,000. CCR also brought aboard National Voter Outreach, a California-based company that helps initiatives make the ballot. Some signature gatherers were paid 60 cents per signature, a tactic that led critics to refer to "bounty hunters" influencing the initiative process.

The nascent "No on 553" forces — including good-government organizations such as the League of Women Voters and Common Cause of Washington as well as labor unions, some business groups and the Washington Environmental Council — seized on the paid signatures as an issue. The group also tried to have 553 barred from the ballot by the Washington Supreme Court.

But the signature fracas did not damage the movement's polls, and LIMIT submitted 254,263 signatures by the July 5 filing deadline. Of these, 211,257 were deemed valid by the secretary of state, and 553 was on the ballot.

### Opponents Struggle

If anti-553 efforts have faltered, it is not for want of allies. Opinion-makers, including most of the big state newspapers, have condemned 553 — partly as a threat to the state's clout in a Congress run by seniority.

Older Washington residents remember the glory days of legendary Democratic Senators Warren G. Magnuson and Henry M. Jackson — still known as "Maggie" and "Scoop." But even in the more recent era of Foley and Dicks, Washington's share of federal appropriations has been impressive. Much of the state's economy has depended on federal water projects, aircraft contracts and the Navy's dominance in and around Puget Sound.

The "No on 553" forces have been frustrated, however, by their lack of finances to compete.

Even after 553 made the ballot, CCR continued to fuel its campaign. By the most recent disclosure deadline, CCR's overall contribution was approaching \$400,000 — or about 85 percent of all spending in behalf of the measure, according to public filings analyzed by the University of Washington's Olson.

Foley's spokesman, Biggs, acknowledges that Washington members were unenthusiastic about both the cost and the politics of barnstorming against 553.

In Washington, as elsewhere, the opposition has been at a loss for effective

tactics. Stuart Rothenberg, editor of *The Political Report* and a visiting scholar at The Catholic University of America, attributes the movement's growth "in no small part to the virtual invisibility of the opposition."

On Oct. 12, Rothenberg told a scholars' conference at the Rockefeller Institute of Government in Albany, N.Y., that while limits had opponents in every state, "there has been no effective national opposition, and local opposition in most states has been negligible."

An anti-limit organization called

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**"There has been no effective national opposition, and local opposition in most states has been negligible."**

—Political scientist  
Stuart Rothenberg

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Let the People Decide, underwritten largely by labor unions, started operations in Washington, D.C., in 1991 but suspended operations Oct. 1.

Rick Scott, political director for the American Federation of State, County and Municipal Employees, says Let the People Decide failed to attract substantial participation from other unions and groups.

"It was sort of like the field in 'Field of Dreams,'" says Scott, "only we built it and they never came."

Meanwhile, the drumbeat of unfavorable publicity about Congress has raised support for 553 higher in opinion polls. And the presence of other high-profile measures on the Nov. 5 ballot (including a "death with dignity" initiative and one on abortion rights) is expected to guarantee a sizable turnout.

### Targeting Foley

Foley has striven to avoid having the measure perceived as a referendum on him, and neither side of the 553 debate portrays it as such.

Nevertheless, the coincidence is powerful. If the initiative becomes law, Foley will be the logical plaintiff to test its constitutionality in court (state or federal).

Washington Democratic Sen. Brock Adams, in his first term, would be allowed to serve one more six-year term if he is re-elected in 1992. Two-term Republican Sen. Slade Gorton would be allowed to run for a third term because

his first two were not consecutive.

A group of initiative opponents came to Washington in September to get help in financing a \$1.7 million campaign against the measure.

"The delegation sent them packing," Olson says.

Foley would seem at first glance the ultimate argument against a term limit law. By passing such a restriction, Washington would be the first state ever to cast away the power and prestige of the Speakership.

And yet as Speaker, Foley represents more than anyone Congress' institutional identity. And it is the voters' resentment of the institution that is driving the term limit movement.

### The Next Shoe

An eventual day of reckoning in court is inevitable, with the prime question being which state's term limits will reach the U.S. Supreme Court first. Colorado's federal term limits are an unlikely candidate because they would not affect any incumbent member of Congress until after the turn of the century.

Some observers say the first effective appeal of a term limit may arise from Florida. There, anti-tax activist Phil Handy has organized support for a term limit initiative for the 1992 ballot. Under Florida law, prospective ballot measures go to the state attorney general for an opinion of their constitutionality. The attorney general has referred the question to the Florida Supreme Court.

But the best bet for a test case is probably the Washington initiative.

Rudolph, the Puget Sound law professor who is preparing to defend 553 in court, says he expects opponents to file suit "fairly quickly" after the voters have spoken. He said if the lawsuit were filed in federal court, it would likely be heard by a special panel of three federal judges whose ruling could be appealed directly to the U.S. Supreme Court.

But Rudolph said he would not be surprised to see 553 opponents submit their suit to a state court instead, with the appeal proceeding directly to the Washington Supreme Court and then to the U.S. Supreme Court.

In general, incumbent House members from Washington would have obvious standing to sue when denied a place on the ballot in 1994.

"Somebody like Foley might be able to show harm and have his standing recognized even sooner," says Rudolph. "He could say 553 was affecting his ability to raise money for his next campaign." ■

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DOCUMENTS WHICH HAVE NOT BEEN  
FILMED BUT ARE AVAILABLE IN THE  
ORIGINAL FILE INCLUDE:

→ ILLINOIS LEGISLATIVE RESEARCH - "TERM LIMITS"

→ WALL STREET JOURNAL - DEC. 24, 1991

"A FREE MARKETEEER'S CASE AGAINST TERM LIMITS"

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