

An hourglass is positioned on the right side of the top half of the cover. The top bulb is empty, while the bottom bulb is filled with sand. The sand is piled up, and the California State Capitol dome is visible through the glass of the bottom bulb. The background is a clear blue sky with some light clouds and the silhouette of a tree on the left.

TERMED **OUT**

Reforming California's Legislative Term Limits

Sasha Horwitz

Termed Out:

Reforming California's Legislative Term Limits

Sasha Horwitz

Center for Governmental Studies

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Center for Governmental Studies
Solutions for Democracy

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FOREWORD

This report by the Center for Governmental Studies (CGS) is part of a series on issues in California Governance. *Termed Out* analyzes the effects of term limits on the California legislature since their adoption by the voters in 1990. Term limits have had both positive and negative effects. By increasing the number of open seats, they have increased opportunities for new individuals, especially minorities, to enter the legislature. At the same time, they have diminished legislative experience and shifted the balance of power toward the executive branch.

The report also analyzes Proposition 93, a California's term limits initiative that will appear on the February 2008 California presidential primary ballot. The initiative is backed by leaders in both houses of the California legislature. If passed, it will allow legislators to serve up to 12 years in either the Assembly or the Senate, or both houses combined. In so doing, it will decrease, from 14 to 12 years, the total time legislators can spend in the legislature, but it will increase the time they can spend in either house.

The initiative also allows a large number of incumbent legislators to serve terms of as long as 18 years, which this report considers unnecessary and potentially counterproductive.

Sasha Horwitz, CGS Political Reform Associate, authored this report. He submitted an early version to the Goldman School of Public Policy, at the University of California, Berkeley, as part of its Master of Public Policy degree program. CGS Chief Executive Officer Tracy Westen and CGS President Bob Stern provided substantive suggestions and editorial comments, as did CGS Political Reform Director Steve Levin and CGS Deputy Director Nancy Volpert. Rebecca Schwaner designed the report's cover.

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CGS is a non-profit, non-partisan organization that creates innovative political and media solutions to help individuals participate more effectively in their communities and governments. CGS uses research, advocacy, information technology and education to improve the fairness of governmental policies and processes, empower the underserved to participate more effectively in their communities, improve communication between voters and candidates for office, and help implement effective public policy reforms.

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EXECUTIVE SUMMARY

In 1990, California voters adopted the strictest legislative term limits in the nation by approving Proposition 140. The limits allow legislators to serve up to six years in the Assembly (three two-year terms) and eight years in the state Senate (two four-year terms)—a maximum of 14 years. Once those individual limits are met, Assemblymembers and Senators are barred from their respective houses for life.

California's term limits affect minority representation, policymaking, agency oversight and overall legislative effectiveness. Many voters generally support term limits, but Sacramento insiders, academics and newspaper editorial boards consider them detrimental to the process. In 2002, voters soundly defeated Proposition 45, the first attempt to soften the statewide term limits law.

This report analyzes the impact of the current limits on the California legislature. It finds that term limits have had positive, negative and neutral impacts. The report also concludes that allowing legislators to serve a total of 12 years in either house will encourage them to develop more expertise without any significant negative consequences.

In 2007, a coalition of critics unified behind a new proposal to reform California's term limits. The new proposal, Proposition 93, the "Term Limits and Legislative Reform Act," will appear on the February 2008 California presidential primary ballot. It would reduce from 14 to 12 years the total time legislators can hold office, but enable them to serve those years divided between the houses any way they choose. As of the time of publication, the Center for Governmental Studies has not yet taken a position favoring, opposing or remaining neutral on Proposition 93.

Benefits of California's Current Term Limits

- Term limits increased the frequency of open seats and allowed 25 percent more individuals to enter the legislature.
- Latino and Asian & Pacific Islander representation in the state legislature improved significantly (from 5.8 to 23.3 percent, and 0 to 5.9 percent, respectively). African-American representation remained the same (7.5 percent), while white representation fell (from 86.7 to 63.3 percent).
- Representation rates are very close to the *voting* population demographics, although they still remain far from the resident population diversity of California.
- Term limits opened new legislative leadership opportunities to women.
- The potential for corruption has fallen because tenures are now shorter and incumbents have less exposure to corrupting influences.

Possible Negative Impacts

- Assembly experience fell by about one and a half years and Senate experience by either two or four years, depending on the session. The median Assemblymember now has four years of experience and the median Senator has between eight and ten years of legislative experience.
- Short time horizons and the pressures to learn on the job have reduced the oversight of agencies and the executive branch. The already inefficient committee system is less able to conduct legislative oversight under term limits.

Neutral Impacts

- Women's representation improved, at least in the short term, by about 50 percent in the Assembly and 200 percent in the Senate, but redistricting and national trends favoring women in politics may have played a stronger role.
- National studies show term limits lead to a decline in public policy innovation. Term limits, however, may encourage innovation among lame duck legislators, because they often do not have to bear the risk of failed policy.
- Less than half the legislators in either chamber serve out their maximum terms. Fewer than 20 legislators since 1990 have served the combined maximum 14 years. Counting time served in both the Assembly and Senate, the median legislator has only served six years.
- The quality of public policy outcomes appears unchanged. Although the committee system is less streamlined under term limits, the Assembly and Senate are still able to recognize and revise weaknesses in bill design and content.
- Term limits have forced out legislators with expertise in some policy areas and opened opportunities to experts in previously neglected areas. There is no evidence that major issues are ignored in the term limits era.
- Despite early fears by some that term limits would make legislators more reliant on lobbyists, lobbying has in fact become more difficult because novice legislators are often skeptical of lobbyists and unwilling to work with them.

The Politics of Reforming Term Limits

Legislators and their supporters who wish to modify California's term limits circulated a ballot measure that will appear on the February 2008 presidential primary ballot. This initiative, Proposition 93, changes term limits to a 12 year plan and contains a "transitioning period" that

permits nearly all sitting Senators and three sitting Assemblymembers to serve more than 12 years in office.

Legislative leaders have energetically pushed for this change, because it is the last opportunity before many legislators are termed out. Changing the limits in February allows them to file for the June 2008 state primary. In order to win voter support for a measure that increases the time legislators may serve in a given chamber, the proponents of Proposition 93 reduced the overall limit on service from 14 to 12 years. Polls show voters favor the measure when read the official ballot language, which emphasizes a reduction in total years served—not the increase in years served in individual chambers. Some observers expected the legislature to place a redistricting reform constitutional amendment on the February 2008 ballot as well, because Governor Schwarzenegger indicated that he would support term limits reform if the issues are linked as a reform package. The legislature did not do so.

This report also considers other reform possibilities to address problems caused by term limits. One, in particular, would replace lifetime bans with a limit on consecutive terms, thereby allowing legislators to run for office again if they step down for four years. Other possible reforms include extending term limits by one term in each chamber (to eight years in the Assembly and 12 in the Senate), eliminating limits altogether or promoting institutional knowledge and expertise without modifying term limits themselves.

The Benefits of a 12 Year Plan

- Expertise will increase. Members will be able to serve longer periods in individual houses and will not be forced to switch chambers to hold onto elected office. Median tenures probably will increase by four years in each house to eight years in the Assembly and ten years in the Senate. Very few members will likely switch chambers.
- With longer tenures, members will have more time for oversight of the executive branch and administrative agencies and will acquire more experience in oversight protocols.
- A 12 year plan will improve relations between Assemblymembers of the same political parties in neighboring districts by eliminating competition over Senate seats, a current source of conflict.

Other Potential Impacts of a 12 Year Plan

- The number of open seats will decline by about nine seats per election as members stay in office for longer tenures.
- Diversification, in terms of minority representation, may slow because open seats provide the best opportunities for minority candidates. It will not deplete the gains already made.

- The Assembly’s level of experience will increase, but policy outcomes should remain stable.
- Leadership turnover will become less frequent since leaders will not need to be replaced as often.
- Longer tenures may raise the potential for corruption. This impact will be more pronounced in the short term, because the initiative’s “transitioning period” allows the majority of sitting Senators to serve up to 18 years before they are termed out.

Conclusion

After weighing the pros and cons of existing term limits and the merits of reform proposals, this report recommends support for a plan that would increase the time legislators could serve in either house (12 years, instead of six in the Assembly and eight in the Senate), thereby enabling them to acquire and utilize greater substantive and procedural expertise. At the same time, it would diminish (from 14 to 12) the total time they are able to serve in the legislature. This report expresses reservations, however, about the Proposition 93’s “transitioning period” that would extend the tenures of many sitting legislators past 12 years.

While this report does not find California’s current term limits law to be significantly dysfunctional, a 12 year plan will improve some of its structural weaknesses. On balance, the benefits of a 12 year plan outweigh its negative consequences without undoing the gains achieved by term limits.

I. BACKGROUND OF CALIFORNIA'S LEGISLATIVE TERM LIMITS

When California voters approved Proposition 140 in 1990, they set term limits to six years in the Assembly and eight years in the state Senate. The change was one of the earliest successes of a conservative-dominated movement that sought to limit the length of time elected officials across the country could serve in a particular office.

Term limits have been long-established in American law and politics. At the national level, the 1777 Articles of Confederation limited the terms of office of the Second Continental Congress such that “no person shall be capable of being a delegate for more than three years in any [period] of six years.” The provision was abandoned when the Second Continental Congress drafted the Constitution.

In 1951, the 22nd Amendment to the U.S. Constitution limited the length of Presidential office to two terms. Gubernatorial term limits also have a long history. Delaware adopted the first gubernatorial term limits in 1787. Thirty-seven states now limit governors' terms.

A. History

Legislative term limits are a recent innovation, particularly in states permitting citizen-initiated ballot measures. Legislative term limits spread rapidly in the early 1990s, passing first in California, Colorado and Oklahoma. Proponents marketed term limits as a way to remove career politicians from office and bring new blood and fresh ideas to state legislatures. Voters in all but two states with the initiative process faced a ballot question on term limits. Those states, Alaska and Illinois, never voted on them because their initiative processes do not allow the question.¹ In Louisiana, which does not allow voter sponsored ballot measures, the legislature placed a referendum before the voters. In Utah, the legislature itself enacted term limits and later that year submitted the question to the voters. The measure failed, but the statutory law still went into effect. Measures failed in Mississippi and North Dakota.

Today 15 states have legislative term limits (*see Chart 1*). Twenty-one states adopted term limits at some point in time, but six of those states have repealed them. State Supreme Courts overturned limits in Massachusetts, Oregon, Washington and Wyoming. In Idaho and Utah, where term limits were statutory, the legislatures repealed them without public consultation.²

Proponents marketed term limits as a way to remove career politicians from office and bring new blood and fresh ideas to state legislatures.

¹ National Conference of State Legislatures, *Frequently Asked Questions about Term Limits*, <http://www.ncsl.org/programs/legismgt/about/TLFAQ.htm>, April 26, 2007.

² Idaho does not permit constitutional initiatives. Voters enacted term limits through a statutory referendum.

Several states enacting term limit laws in the early 1990s intended them to apply to congressional terms as well. The United States Supreme Court, however, declared unconstitutional an Arkansas law that prohibited members of Congress from serving more than three terms.³ The Supreme Court affirmed an Arkansas Supreme Court decision that declared, “States have no authority ‘to change, add to, or diminish’ the requirements for congressional service enumerated in the Qualifications Clauses [of the Constitution].”⁴ Limiting congressional terms would require a constitutional amendment originated by the Congress and ratified by two-thirds of the states.⁵

Along with those of Arkansas and Michigan, California’s limitation is considered among the most restrictive.

Term limits vary primarily in length and whether they ban members for life or merely restrict the number of terms that can be served consecutively; however there are some other structural variations. Along with those of Arkansas and Michigan, California’s limitation is considered among the most restrictive. Only Nebraska’s and Oklahoma’s are more constraining in that they allow fewer total years of service.

Chart 1: States with Legislative Term Limits, by restrictiveness⁶

State	Lower House	Upper House	Type of Limit	Max. service
Nebraska	2 terms (8 years) unicameral		Consecutive	8
Oklahoma	12 years combined both houses		Lifetime ban	12
California	3 terms (6 years)	2 terms (8 years)	Lifetime ban	14
Arkansas	3 terms (6 years)	2 terms (8 years)	Lifetime ban	14
Michigan	3 terms (6 years)	2 terms (8 years)	Lifetime ban	14
Missouri	4 terms (8 years)	2 terms (8 years)	Lifetime ban	16
Arizona	4 terms (8 years)	4 terms (8 years)	Consecutive	16
Colorado	4 terms (8 years)	2 terms (8 years)	Consecutive	16
Florida	4 terms (8 years)	2 terms (8 years)	Consecutive	16
Maine	4 terms (8 years)	4 terms (8 years)	Consecutive	16
Montana	4 terms (8 years)	2 terms (8 years)	Consecutive	16
Ohio	4 terms (8 years)	2 terms (8 years)	Consecutive	16
South Dakota	4 terms (8 years)	2 terms (8 years)	Consecutive	16
Nevada	6 terms (12 years)	3 terms (12 years)	Lifetime ban	24
Louisiana	3 terms (12 years)	3 terms (12 years)	Consecutive	24

³ U.S. *Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

⁴ *Ibid.*

⁵ Alternatively, two-thirds of the state legislatures can call a convention for proposing amendments without congressional input. Any amendments that result must then be ratified by three-fourths of the states. However, this technique has never been used.

⁶ Restrictiveness is determined by maximum allowable service and type of limit. Adapted from National Conference of State Legislatures, *The Term Limited States*, <http://www.ncsl.org/programs/legismgt/about/states.htm>, April 25, 2007.

Proposition 140 passed with 52.2 percent of the vote, thereby imposing term limits on the legislature and other state officers. The ballot argument in favor claimed:

- “Proposition 140 will reform a political system that has created a legislature of career politicians in California.”
- “Limiting Terms will create competitive elections, so good legislators will always have the opportunity to move up the ladder.”
- “Term Limitation will end the ingrown, political nature of both houses—to the benefit of every man, woman and child in California.”
- “Proposition 140 will end the reign of the Legislature’s powerful officers [Assembly Speaker Willie Brown and Senate Leader David Roberti].”⁷

Under Proposition 140, California Assemblymembers may serve a maximum of three two-year terms (six years) and Senators may serve two four-year terms (eight years). Barring exceptional circumstances (e.g., winning a special election to fill an unexpired term), no member may serve more than 14 combined years. All Assemblymembers and Senators holding office in 1990 were forced out of those chambers in 1996 and 1998, respectively. Those who subsequently served the limit in both chambers were completely “termed out” in 2004.

B. Politics

Sacramento insiders, legislators, academics and newspaper editorial boards routinely fault term limits for draining the legislature of expertise. According to them, new members enter with short time horizons and find themselves struggling to learn how to be effective legislators. They are given important committee assignments and occasionally become chairs of committees as soon as they arrive in Sacramento. Because legislative leadership positions frequently turn over, new leaders lack the skills to manage the houses from day one.

Insiders express further concern that term limits shift the balance of power and erode checks and balances. By depriving legislators of expertise and institutional experience, members must race against time to be effective in their jobs. Moreover, because arriving legislators know their terms are limited, they bring with them political instead of substantive staff and focus more on their next office than the legislative duties of their current one.

Voters, on the other hand, like term limits. Because they often view politicians as systematically corrupt and dishonest, they see term limits as an excellent way to keep politicians on a short leash. They believe the limits bring in fresh ideas and open up the electoral process to newcomers who otherwise might not have had the chance to serve.

⁷ California Official Voter Information Guide, November 5, 1990 Election, California Secretary of State, Argument in Favor of Proposition 140. Proposition 140 also eliminated legislative pensions and limited legislative staff and operating cost expenditures.

Voters have strongly supported the idea of legislative term limits since their inception. An April 6, 2007 Field Poll explains: “As they have for the past ten years, about two-thirds of the state’s voters (66%) believe that the terms of elected officials in California should be limited.

...[A]bout two-thirds of the state’s voters believe that the terms of elected officials in California should be limited.

Majorities of Democrats, Republicans and non-partisans all feel this way.”⁸

These findings are consistent across polls.

Most California legislators fervently wish to lengthen their term limits, but they

fear the public will oppose such a move. Moreover, because Proposition 140 passed as an initiative constitutional amendment, proposed changes to term limits must appear on the ballot to be approved by the voters. The legislature can, of course, place a constitutional term limits referendum on the ballot by a two-thirds vote of each house, but politically it would prefer that outsiders initiate the measure.

In 2007, a “bipartisan coalition of elected officials and major interest groups”⁹ settled on a proposal referred to as a “12 year plan” that would reduce overall term limits from 14 years—six in the Assembly and eight in the Senate—to 12 years, but allow members to serve the time in one or both houses. The proposal qualified for the February 2008 ballot, but the signature count was much tighter than supporters anticipated. The ballot initiative they drafted mirrors the structure of Oklahoma’s term limits.

Because voters tend to oppose softening term limits, supporters of modifying limits added a “political sweetener” to their proposal—an attempt to make term limits reform more palatable to opponents. It increases the time an Assemblymember or Senator can spend in a single house, but reduces the time a legislator serves before the lifetime ban sets in. Supporters believe this duality will endear the initiative to voters and legislators alike.

Proposition 93 also contains a “transitioning period” that allows members currently in office to serve up to 12 years in their chamber regardless of the time previously served in the other house or served prior to Proposition 140. As a consequence, Senators who previously were members of the Assembly (and vice-versa) will be able to serve 12 years in the Senate in addition to the time spent in the Assembly. For instance, a legislator who joined the Senate after spending six years in the Assembly, would not be termed out until he or she reaches 12 years in the Senate; a total of 18 years served. Individuals that enter the legislature after 2008 and those who move to the other chamber after 2008 are unaffected by the provision.

As applied, only three of the 80 current Assemblymembers have spent time in the other chamber and will be termed out after surpassing 12 years in the legislature.¹⁰ In contrast, 38 of

⁸ Field Poll #2227, April 6, 2007.

⁹ Walters, Dan, “Term Limits Overhaul in Context,” *Sacramento Bee*, February 26, 2007.

¹⁰ Charles Calderon, Betty Karnette and Nell Soto entered the Assembly after serving the maximum number of Senate terms. Under the initiative these current Assemblymembers will be termed out after they serve 12 years in the *Assembly*. Calderon and Karnette will be termed out after their 20th years in office and Soto will be termed

the 40 sitting Senators previously served in the Assembly¹¹ and will be able to exceed 12 years of total legislative service. Sixty percent of incumbent Senators will be able to serve 18 combined years.

On April 11, 2007 Attorney General Jerry Brown released a title and summary for Proposition 93, the “Term Limits and Legislative Reform Act.” The following language accompanied signature petitions and probably will appear on the ballot:

Limits on Legislators’ Terms in Office. Initiative Constitutional Amendment. Reduces the total amount of time a person may serve in the state legislature from 14 years to 12 years. Allows a person to serve a total of 12 years either in the Assembly, the Senate, or a combination of both. Provides a transition period to allow current members to serve a total of 12 consecutive years in the house in which they are currently serving, regardless of any prior service in another house. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would have no direct fiscal effect on state or local governments.¹²

Because a number of key legislators’ terms will expire in 2008, including those of Assembly Speaker Fabian Núñez and Senate President pro Tempore Don Perata, the coalition sought to place their reform measure on the February 2008 presidential primary ballot so that its passage would give incumbents enough time to file their primary election application papers for the June 2008 statewide primary election.

U.S. Term Limits, a national term limits advocacy group, filed a lawsuit claiming the title and summary mislead voters into supporting the proposal. However, on June 29, 2007 an appeals court threw out the suit and a spokesman for U.S. Term Limits announced the organization would no longer pursue a legal strategy.¹³ Their initial opposition, however, foreshadows the coming anti-Proposition 93 campaign.

This would not be the first time Californians have attempted to change term limits. Voters soundly rejected Proposition 45 in March 2002, 57.7 to 42.3 percent.

This would not be the first time Californians have attempted to change term limits. Voters soundly rejected Proposition 45 in March 2002, 57.7 to 42.3 percent. The initiative would have given lame duck legislators the opportunity to serve an extra four years by gathering signatures from constituents equal to 20 percent of the votes cast in the district in the previous election.

out after her 18th. A fourth Assemblymember with Senate experience, Mervyn Dymally, will not benefit from the “transitioning period” because he held office before term limits passed in 1990.

¹¹ Alex Padilla and Jeff Denham entered the Senate without serving in the Assembly.

¹² California Secretary of State, *Elections & Voter Information*, http://www.ss.ca.gov/elections/elections_j.htm, April 28, 2007.

¹³ Maclachlan, Malcolm, “Term limits lawsuit thrown out,” *Capitol Weekly*, June 29, 2007.

The failure of Proposition 45 does not predict the current measure’s prospects for success. Proposition 45’s language was confusing and its supporters ran a weak—though well-funded—campaign. Supporters claimed, somewhat

Because of an energetic opposition skeptical of extending legislators’ terms defeated Proposition 45, proponents of changing term limits have reduced the total time a legislator may serve, which they believe voters will find more attractive.

inconsistently, that their initiative preserved term limits but also improved them.¹⁴ The opposition effectively framed the initiative as a denial of the public will. John Burton, in public office since 1964, was attacked as a poster child for career politicians.¹⁵ All three major Republican gubernatorial candidates opposed the initiative, while Governor Gray Davis refused to take a position.¹⁶

Opponents motivated voters by citing former Assembly Speaker Willie Brown’s threat to return to the legislature and claiming that a campaign finance loophole would enable special interests to run the signature campaigns for legislators seeking more terms.¹⁷

Because an energetic opposition skeptical of extending legislators’ terms defeated Proposition 45, proponents of changing term limits have reduced the total time a legislator may serve, which they believe voters will find more attractive.

C. Public Opinion

Public opinion polls are highly contingent on question design. Surveys that do not mention how the proposed 12 year plan reduces overall service from 14 to 12 years receive the lowest voter support. A March 2007 Public Policy Institute of California (PPIC) poll, for example, finds 68 percent of likely voters in California think term limits are “a good thing,” but only 31 percent favor a 12 year plan.¹⁸ The question states, however, that “a legislator is allowed to serve six years in the state Assembly and eight years in the state Senate,” making no reference to the total being greater than 12 years.

Polls eliciting the strongest support emphasize that 12 years would be a decrease from the current 14 year limit. A January 2007 Binder Research poll finds voters support a proposition to change term limits by 59 to 33 percent, up from 43 percent supporting a similar question

¹⁴ Dan Schnur, Republican Political Consultant, Personal Interview, Berkeley, California, February 11, 2007; Schnur, Dan, “Prop. 45; Turning California Term Limits,” *Campaigns and Elections*, June 2002.

¹⁵ Lucas, Greg, “Attempt to Limit Term Limits Loses,” *San Francisco Chronicle*, March 6, 2002.

¹⁶ Associated Press. “Davis Takes No Stand on Proposition 45” *San Diego Union Tribune*, March 4, 2002.

¹⁷ Sandalow, Marc, “Nation’s Eyes on State’s Term-Limit Vote; McCain Joins the Fray Over California Initiative to Loosen Rules,” *San Francisco Chronicle*, February 28, 2002. The loophole allowed independent groups to fund the signature petitions for incumbents, without being bound to campaign finance limits. Experts claimed signature campaigns in legislative districts could cost \$100,000.

¹⁸ Public Policy Institute of California, “PPIC Statewide Survey: Californians & Their Government,” March 2007.

last year.¹⁹ More recently, the April 6, 2007 Field Poll finds likely primary voters inclined to vote Yes, 53 to 39 percent, on an initiative that would “reduce the total years a legislator can serve in both houses from 14 to 12, but allow legislators to serve their entire 12 years in either the Assembly or the Senate.”²⁰

The latest polls, written after the Attorney General released the initiative title and summary, incorporate the official ballot language into the question. In June, the Survey and Policy Research Institute (SPRI) at San Jose State University finds voters favor the initiative 56 to 31 percent when read the official ballot language.²¹ Another such poll, a September 2007 statewide survey by the PPIC, finds 55 percent of likely voters would vote Yes on the measure.²² The results follow the trend of an earlier PPIC poll.²³

The public opinion data described above shows how framing effects predict the public’s attitude toward the initiative. When voters perceive that the measure reduces the time legislators can serve, a majority of the public supports changing term limits. The only poll that demonstrates voter disapproval for the measure calls attention to the current limits being six and eight years long and frames 12 years as an extension. By contrast, the Attorney General’s summary emphasizes the reduction in total service from 14 to 12 years.

Chart 2: Framing Effect of Recent Polls on a 12 Year Plan

Poll	Support	Oppose	Wording	Date	Respondents
Binder Research	59	33	Reduction in total time	January 2007	Likely Voters
PPIC	31	64	Increase from six/eight years	March 2007	Likely Voters
Field	53	39	Reduction in total time	April 2007	Likely Primary Voters
PPIC	56	31	AG title and summary	May 2007	Likely Voters
SPRI	51	36	AG title and summary	June 2007	Voters
PPIC	55	39	AG title and summary	September 2007	Likely Voters

Unlike Governor Davis in 2002, Governor Schwarzenegger has indicated his willingness to support term limits as part of a greater political reform package that includes redistricting reform.²⁴ His support could give the measure greater credibility and likelihood of success; his opposition could doom it.

Even with the “political sweetener” of a 14 to 12 year overall reduction, the ballot measure faces an uphill battle. Voters fundamentally like term limits and may be reluctant to extend them in individual chambers. Additionally, an early political *faux pas* has raised allegations that

¹⁹ David Binder Research, “Voter Survey on Term Limits Initiative,” February 23, 2007.

²⁰ Field Poll, #2227, April 6, 2007.

²¹ Survey and Policy Research Institute, “California voters support term limits proposal, residency for illegal immigrants, give Schwarzenegger high marks,” <http://www.sjsu.edu/spri/07survey/CApoliticalpressr.pdf> July 23, 2007.

²² Public Policy Institute of California, “PPIC Statewide Survey: Californians & Their Government,” September 2007.

²³ Public Policy Institute of California, “PPIC Statewide Survey: Californians & Their Government,” May 2007.

²⁴ Wildermuth, John, “Schwarzenegger Says He Won't Back Term Limits Change Without Redistricting Reform on Same Ballot,” *SF Gate: Politics Blog*, February 16, 2007.

the initiative seeks to protect incumbents rather than serve the public good. Days after submitting the ballot question to the Attorney General, the sponsors revised and resubmitted language to clarify the “transitioning period.” The media quickly noted that the new language may have been intended to enable Senate President pro Tempore Don Perata to serve an extra term, in light of his unique legislative history, but it also would bring his permissible time in office to 16 years.²⁵

²⁵ Sanders, Jim, “Term limit plan tweaked to benefit Perata,” *Sacramento Bee*, February 21, 2007. After two years in the Assembly, Perata won a vacant Senate seat in a 1998 special election. By the 2008 election he will have served 10 years in the Senate (two full and one half Senate terms). The “transitioning period” allows Perata to run for a third full term.

II. IMPACTS OF LEGISLATIVE TERM LIMITS

The empirical evidence leaves little doubt that term limits are responsible for changing the operations of the legislature. But the legislature is an adaptable institution. Some of these changes are good for the state; most are neutral; and a few are harmful.

Some of these changes are good for the state; most are neutral; and a few are harmful.

The following section details those changes that have had the most significant impact on the ability of the legislature to manage California effectively. Where possible, the analysis relies on legislation and legislator data to measure the true effects of term limits. It avoids deriving conclusions solely from subjective impressions unless they are supported by empirical evidence. For instance, interviewees disparage term limits for contributing to the excessively partisan nature of the houses, yet the empirical evidence indicates that these trends were caused by other, unrelated factors.²⁶ In comparison, the Congress lacks term limits, but has become increasingly partisan over the same period.

A. Positive Impacts

1. Opportunities for Newcomers

Term limits created more opportunities for newcomers to enter the legislature, a fact that is undisputed by opponents. From 1990 through 2008, 369 individuals will have served in the legislature compared to 296 for the prior equivalent 18 year period preceding term limits (1970-1988). To be sure, comparisons between different legislative sessions face a number of difficulties. Redistricting, for example, might increase opportunities for newcomers entering in one period and reduce them in another. Diminishing the effect of outside influences requires controlling for as many unique features as possible.

This report compares 1970-88 with 1990-2008 to best control for redistricting effects, which are perhaps the greatest potential threat to the validity of such a model. These two time periods line up propitiously on more than just redistricting characteristics. The redistricting lines of 1971 and 1991 were both drawn by court-ordered, incumbent-blind special masters, while those of 1981 and 2001 were approved by the legislature. Furthermore, in both periods the division of government was similar. The Senate was controlled by Democrats throughout and the Assembly was controlled by Democrats with the exception of 1994-96. The governor was Republican for ten of the 18 years in the 1970-1988 period and 14 of the 18 years in the 1990-2008 period.

²⁶ Cain, Bruce and Thad Kousser, *Adapting to Term Limits: Recent Experiences and New Directions*, Public Policy Institute of California, San Francisco. 2004.

During the 18 year period with term limits in place, 73 more people served in the legislature, an increase of 25 percent. This finding suggests that term limits have generated a meaningful increase in turnover.

2. Racial Diversity

...[T]erm limits opened seats to new members and created opportunities for candidates of color.... The strongest gains are in Latino representation, though Asian & Pacific Islanders have also benefited, especially in the Assembly.

Term limits have clearly added to the racial diversity of the state legislature. The incumbency advantage often led to the entrenchment of (primarily white) legislators. By opening seats to new members, term limits created new opportunities for candidates of color. Chart 3 compares the racial composition of the legislature at the dawn of term

limits with rates from today using the most recent census data.²⁷ The strongest gains are in Latino representation (up from 5.8 to 23.3 percent), though Asian & Pacific Islanders have also benefited, especially in the Assembly (up from 0 to 5.9 percent). African-Americans, who have become a slightly smaller proportion of the California population since 1990, hold the same number of legislative seats as they did before term limits (7.5 percent). White representation has dropped (from 86.7 to 63.3 percent), although whites still exceed their proportion of the population (43.8 percent).

Chart 3: Comparison of Racial Composition of California and the California Legislature²⁸

Race	1991-1992		2007-2008	
	California Population	State Legislature	California Population	State Legislature
White (Not of Hispanic Origin)	57.4%	86.7%	43.8%	63.3%
African-American	7.1	7.5	6.7	7.5
Latino	24.4	5.8	35.2	23.3
Asian & Pacific Islander	9.2	0	12.2	5.9

Charts 4 and 5 depict the share of seats held by minority legislators from 1990 to the present.²⁹

²⁷U.S. Census Bureau, *Census of Population and Housing 1990 Summary Tape File 3 (California)* [on-line data file] / prepared by the California Digital Library, -- Oakland, California: 2001. Generated by Sasha Horwitz; using Counting California; <http://countingcalifornia.cdlib.org:80>; U.S. Census Bureau, *State and County QuickFacts: California*, <http://quickfacts.census.gov/qfd/states/06000.html> April 29, 2007.

²⁸ California population figures are taken from the 1990 Census and the 2005 Census projection.

²⁹ Compiled by the author using legislator biographies and photographs from the Handbook of the California Legislature, Who's Who in the California Legislature, and the California Journal Roster and Government Guide. Members of Portuguese descent are not considered Latino.

Chart 4: Racial Composition of the Assembly

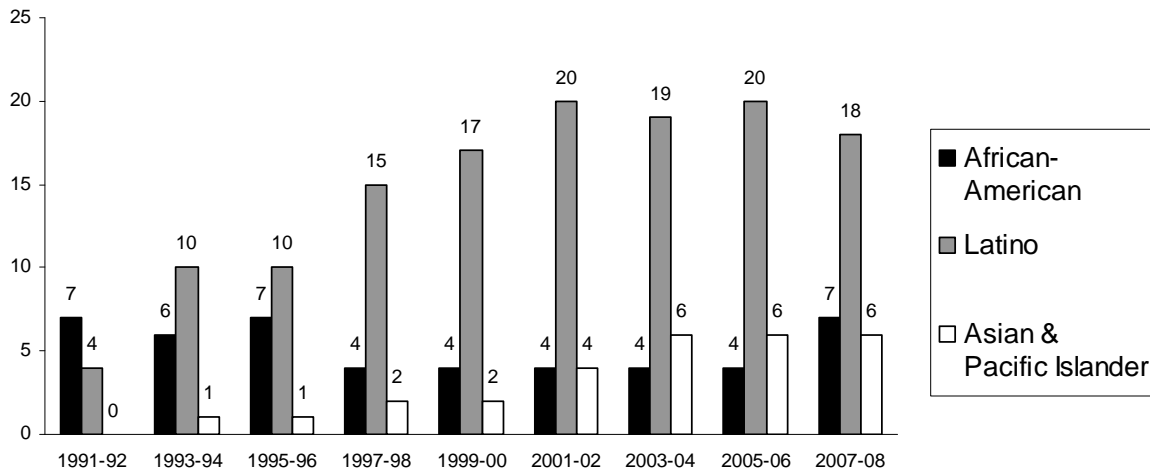
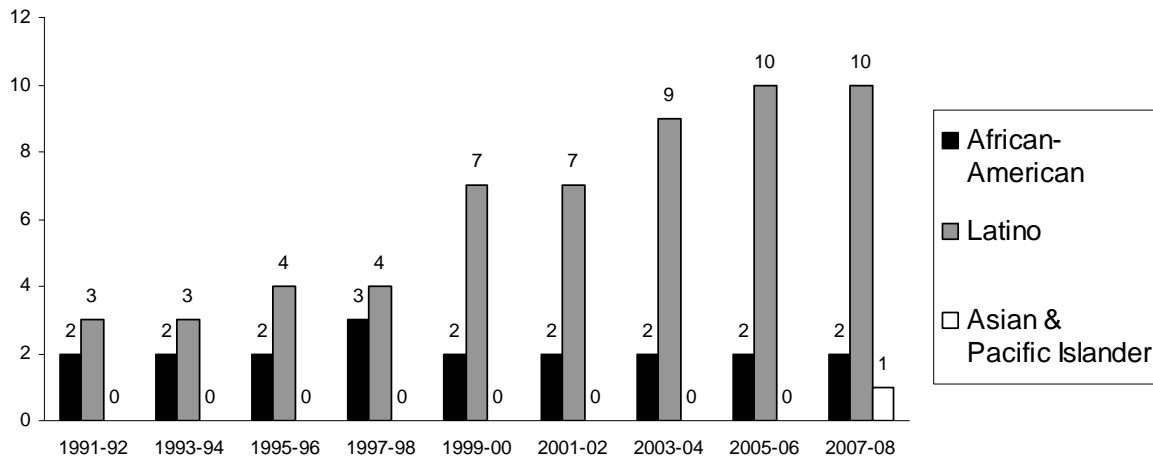


Chart 5: Racial Composition of the Senate



The racial composition of the legislature more closely approximates the voting population of the state than it does the resident population. Chart 6 compares the race of voters in the 2004 election with the current diversity of the legislature and the Congress. Although data using resident population shows a wider disparity between residents and their representatives, the populations of white and African-American voters are almost equal to their representation. Latinos are actually overrepresented in the legislature, and Asian & Pacific Islanders are somewhat underrepresented compared to the voting populations.

While racial diversity has increased, it is still not proportionally representative of the California population. Term limits reform alone will not create truly proportional representation; however, term limits reform in conjunction with fair redistricting should increase the likelihood of this occurring.

Chart 6: California Voting Population and Legislature Diversity³⁰

Race	2004	2007-08		2007-08	
	Voting Population	State Legislature	Difference	Congressional Delegation	Difference
White (Not of Hispanic Origin)	64.9%	63.3%	-1.6%	74.5%	+9.6%
African-American	8.1	7.5	-0.6	7.3	-0.8
Latino	16.2	23.3	+7.1	14.5	-1.7
Asian & Pacific Islander	8.7	5.9	-2.8	3.6	-5.1

According to political scientists Bruce Cain and Thad Kousser, term limits accelerated, but did not cause, the diversification of the legislature. They attribute the process to natural forces and also indicate that the 1991 special masters redistricting was influential in opening up opportunities to minorities by creating more minority-majority districts.

The difference is more pronounced when the legislature is compared to the California congressional delegation, which is not subject to term limits and as a result is less diverse than the legislature. Whites, overrepresented in the Congress, fell from 80 percent of seats in 1990 to 74.5 percent of seats in 2007. Latinos more than doubled their congressional presence, from 6.7 percent of seats to 14.5 percent, and now come closest to the voting population. African-Americans and Asian & Pacific Islanders actually lost representation since 1990. African-Americans fell from 8.9 percent of seats to 7.3 percent, and Asian & Pacific Islanders fell from 4.4 percent to 3.6 percent.

3. Career Diversity

Term limits advocates argued that the limits would create a new class of “citizen legislators,” who were not professional politicians. In large part this prediction has not been realized. The legislature now includes more individuals who came to Sacramento after serving in local government. In addition, present day legislators are likely to run for another political office once they are termed out.³¹ Neither tendency indicates a decline in political careerism.

On the other hand, the career composition of the chambers has changed somewhat with the adoption of term limits.³² By opening up seats to new members, and by creating clearer time horizons, the legislature has attracted different types of individuals. One former legislator who served under term limits said, “but for term limits, I wouldn’t have run,” because he was unwilling to make an open ended, long-term commitment.

One of the most visible changes in the legislature has been the declining number of lawyers; today only 20 percent of legislators have law degrees. The number of businesspeople has

³⁰ U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2004, Table 4a.

³¹ Cain and Kousser, 2004

³² Handbook of the California Legislature, 1971, 1981, 2007-2008; Career data is drawn from the from the self-identified occupations and legislator biographies.

increased slightly. Educators, including teachers, professors and those in the education field, are now a larger share of the legislature. Fewer farmers and ranchers serve in the legislature, certainly due in part to the changing California economy. About as many legislators come from the health care industry as did before term limits. More people today enter the legislature from careers in public service, but fewer have served as legislative staff.³³

4. *Potential for Corruption*

In addition to its impact on expertise, tenure can also be correlated with the potential for corruption—for example, accepting campaign contributions or personal financial support to move or oppose a specific legislative issue. Theoretically, the less time one serves in elected office, the lower the exposure to corrupting influences. Members new to statewide office are said to be skeptical of lobbyists and lack the knowledge to exploit the political process for personal gain. In contrast, long tenures endow legislators with detailed knowledge of the perquisites of office, deeper relationships with lobbyists, and access to government resources that may lead to the appearance or actuality of corruption.

The shorter tenures under term limits suggest that the likelihood of corruption or appearance of corruption has fallen. However, this assumption is not based on quantifiable evidence or observations. It merely provides a useful theory for predicting the likelihood of corruption.

Predictions that lobbyists would have disproportionate levels of influence after term limits were mistaken.

B. Neutral Impacts

1. *Opportunities for Women*

Gender balance has improved in the years since term limits were enacted; however, it is unlikely that this improvement is solely linked to term limits. Political scientists insist that other factors, such as national political trends and redistricting, are more responsible for women's gains.³⁴ For instance, 1992 was the first year term limits had any effect, indirect or otherwise, but it was also the "Year of the Woman" and the year of the incumbent-blind special masters redistricting, which made competitive many formerly safe seats held by incumbents. Without the benefit of term limits, women in the California congressional delegation dramatically increased their representation from 6.4 percent in 1990 to 38.2 percent today. Women's gains are first visible after "the enactment of term limits but well before any

³³ Conclusions are drawn from comparisons of legislators from the 1981-82 class and the 2007-08 class. They provide an imprecise, but telling, snapshot of the change in the legislature's career makeup.

³⁴ Cain and Kousser 2004; Caress, Stanley, "The Influence of Term Limits on the Electoral Success of Women," *Women and Politics*. Vol. 20(3) 1999.

incumbent was forced from office,” suggesting that reapportionment played a more significant role.³⁵

Women now hold eight more seats in the Assembly and seven more in the Senate, a 50 percent increase from 1990.

Women now hold eight more seats in the Assembly and seven more in the Senate, a 50 percent increase from 1990, the year the term limits law passed. In the last seven years, the number of women in the Assembly has remained stable at about 30 percent. The Senate did not experience rapid gains in the early 1990s, due to staggered terms that opened only 20 Senate seats, but all 80 Assembly seats, in a given election year. The number of women has gradually increased since then. Women currently comprise 27.5 percent of state Senators, an increase of nearly 200 percent from 1990.

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Chart 7: Gender Breakdown of the Assembly

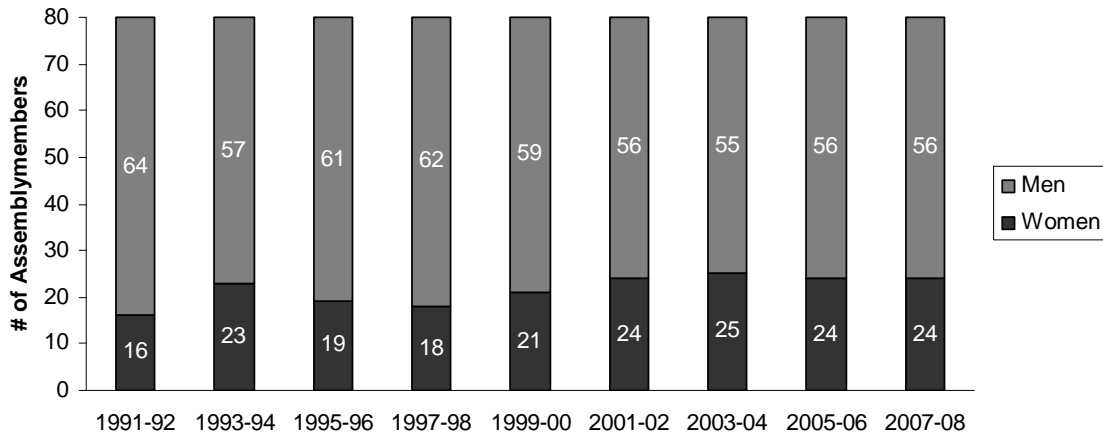
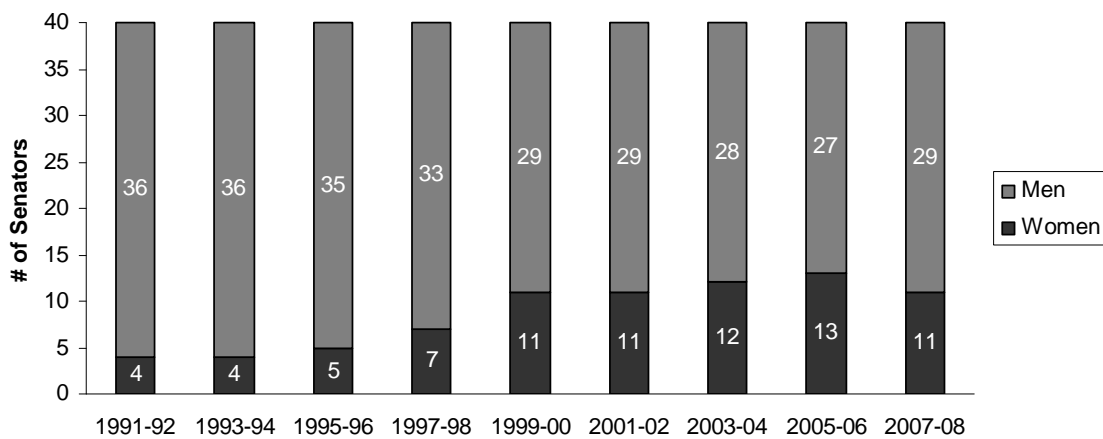


Chart 8: Gender Breakdown of the Senate



³⁵ Caress 1999.

One clear indicator of women's success is their presence in the leadership and as influential committee chairs. These opportunities can be attributed to term limits, because they have opened seats previously held by male legislators. Doris Allen became the first female Speaker of the Assembly in 1995, though her tenure was short lived, ending in her recall. Sheila Kuehl became the first female Speaker pro Tempore of the Assembly; Assemblymember Sally Lieber followed her. Similarly, Gloria Romero is now the first female Majority Leader of the Senate.

2. *Expertise and Policy Production*

Whether or not term limits have undercut legislative expertise and the production of sound policy is a matter of continuing debate. The real question is whether legislators are able to develop *sufficient* expertise under short time horizons and whether the quality of enacted legislation has changed. Political scientist Renée Van Vechten created an expertise timeline she calls the "learning curve," summarized below.³⁶

Level one: 3 – 6 Months:

The member develops familiarity with "the work environment: basic rules and procedures both formal and informal, the faces inside and near to the Capitol building, and the landscape of government and Capitol offices."

End of 1st year: "Good grasp of the institution's structure, processes, and rhythms."

Level two: as late as 3rd year:

The member becomes "comfortable with a wide range of constituents both in and outside of a district, knowing their concerns, devising strategies to 'sort out the issues' that confront him or her, 'figuring out how (s/he wants) to operate,' and 'getting to be a player' inside the institution if so desired."

Level three: 5th and 6th years:

Not all members reach this capacity, which is characterized as "having a command of at least one or more policy areas, which requires a solid understanding of multiple state programs and how they interlace.... Legislators are regarded by their peers in both houses as 'experts': they have established a reputation for knowing their subject matter thoroughly and have thoughtfully attempted to make substantive changes in large state programs and policies."

Level Four: Infrequent:

Under term limits, most legislators without prior experience do not have the time to reach level four. Mostly Senators, these are "'experts' with long-term memory, ... a sense of history, ... a general mastery of several issue areas, and ... influence.... These legislators are efficient, effective, and independent."

³⁶ Van Vechten, Renée, "Taking the Politics out of Politics? State Legislative Term Limits and Institutional Political Reform in 20th Century California," PhD Dissertation, UC Irvine 2002.

Although expertise has diminished under term limits because members can no longer serve indefinitely, the effect has not necessarily been problematic. There is a clear relationship between expertise and the ability to produce good policy. But must that expertise be situated with members of the legislature, or can it reside with the staff, agencies, lobbyists or the governor?

...[L]ess expertise significantly disrupts the committee system.

Cain and Kousser state that less expertise significantly disrupts the committee system, but they do not show that this hurts policy development or production.

They conclude that gatekeeping in particular has suffered; bills now die at lower rates in committees.³⁷ Under term limits, less experienced legislators allow more bills to pass through committees. Bills are now amended at later stages in the legislative process than previously. Cain and Kousser find that:³⁸

[A]fter post-term limits committees were finished with bills, much work remained to be done on them. This work could involve redrafting a bill to make it accomplish all of its author's goals or to satisfy the requests of lobbyists. The portion of bills amended in other committees (in most cases, the Appropriations Committee) increased by 7.3 percentage points overall, with the largest increase coming after bills were heard in Senate policy committees. The percentage of bills amended on the floor of each house increased by about 5 percentage points, a rise that consistently registered as statistically significant.³⁹

The committee system has certainly become less efficient, but not necessarily less effective. Because bills are more frequently amended at later stages in the policymaking process, policy outputs may remain unaffected.

The quality of policy is both the most important impact and the hardest to measure reliably. Varying opinions of what constitutes good policy and how to identify it make this criterion the most difficult to apply. Furthermore, the issues that California faces today differ from those before term limits, confounding before-and-after analyses.

One concern mentioned by interviewees is that neophyte members are unaware they may be producing misguided legislation that veteran members would have noticed. Experience may diminish the impact of the "learning curve"⁴⁰ faced by neophyte members and prevent instances of "reinventing the legislative wheel."

³⁷ Cain and Kousser 2004.

³⁸ *Ibid.* p. 34. Prior to term limits, 26.6 percent of bills failed in the Assembly, compared with 18.2 percent after term limits. In the Senate, prior to term limits, 21.0 percent of bills failed, compared with 14.8 percent after term limits. (All rates are statistically significant.)

³⁹ "Most floor amendments in the California Legislature are made by bill authors themselves (often working with interest groups) rather than by the opponents of legislation. Still, the increase in floor amendments demonstrates that pieces of legislation emerge from policy committees unfinished." [footnote in original].

⁴⁰ Van Vechten 2002.

Cain and Kousser examine several proxies for quality, but none actually addresses whether policies before term limits were normatively better.⁴¹ They consider the complexity of bills at the time of passage (thought to be correlated with bill length), and the breadth of legislation (measured as the number of code sections affected). They find that term limits lead to an increase in complexity and breadth of legislation, but this conclusion alone says little about policy production.⁴² Why must complexity imply worse public policy? Why must shorter breadth be desirable?

No empirical sources find that term limits worsen legislation quality.

No empirical sources find that term limits worsen legislation quality. In fact, in a multi-state study of the impacts of term limits, the *Joint Project on Term Limits*, the National Conference of State Legislators (NCSL) concludes that “the quality of the policy enacted by term-limited legislatures has not changed measurably under term limits.”⁴³ Furthermore, “the study did not reveal evidence that the policy produced in term-limited legislatures in any way differs from, or is of poorer quality than, that produced in non-term-limited legislatures.”⁴⁴

Respected *Sacramento Bee* columnist Dan Walters reads every bill that comes across his desk. Regarding the quality of public policy production, he says:

I do not believe that term limits have affected the bottom line essentially one whit. They have changed the culture of the Capitol, they have changed the nature of lobbying, they have changed a lot of things in the Capitol. *I do not believe they have fundamentally improved or damaged the bottom line performance of the Capitol. [italics added]*⁴⁵

3. Issue Champions

The *Joint Project on Term Limits* study does suggest the quality of policy outcomes may change over time as policy champions leave state legislatures. Legislators may take years to develop expertise on complex issues such as water policy. Without public servants dedicated to arcane or abstruse subjects, the focus of the legislature may continue to move toward more visible or short-term issues.

On the other hand, no evidence suggests important policy areas are neglected now that long-term issue champions have disappeared. Just as experts in some areas are forced out of the legislature along

...[N]o evidence suggests important policy areas are neglected now that long-term issue champions have disappeared.

⁴¹ Cain and Kousser 2004.

⁴² *Ibid.*

⁴³ Bowser, Jennie Drage, Keon Chi and Thomas Little, “Coping with Term Limits,” *National Conference of State Legislatures*, Denver. 2006. p. 5.

⁴⁴ *Ibid.*

⁴⁵ Dan Walters, Columnist, *Sacramento Bee*, Telephone Interview, February 19, 2007.

with their expertise, new opportunities are created for members with interests neglected by the current class of legislators. For example, the legislature lost an advocate for the poor with John Burton, who left in 2004, but Rudy Bermudez, who championed prison issues, would not have had the opportunity to serve if term limits had not accelerated turnover.⁴⁶

The enormous difficulty required to quantify this impact may prohibit definitive conclusions. This report's analysis has not been able to show that major long-term issues have been neglected. Of course, searching for major proposals that require years to develop and strong coalitions is like searching for "a dog that doesn't bark."⁴⁷ Their absence does not indicate whether every problem is being addressed.

Policy stewardship, the attention legislators give to particular issues once they have become law, is affected by term limits. The evidence of problems caused by lack of stewardship is anecdotal. *Governing Magazine* detailed a situation it calls the "orphaned program," in which a policy is passed and then subsequently neglected or misunderstood by members that were not in the legislature at the time it was designed.⁴⁸ When laws need updating, current members may be focused on other issues or unaware there is even a problem.

The assumption that policy stewardship was ever widespread may belie the comfortable myth that members routinely track the lives of their successful bills. In fact, lawmakers are not technically responsible for ensuring their programs are implemented or that their legislation is properly administered. They may expect the system to work fluidly, when in reality it does nothing of the sort.

4. Policy Innovation

Policy innovation is considered a telling indicator of a legislature's energy.⁴⁹ Unlike measurements of quality, which deal with a legislature's ability to write sound and effective bills, innovation is concerned with addressing problems in new and creative ways. Innovative policies are those that have not been tried before, and consequentially they carry a certain amount of risk. Just as the recently passed Global Warming Solutions Act (AB32) is "innovative," so was the Energy Deregulation passed by the California legislature in the 1990s that led to the energy crisis of the early 2000s. For this reason, more innovative policies should not necessarily be thought of as "better," nor should less innovative policy be thought of as "worse." Nevertheless, "while each individual attempt at creating original policy may not improve society, a system that encourages the production of many innovations in different governmental units can lead to ultimate progress."⁵⁰

⁴⁶ Burton's case raises the interesting point that public service remains possible from outside the legislature. The John Burton Foundation for Children Without Homes, founded the year Burton was termed out of the legislature, works to improve the welfare of homeless children.

⁴⁷ Thad Kousser, Professor, Political Science, UC San Diego, Telephone Interview, March 9, 2007.

⁴⁸ Greenblatt, Alan, "The Truth about Term Limits," *Governing Magazine*, January 2006.

⁴⁹ Kousser, Thad, *Term Limits and the Dismantling of State Legislative Professionalism*, New York: Cambridge University Press 2005.

⁵⁰ Kousser 2005, p. 177.

Innovation is admittedly difficult to measure, and it is unclear whether innovation has increased or decreased in term limited states. Kousser uses the Council of State Governments' annual Innovation Awards to help quantify this factor.⁵¹ His multi-state analysis concludes that term limited states earned 1.4 fewer Innovation Awards recognitions than those without—a suggestive, but by no means ironclad, indicator of innovation.⁵²

California has won six Innovation Awards since the program was instituted, but the last was conferred in 1998. This might indicate that innovation in California legislation has dropped off under term limits, though it may be risky to postulate a decline in innovation on such a subjective criterion as Innovation Awards. No measure of innovativeness will be free from bias, error, or subjectivity. Moreover, innovative programs may be produced by governors or agencies and not necessarily by the legislature, and recognition may come as many as five years after the innovative policy was first implemented.

Kousser also suggests a contrary conclusion—that term limits may actually provide an incentive to innovate among outgoing legislators. Lame ducks, cognizant that they have one last opportunity to pass their bills before losing their seats, may produce untested yet “innovative” legislation. Instead of relying on tried and true solutions to current problems, they may consider new ways to address known policy problems. These bills may be riskier because the legislators lack the long time horizons necessary to appreciate the consequences of untested legislation.

Former Assembly Speaker Robert Hertzberg echoes this sentiment. He predicts that new legislators with varied experiences—not necessarily lame ducks—are also likely to produce innovative policies. He led the chamber from 2000 to 2002, a period when most Assemblymembers had very little legislative experience, yet he saw no shortage of innovation during this period. In particular, he cites CalGrants, a college financial aid program, and Mental Health Funding (AB34), a program that reduced homelessness and incarcerations via mental health services for the homeless, as innovations that would not have occurred without the opportunities for new ideas ushered in by term limits.

5. Lobbyist Influence

Predictions that lobbyists would have disproportionate levels of influence after term limits were mistaken, according to interviewees. Incoming members are said to be skeptical of

⁵¹ *Ibid.* Since 1986, the Council of State Governments (CSG) has produced an annual list of Innovation Awards. The awards are meant to recommend policies that other states should consider adopting. Awards are presented to eight states each year (two per geographic region). Since 1996, the CSG has published its list of finalists, and since 2002, the CSG has included 4 “alternates.”

⁵² Kousser suggests that professionalized legislatures and those with members yet to be termed out might be factors that could partially compensate for any decline in innovation. California has the most professionalized legislature, but the last members in office when term limits passed were termed out in 2004. See Squire, Peverill. “Uncontested Seats in State Legislative Elections,” *Legislative Studies Quarterly* 25:131–46. 2000.

lobbyists and less willing to work with them at first.⁵³ These new members rarely have had contact with lobbyists before entering the legislature. However, those members coming from big city governments usually have had that exposure.

Lobbyists complain that term limits have made their job more difficult because they do not have the time to forge relationships with legislators. Successful lobbying relies on relationship building. Without long time horizons, lobbyists have difficulty exercising the same influence over new members that they had with veteran lawmakers. Term limits advocates often cite this change as a positive feature of term limits.⁵⁴ On the other hand, this may present a significant problem for groups that retain lobbyists to bring attention to public interests and causes—for example, cities and municipalities that petition the state government for essential goods and services.

C. Negative Impacts

1. Experience

Legislators spend less time in individual houses under term limits than they did during the 1970-1988 period. Since term limits, the median Assemblymember has served four years in the Assembly and the median Senator has served six years in the Senate; overall, the median legislator has spent six years total in office. Of legislators in office during the years 1970-1988, the median Assemblymember's tenure was eight years long, the median Senator's was ten years and the median legislator's was 12 years (*see Appendix 1*). With term limits, the median Assemblymember and Senator both spent four fewer years in their respective houses and the median legislator spent six fewer years in office.

The following charts show distribution of tenures for members between 1990 and today.

⁵³ Tim Hodson, Executive Director, Center for California Studies, CSU Sacramento, Telephone Interview, March 16, 2007; Robert Naylor, Lobbyist, Nielsen Merksamer, Telephone Interview, April 20, 2007; Kousser, Telephone Interview, 2007

⁵⁴ U.S. Term Limits, www.ustl.org, July 3, 2007; Greenblatt 2006; Naylor, Telephone Interview, 2007.

Chart 9: Distribution of Assembly Service, 1990-2008⁵⁵

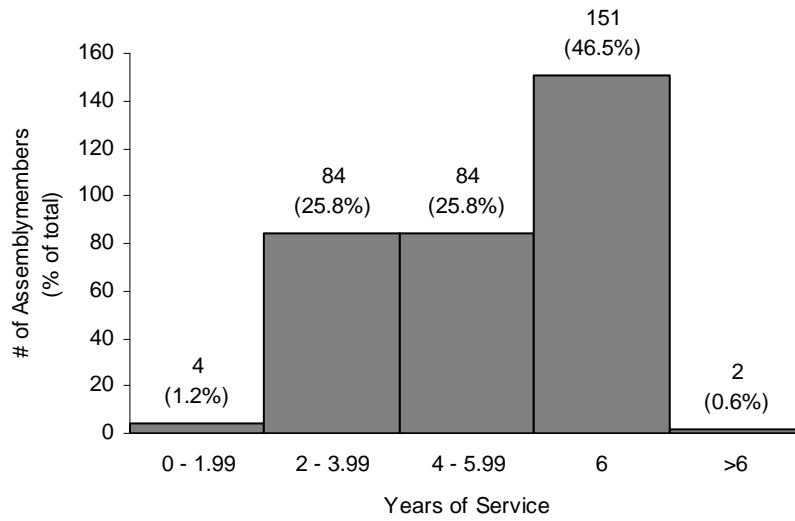
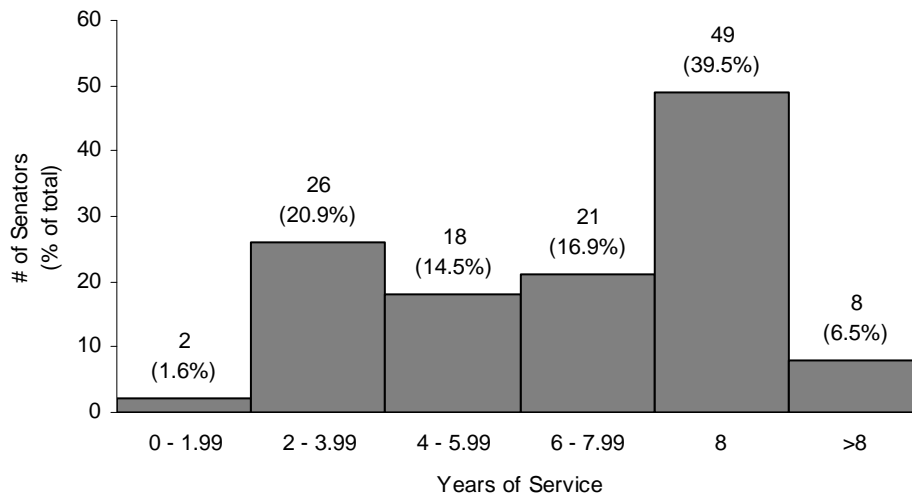


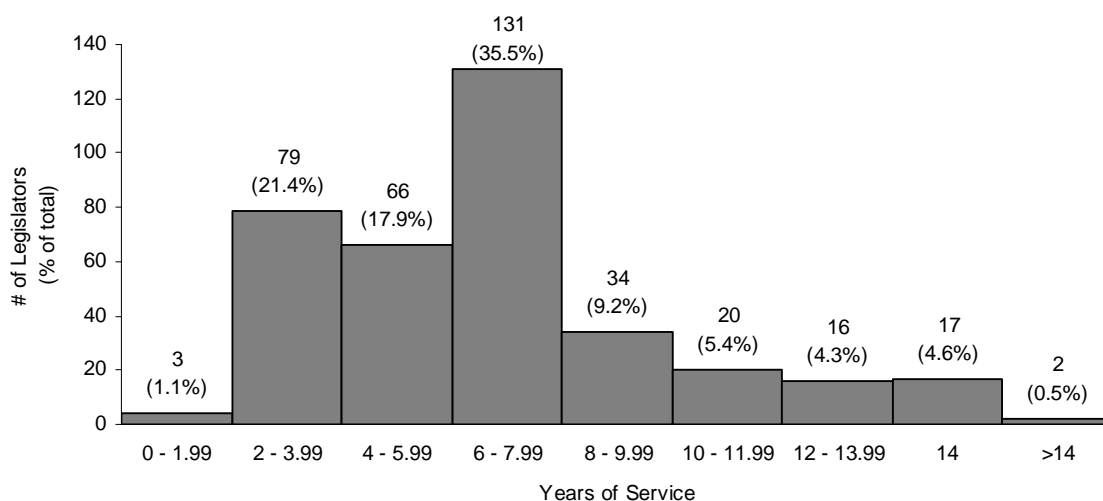
Chart 10: Distribution of Senate Service, 1990-2008⁵⁶



⁵⁵ Information calculated by the author using data from the Handbook of the California Legislature, Who's Who in the California Legislature, California Journal Roster and Government Guide, and www.joincalifornia.com. Barbara Alby and Tim Leslie, the only Assemblymembers to exceed the six year term limit, both served seven years. Alby and Leslie won special elections to fill vacated seats, which do not count toward the term limit.

⁵⁶ Senators Maurice Johannessen, Patrick Johnston, Tim Leslie, Steve Peace and Byron Sher, each served nine years. Senators Ross Johnson, John Lewis and Don Perata served 10 years. In each case, the Senator won a special election to fill a vacated seat, which does not count toward the two term limit.

Chart 11: Distribution of Legislative Service, 1990-2008⁵⁷



There is no indication that term limits, *per se*, generate maximum six and eight year terms in the Assembly and Senate. Most members have the opportunity to serve out their limit, but fewer than half do so. This statistic challenges the belief that politicians seek to stay in the legislature as long as term limits allow.

There is no indication that term limits, per se, generate maximum six and eight year terms in the Assembly and Senate.

Surprisingly, only 19 of the 187 individuals who could have reached 14 years of service by the end of this legislative session have served the full 14 year limit. The number is small, in part,

because the Senate has half as many seats as the Assembly, and at most only half the Assembly can transition to the Senate. Only 10.2 percent of legislators thus served the maximum.

Although calculating tenures provides a useful description of the behavior of members during their legislative lifespans, the measurement obscures how much legislative *experience* exists at a given point in time. A member who goes on to serve 10 years in the legislature should not be counted as having 10 years of experience her first day on the job. A more reliable estimate of experience comes from Van Vechten, who determined the median length of tenure for Assemblymembers and Senators for each session from 1968 to 2000.⁵⁸ The advantage of her measure is that it provides a better estimate of accumulated legislative experience in a given session, without counting time served later in their tenure.

Chart 12 lists the number of years of experience held by the median Assemblymember or Senator since Proposition 140 passed in 1990. Values are calculated as the time served at the end of each two year session and include time accumulated in the other house. Term limits

⁵⁷ The only legislators to exceed the 14 year limit on total service are Byron Sher, who served 15 years, and Tim Leslie who served 16 years. Both legislators won special elections to fill vacant Senate seats.

⁵⁸ Van Vechten 2002.

first went into effect in the Assembly in 1996 and in the Senate in 1998. This impact is prominent in the Senate, where the median tenure was cut in half after 1998.

Taking the mean average of the results from the period 1970-1988 (*see II. A. 1. Opportunities for Newcomers*) indicates the average pre-term limits Assemblymember had a median of 5.6 years of experience and the average Senator had a median of 11.9 years. Overall, these data show that Assemblymembers have consistently had about 1.5 fewer years of experience since Proposition 140 was passed. In contrast, Senators had between four and six years *more* experience until 1998, when the first Senators were termed out. Since then they have fluctuated between two and four *fewer* years of experience, a trend that should be expected to continue.

Chart 12: Years of Accumulated Legislative Experience⁵⁹

Session	Median Assemblymember Experience (years)	Median Senator Experience (years)
1970-1988 (avg.)	5.6	11.9
1991-92	10	18
1993-94	4	16
1995-96	4	18
1997-98	4	16
1999-2000	4	8
2001-02	4	8
2003-04	4	10
2005-06	4	8
2006-08	4	10

2. Policy Focus

Public policy under term limits appears to focus more on local issues than it did before term limits.⁶⁰ Recent evidence suggests new legislators tend to come from local government and run for higher elected office—particularly the state Senate—when they are termed out.⁶¹ For this reason, new legislators begin with more knowledge of local than state issues, which would predict a focus on local issues. Few members, other than Los Angeles city officials, return to local government after serving in the legislature.⁶²

Public policy under term limits appears to focus more on local issues than it did before term limits.

⁵⁹ Adapted and updated by the author from Van Vechten 2002.

⁶⁰ Surprisingly, an early study found a focus on state issues. However, it was based on national survey data collected in 1995, before term limits had a full impact. *See* Carey, John, Richard Niemi and Lynda Powell, *Term Limits in the State Legislatures*, University of Michigan Press, Ann Arbor. 2000.

⁶¹ Cain and Kousser 2004; Bowser, Chi and Little 2006.

⁶² Cain and Kousser 2004.

Many bills are also designed to address popular or expedient issues. The NCSL calls these “brochure bills” because they are “bills [that] are designed to build a legislator’s resume for re-election.”⁶³ That is not to say that the content of these policies is bad for California. Legislation that addresses public demands is a desirable feature of responsible government.

Interviewees mention that the types of bills produced tend to address issues of immediate importance. Bruce Cain, Director of the University of California Washington Center, describes bills nowadays as “silly and less about long-term problems. I don’t want to go so far as to say that the quality of bills is any better or worse. I think that’s a function of a lot of other stuff. But I do think that the type of bills [produced] don’t have a long range perspective.”⁶⁴

Several interviewees suggest that gerrymandered district lines explain this nearsighted focus.⁶⁵ The 2001 redistricting maps were designed to create safe seats for the two major parties. A major consequence of this calculus is that incumbents only face serious challenges during the primary. Members, wary of a primary battle that could cost them their seat, find they have to churn out “brochure bills” to appeal to primary constituents and discourage challengers.

3. Agency and Executive Oversight

The ability of the legislature to oversee administrative agencies and the executive branch has declined with term limits. The lost skills required for oversight is a casualty of lesser experience, compounded by time pressures that divert resources away from audits, investigations and hearings. Unlike policymaking where the committee system is only one part of a multi-stage, iterative revision process, oversight hearings must occur in committees. The legislature does not have a strong tradition of oversight; specifically it lacks standing oversight committees and has never produced written

The ability of the legislature to oversee agencies and the executive branch has declined with term limits.

transcripts of committee hearings. Nevertheless, there have been fewer audits of executive agencies and quasi-governmental bodies since term limits.⁶⁶

It would be naïve to assume the legislature was an excellent oversight body before term limits. The federal corruption investigations of the early 1980s that led to the ouster of several legislators and the Willie Brown-brokered “napkin deal” of 1987 helped fuel the anti-politician climate that welcomed Proposition 130.⁶⁷

⁶³ Bowser, Chi and Little 2006, p. 5. There is no clear standard for a “brochure bill,” but the 2006 infrastructure bonds may be considered an example.

⁶⁴ Bruce Cain, Director of University of California Washington Center, Telephone Interview March 7, 2007.

⁶⁵ Cain, Telephone Interview, 2007; Walters, Telephone Interview, 2007; Dan Weintraub, Columnist, *Sacramento Bee*, Telephone Interview, February 21, 2007.

⁶⁶ Kousser, Telephone Interview, 2007.

⁶⁷ Willie Brown and several other legislators negotiated a deal among insurance companies, trial lawyers, doctors and manufacturers to allow changes in civil liability lawsuits including immunity from litigation for the tobacco industry. The resulting legislation was printed within 48 hours and brought to vote on the last day of the 1987

Moreover, recent events suggest that oversight has not vanished in the post-Proposition 130 world, as alarmists claim. The investigation into the dealings of Insurance Commissioner Chuck Quackenbush occurred via a combination of efforts by both veteran and neophyte legislators.⁶⁸ Secretary of State Kevin Shelley resigned in light of both legislative and federal investigations into his campaign finance violations. The legislature exhibited similar skill during the energy crisis investigation.

Nevertheless, the time pressures on legislators to learn on the job and produce legislation from day one do in fact divert legislators' attention away from oversight. A major consequence of weak oversight is that agencies and the executive branch have greater freedom from scrutiny and by default are more powerful.

4. *Balance of Power in Budget Negotiations*

A shift in the balance of power to the executive branch is most visible in the relative strength of the governor in budget negotiations. This argument is underlined in two forms: Budget expertise takes time to develop and is not easily replaced by new legislators. Weaker leadership lacks the capacity to hold its own with the governor.

Cain and Kousser analyze line-by-line changes that the legislature makes to the governor's budget on several targeted subjects⁶⁹ as a proxy for the relative strengths of the executive and legislative branches.⁷⁰ They find "the legislature changed half as much of the governor's budget after term limits as it did before."⁷¹ While this is an imperfect measure, capturing only a single dimension of the power relationship, it represents a stark change in legislative behavior.

Another way of thinking about this issue is to analyze the length of time it takes for the legislature and governor to agree on a budget.⁷² Budget delays are much more commonplace in the post-term limits era. Since 1991, there have been only five on-time budgets and two budgets less than two weeks late—out of 17. On average, the budget has been about 25 days late since term limits (*see Appendix 2*). In contrast, in the period before term limits, the budget passed on-time more than 50 percent of the time. On average, the budget was less than one week late.⁷³

legislative session. The "napkin deal" is so named because the details were outlined on a cloth napkin while the parties dined at Frank Fat's restaurant in Sacramento.

⁶⁸ Cain and Kousser 2004.

⁶⁹ Health care, higher education and business services.

⁷⁰ Cain and Kousser 2004.

⁷¹ Cain and Kousser 2004, p. 77.

⁷² Late budgets, though, may be a product of changing economic and political environments and not directly related to term limits. Budget delays have become the norm at the federal level. Appropriation bills frequently rely on continuing resolutions and federal departments may operate on budgets that have not been updated for years. That the California legislature is often delayed may merely be a sign of the times; not a product of term limits.

⁷³ Office of Assembly Clerk, *Budget Bill Passage History Table*, http://www.assembly.ca.gov/clerk/BILLSLEGISLATURE/Budget_History_Table.htm, October 16, 2007

III. RECOMMENDATION: ALLOW LEGISLATORS TO SERVE 12 YEARS IN ONE OR BOTH HOUSES

Term limits are neither the devastating force that opponents decry nor the panacea that supporters assert. They have opened up the legislature to new individuals but weakened the ability of the legislature to oversee agencies and the executive branch. Public policy outcomes, the most important variable in the equation, have remained constant. Even though the clearest impact of term limits has been the loss of institutional expertise, the legislature is no less robust or capable of handling its lawmaking responsibility after term limits than before. No major policy areas have gone neglected, creative solutions to existing problems are still developed, and there is evidence that the increased turnover can bring in new legislators concerned with previously ignored issues.

Term limits are neither the devastating force that opponents decry nor the panacea that supporters assert.

On balance, this report finds a 12 year plan is more likely to benefit California than hurt it. Based on these findings, this report concludes that a 12 year plan improves the potential for legislative

expertise, which could enhance the ability of the legislature to deal with future problems.

Twelve years is the appropriate length for these new limits because it is impractical to limit Senators to half terms. Therefore, the only viable limits are multiples of four years, i.e., eight, 12 or 16. Eight years are too few to help legislators gain expertise. In contrast, voters will be dubious of a 16 year plan since it extends limits beyond the current 14 year maximum. Therefore, this report considers 12 years to be the only practicable length for term limits reform.

This report takes issue, however, with the Proposition 93's "transitioning period" (*see I. B. Politics*) because it unnecessarily protects 41 sitting incumbents by allowing them to stay in office more than 12 years. There is no public purpose achieved by excluding incumbents with time spent in the other house from the 12 year limit, and the "transitioning period" could have been crafted without unfairly protecting incumbents. An equitably written "transitioning period" would apply time incumbents served in the other house toward their 12 year limit.

The potential benefits of a 12 year plan are significant, and the likely harms are minimal. That said, no reform takes place in a vacuum, and any change to the status quo will have consequences, both intended and unintended. Weighing the pros and cons of this proposal in light of the findings, this report recommends supporting a 12 year plan, even if it is an imperfect solution. The following section details the probable outcomes of the Proposition 93.

A. Political and Other Strategic Considerations

The February 2008 presidential primary election will give voters the opportunity to amend the state constitution via the Proposition 93, a 12 year plan initiative. Voters will have the option of preserving the current limits—six years in the Assembly and eight years in the Senate—or voting to change the limits so legislators can serve up to 12 years divided as they choose between the two houses of the legislature.

Because the public strongly supports the general concept of term limits, proposals to lengthen them could meet strong resistance. Organizations such as U.S. Term Limits and the California Term Limits Defense Fund oppose the proposed initiative on principle and are campaigning against it.

On the other hand, legislative support for a 12 year plan will be strongest as long as the proposal appears on the February 2008 ballot. California’s legislative leaders realize it is their last opportunity to change the limits because, if the initiative passes, members who would normally be termed out in November 2008 will be able to run for reelection in the June primary.

Voters generally support term limits, and a proposal that may be viewed as benefiting politicians will be more popular at a time when the legislature is well regarded. A September 2007 PPIC poll finds legislative approval ratings reach only 29 percent among likely voters, a decline from levels several months earlier, but nearly the same rate as September 2006.⁷⁴ Although, the *San Francisco Chronicle* praised the bipartisan and cooperative atmosphere of 2006, calling it “a banner year for both the governor and the Legislature,”⁷⁵ the 2007 budget delays and the special legislative session appear to have taken a toll on legislative approval rates.

Governor Schwarzenegger has said that will not support Proposition 93 unless the legislature also places reasonable redistricting reform on the February 2008 ballot. At this date the legislature has not done so. This and other factors may make passage of term limits reform more difficult in February 2008.

B. Predicted Improvements

1. More Institutional Expertise

Proposition 140 cut short the ability of legislators to develop expertise over the long-term, especially in the Assembly. The median length of Senate and Assembly experience fell as term limits forced out

Proposition 140 cut short the ability of legislators to develop expertise over the long-term, especially in the Assembly.

⁷⁴ Public Policy Institute of California, “PPIC Statewide Survey: Californians & Their Government,” September 2007.

⁷⁵ Editorial, “Year of Surprises...” *San Francisco Chronicle*, January 1, 2007.

many long-serving members. Members have the option of running for the other chamber at the end of their term, but only 19 members (of 187 eligible) have served the maximum allowable tenure. This diminished expertise is the most criticized feature of the term-limited legislature. An increase should make the policymaking process more efficient.

A 12 year plan decreases the total allowable service from 14 to 12 years, but members can dedicate all of that time to a single chamber. Members who formerly switched chambers to stay in elected office could develop expertise in a single house.

Based on results from Oklahoma, the only state with a 12 year plan, this report predicts that under the plan the median California Assemblymember will serve eight years, and the median Senator will serve ten years, an increase of four years for both houses⁷⁶ (see Appendix 3). Notably, these are equivalent to tenures prior to term limits. It may seem counterintuitive that reducing the maximum limit from 14 years will lead to longer tenures; however a 12 year plan eliminates the main incentive to switch chambers, i.e., to serve the longest possible time in the legislature.⁷⁷

Under a 12 year plan, agency oversight should improve because the pressures of time and limited experience will be reduced.

Evidence from Oklahoma suggests that most members remain in one chamber throughout their careers. In Oklahoma's 16 year history of term limits, only 11 of 249 lower house members (4.4 percent) moved to the other house. No Senator left to join the lower house. This trend

implies that the perks of being a Senator (elections half as often, twice the number of constituents, "upper chamber" prestige, etc.) are insufficient to drive Assemblymembers to seek Senate seats. Furthermore, because the Senate has only half as many seats as the Assembly, at most only half of all Assemblymembers can win Senate seats. This bodes well for expertise accumulation in the Assembly, which lags behind the Senate because most legislators begin their careers in the lower house.

2. More Agency Oversight

Under a 12 year plan, agency oversight should improve because the pressures of time and limited experience will be reduced. Short tenures in the legislature, in conjunction with the demands of on-the-job learning, developing expert policy knowledge, and looking for the next political office, compete with oversight for a member's attention. Moreover, oversight itself

⁷⁶ The expected length of service is longer if the projection excludes sitting incumbents because many have only been in office a few years, and probably will remain for several more terms in the future.

⁷⁷ These projections are based on Oklahoma's membership history, but fundamental differences between the states may weaken the model's predictive capacity. Aside from unique political cultures and histories, Oklahoma has a 149 seat legislature (101 House seats, 48 Senate seats) that meets part-time every other year, whereas California's has 120 seats (80 Assembly seats, 40 Senate seats) and meets full-time year round. Nonetheless, Oklahoma is the best proxy, because it is the only state that actually demonstrates legislator behavior under a 12 year plan.

requires a level of expertise that neophyte members do not have. Experienced members are not only more knowledgeable about oversight protocols, they may also have more time to dedicate to the subject.

3. *More Collegiality*

Assemblymembers of the same party in neighboring districts may develop more collegial relationships, because they will not be forced to compete for the same Senate seats as often. In many cases, two Assembly districts overlap much of a single Senate district, which creates competition between the Assemblymembers who may consider themselves “heirs” to the same seat. While tension between members of opposing parties should be expected, more often than not these members are of the same party thus contributing to intraparty tension and legislative impasse.

Without short six year terms, Assemblymembers will be less inclined to enter the Senate at the earliest opportunity. Members will have the option to remain in their current house without having to switch chambers to stay in the legislature. A case in point, termed out Assemblyman Mark Leno is challenging incumbent Senator Carole Migden in Senate District 3, in the June 2008 primary. Both are Democrats from San Francisco, strongly concerned with gay rights. Leno’s challenge would not occur but for the pressure of a three term limit.

C. *Other Potential Impacts*

1. *Fewer Opportunities for Newcomers*

A 12 year plan will lengthen legislative tenures and slow turnover. Consequentially, this will reduce the number of open seats, the best opportunity for newcomers to enter the legislature. Under term limits, the median legislative seat in Oklahoma opens every 12 years, half as often as California (*see III. B. 1. More Institutional Experience*). In Oklahoma, the turnover rate under term limits is one individual per 4.5 seats, or 27.9 openings per election. In California the current rate is one individual per 3.2 seats, or 31.1 openings per election. If California’s turnover rate under a 12 year plan behaves the same way as Oklahoma’s, the number of openings will fall to approximately 22.3 openings per election, a decline of 8.8 seats.

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2. *Status Quo Diversity*

Racial diversity in the legislature currently approximates the voting makeup of the state although it lags behind the population diversity⁷⁸ (*see Chart 6*). A 12 year plan will not undo

⁷⁸ Cain, Telephone Interview, 2007; Kousser, Telephone Interview, 2007; U.S. Census Bureau 2004, Table 4a.

the gains. The improvements were not caused by term limits alone; they merely sped up diversification already under way.⁷⁹ Currently, 16 Assembly districts have a majority Latino population.⁸⁰ Of those, thirteen are represented by a Latino Assemblymember;⁸¹ in each of the remaining three, the incumbent is African-American.⁸²

A 12 year plan may slow the diversification process, but the reform is unlikely to reverse it. Lengthening the amount of time a legislator can stay in one chamber effectively preserves its racial composition by lengthening the span between open seats. These provide voters the best opportunity to replace racially unrepresentative members. Similarly, a 12 year plan alone will not contribute to the further diversification of the legislature beyond the voting population of the state.

3. *Similar Policy Outputs*

Published findings indicate that the public policy produced by the term-limited legislature is not measurably different from that produced before the law.⁸³ The seeming stability of policy outcomes can be attributed primarily to two factors: poorly designed legislation is still corrected before the bill's final passage and the Senate is the chamber with more experienced legislators. The latter argument assumes that the system remains stable because the Senate has more experience and "cleans up" after the Assembly.⁸⁴ Chart 13 displays the percentage of Senators with Assembly experience.

Since 1992, over 75 percent of Senators have had prior Assembly experience, and since 2003, the rate has met or exceeded 90 percent.⁸⁵ This number will drop precipitously under a 12 year plan, as happened in Oklahoma. The primary incentive to switch chambers was to serve the maximum amount of time in the legislature. Without this incentive, Assemblymembers and Senators will develop nearly equivalent levels of experience.⁸⁶

⁷⁹ Cain and Kousser 2004.

⁸⁰ No Assembly district is majority African-American or Asian & Pacific Islander.

⁸¹ Mike Davis and Mervyn Dymally represent districts 48 and 52 of Los Angeles. Wilmer Carter represents district 62 of Rialto.

⁸² This occurs because district lines are drawn based on residents, while legislators are chosen by voters. Many of the Latino residents in these districts may be ineligible to vote, due to age or citizenship.

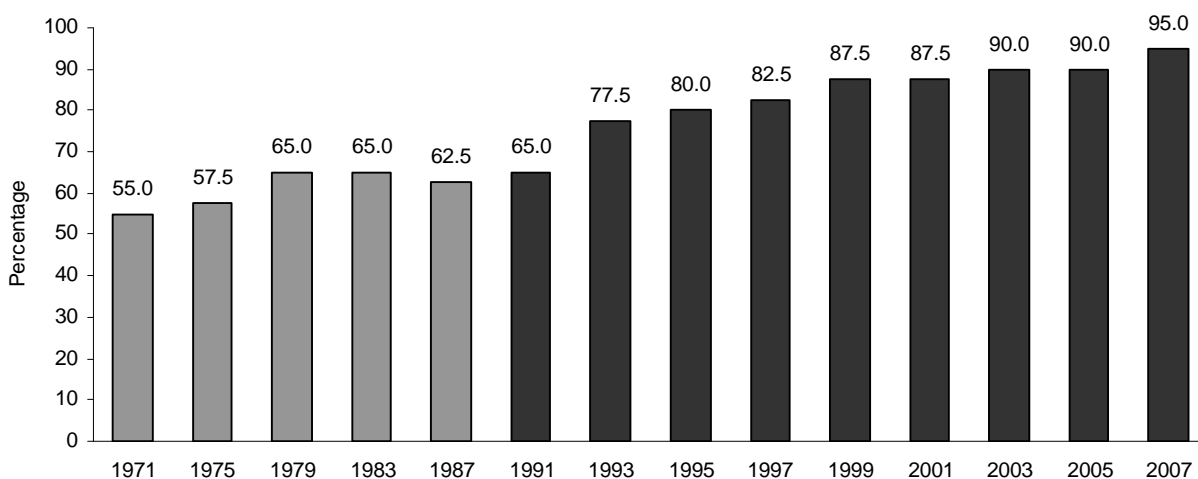
⁸³ Greenblatt 2006; Bowser, Chi and Little 2006

⁸⁴ Hodson, Telephone Interview, 2007; Kousser, Telephone Interview, 2007

⁸⁵ Very few Assemblymembers are former Senators.

⁸⁶ The House and Senate of Oklahoma have median tenures of six and eight years, respectively (*see III. B. 1. More Institutional Expertise*).

Chart 13: Percentage of Senators with Prior Assembly Experience⁸⁷



While this may diminish the ability of the Senate to “clean up” after the Assembly, it should increase the Assembly’s ability to initiate higher quality legislation. Moreover, the point is moot if the *second house* to see a bill—not the *upper house*—addresses weaknesses in language or design.

4. More Experienced Leadership

Assembly and Senate leaders will no longer need to be chosen from freshmen or sophomore members. As a result, leaders will start with more knowledge, although the overall effect may be neutral. Term limits force party caucuses to select legislative leaders from members with short time horizons. One theory mentioned earlier (*see II. C. 4. Balance of Power in Budget Negotiations*) is that weaker leaders cannot stand up to the governor and therefore cede power to the executive branch. Anecdotal evidence suggests stronger leadership may be a more effective check on executive power.

Leadership will act more like it did before Proposition 140, because leaders will have the benefit of longer time horizons and can better exert influence on their caucus. However, the previous environment was that of Assembly Speaker Willie Brown. Strong leadership itself does not necessarily lead to good policy outcomes or benefit the state. Additionally, the late 1980s saw federal corruption investigations that resulted in felony convictions of sitting legislators. In the words of *Sacramento Bee* columnist Dan Weintraub, “It is very difficult to argue that the legislature we had in 1990, before term limits, was some paragon of virtue.”⁸⁸

⁸⁷ Results from 1971-1987 taken from Cain and Kousser 2004 and Van Vechten 2002. Results from 1991-2007 calculated by the author using data from the Handbook of the California Legislature, Who’s Who in the California Legislature, California Journal Roster and Government Guide, and www.joincalifornia.com.

⁸⁸ Weintraub, Telephone Interview, 2007.

5. *More Potential for Corruption*

A 12 year plan encourages officeholders to spend more time in the legislature. The benefit of longer tenures in office is expertise, but the cost may be the increased appearance or actuality of corruption. This report predicts that tenures will increase by four years in both houses. Theoretically, this added time in the legislature translates to more *potential* for corruption as members have more exposure to corrupting influence and a greater mastery of the political system.

This report finds that the “transitioning period” provision of the Proposition 93 (*see I. B. Politics*) gives 38 Senators the opportunity to exceed 12 years in the legislature and enables 60 percent of Senators to serve 18 combined years in the legislature. Three Assemblymembers will be allowed to exceed 12 years in office because of the “transitioning period.” As designed, the initiative would further increase the potential for corruption among these members.

As those sitting Senators are replaced by new members, the effect of the “transitioning period” will vanish. However, the first several years under the Proposition 93 will be marked by an increase in this potentiality for corruption.

6. *Less Effective Senators*

One former legislator has expressed concern that a 12 year plan will encourage less effective Assemblymembers, particularly those who have not been given committee chair assignments, to seek out new opportunities in the Senate. As these less powerful Assemblymembers move to the Senate, the legislator argues, they will degrade the quality of that chamber’s work.

The concern is worth voicing. It is certainly possible that less effective Assemblymembers, feeling excluded from key decision-making, will seek greener pastures and greater influence in the Senate. Many view the Senate as having greater prestige than the Assembly, and would prefer to run for office every four years instead of every two.

Several factors suggest that moves from the Assembly to the Senate may be infrequent. This flow of legislators from Assembly to Senate has not occurred in Oklahoma, the other state with a term limit plan similar to California’s. In the past 16 years, only 11 of 249 (4.4 percent) lower house members in Oklahoma successfully left their seats to enter the Senate. No Senator moved into the lower house. Comparisons between California and Oklahoma must be made cautiously. Oklahoma is a much smaller state and its legislature meets less frequently. Oklahomans live in a vastly different political environment and may not view a move to the Senate with the same desire as California Assemblymembers.

Assemblymembers would first have to defeat an incumbent Senator or run for an open seat. The incumbency advantage is a difficult barrier to surmount, especially for Assemblymembers considered to be legislative weaklings. Open seat opportunities might be easier, but few opportunities may be available. Only 20 of California’s Senate seats are up for election in a

given year. If on average one-third of those are open in a given election year, that amounts to fewer than seven open seats per election. Finally, in California today, under its current term limits regime, more Assemblymembers enter the Senate—on average 10 Assemblymembers move to the Senate per election—than under the predicted scenario. By contrast, under the 12 year plan, and based on the experience from Oklahoma, only about one Assemblymember would be expected to join the Senate in any given election.

IV. OTHER REFORM POSSIBILITIES

Several alternative reforms could also improve term limits and/or reduce the loss of expertise. While the political environment is not ripe for these options, a failure of the term limits measure in February 2008 may invite other strategies. This report outlines several alternatives that could mitigate the problems with term limits. Each is evaluated across six criteria:

- Maximizing Oversight
- Maximizing Diversity
- Minimizing Potential for Corruption
- Maximizing Stewardship of Issues
- Maximizing Quality of Policy Produced
- Political Feasibility.

These criteria are rated on a simple scale (Good, OK, Bad), because the projections are not based on best practices or empirical data. Alternative 5, “Leave the Law As Is,” is a baseline representing the status quo.

Chart 14: Predicted Consequences of Alternative Term Limits Reforms

Alternative	Oversight	Diversity	Low Potential for Corruption	Stewardship	Quality of Policy	Political Feasibility
1. Consecutive Terms	Good	Good	Bad	Good	Good	Bad
2. Extend Limits	Good	OK	OK	Good	Good	Bad
3. Repeal Limits	Good	Bad	Bad	Good	Good	Bad
4. Root Problems	Good	Good	Good	Bad	Good	OK
5. Leave the Law As Is	Bad	Good	Good	Bad	Good	Good
12 Year Plan	Good	OK	OK	Good	Good	OK

Alternative 1: Replace Lifetime Bans with a Limit on Consecutive Terms

This reform would change the current lifetime ban to a ban on consecutive terms. Legislators who have reached their term limit would be required to take a four-year sabbatical, during which time they could not be a legislator, legislative staffer or lobbyist. After that, they would be free to reenter legislative office again. Implementation would require a ballot measure amending the constitution.

Oversight: Good. Although members will still be forced out of the Assembly after six years and the Senate after eight years, the experience will not be lost permanently. Members could return to the legislature, bringing their institutional knowledge with them.

Diversity: Good. Since the limits would be the same as they are now, gains in racial diversity should remain constant. A white incumbent may very well be replaced by a minority legislator

during the sabbatical. However, because of the potential for the former incumbent to return to the seat is higher than the status quo, the chance remains that one such incumbent may in turn force a minority member out.

Minimize Potential for Corruption: Bad. This alternative should lead termed out legislators to engage in one of two behaviors: They will either return to the legislature after the sabbatical period, or leave Sacramento permanently at the end of the term limit. The longer a member remains in office the more exposure he or she has to corrupting influences. By this standard, the potential for corruption increases if former members return to the legislature. This potential for corruption, however, is no different for those members who permanently leave Sacramento after reaching the term limit.

Stewardship: Good. Members with expertise in specific substantive issues cannot use the office to act as stewards over legislation involving those issues once they have left the legislature. The opportunity to return to the legislature brings with it the ability to directly influence those issues over a longer period.

Quality of Policy Produced: Good. Termed out members, who return to the legislature after the sabbatical period, will contribute their prior experience to policy production. If returned members comprise a substantial part of the legislature, they will also strengthen the committee system by using their greater experience to screen bills.

Political Feasibility: Bad. Voters strongly support term limits, and it will be difficult to persuade them to support a proposal that would give politicians the opportunity to return to the legislator, once they have been termed out.

Alternative 2: Extend Term Limits

This reform would extend term limits outright by one extra term per chamber, allowing members to serve eight years in the Assembly and 12 in the Senate. This might also lead to stronger legislative leaders who could better control their caucus and thus bargain or deal with the governor. Implementation would require a ballot measure amending the constitution.

Oversight: Good. Members have an opportunity to accumulate more expertise because they will likely serve longer than the status quo.

Diversity: OK. Slows the diversification process, though the impact may be insignificant.

Minimize Potential for Corruption: OK. Encouraging members to stay in office longer has the perverse effect of increasing their exposure to corrupting influences.

Stewardship: Good. Members can follow particular issues for longer periods of time and more fully develop policy solutions to long-term problems.

Quality of Policy Produced: Good. If more expertise means better policy, then this will lead to a smoother and smarter policymaking process.

Political Feasibility: Bad. Voters, generally supportive of term limits, will not be inclined to support this reform.

Alternative 3: Repeal Term Limits

This reform would repeal term limits outright, returning California to the pre-1990 system. It would enable members to serve indefinite periods in the legislature and might potentially hurt the diversification process. Implementation would require a ballot measure amending the constitution.

Oversight: Good. Members will be able to serve for a long time and become familiar with the skills needed for oversight.

Diversity: Bad. Repealing term limits may slow further progress, although it will probably not undo the gains to racial diversity. There exists the possibility that a white member may come to occupy a seat in a minority-majority district. Because of the incumbency advantage, a single election could lock a racially unrepresentative member into the seat for many years.

Minimize Potential for Corruption: Bad. Long serving members will have the greatest exposure to corrupting influences.

Stewardship: Good. Issue experts can continue to fight for their issues as long as time allows. Also, members can monitor the strength and effectiveness of existing programs.

Quality of Policy Produced: Good. The extension in legislative service will increase expertise. Development of long-term policy solutions will improve with longer time horizons.

Political Feasibility: Bad. Voters are unlikely to support this proposal because it goes against their strongly held suspicion of politicians. The many opponents of such a proposal will have an easy task convincing voters to oppose the measure.

The weakness of this reform stems from the problems caused by long-serving leaders. It is worthwhile to consider this reform in conjunction with a check on leadership, such as imposing limits on how long a member can serve as the Assembly Speaker or Senate President pro Tempore.

Alternative 4: Address the Root Problems

This reform would directly address some of the problems caused by term limits without changing the limits themselves. The most essential goal in this approach is to improve institutional knowledge without lengthening legislative service. The ideal vehicles for this

change are retaining knowledgeable staffers, reviving the Assembly Office of Research (AOR) and encouraging the use of non-partisan research staff. Each has the benefit of moving the expertise burden from the legislators themselves to bodies that are not subject to frequent turnover.

The Assembly has been less adept than the Senate at utilizing existing research staff. The AOR is defunct, while the Senate Office of Research remains strong. Previous efforts made by the Senate to institutionalize the use of non-partisan resources have been effective. For example, incoming Senate committee chairs are informed they may not replace more than one committee consultant at a time with loyal staff.⁸⁹ Although these standards are norms, not rules, they have become an established part of Senate culture. The Assembly would do well to value non-partisan staff in the same way.

California may also need to develop a non-partisan policy analysis or auditing office unaffiliated with the legislature.⁹⁰ The highly regarded Legislative Analyst Office (LAO) is understaffed and underutilized. Unfortunately, members prefer using political staff to answer their policy research questions. By contrast, non-partisan research staff provide unbiased analysis to members. Florida offers an excellent model called the Office of Program Policy Analysis and Government Accountability (OPPAGA), which serves as an independent auditor that “examines agencies and programs to improve services and cut costs when directed by state law, the presiding officers or the Joint Legislative Auditing Committee.”⁹¹ OPPAGA is considered the research arm of the Florida legislature. The services it provides include: performance audits of state programs, research and technical assistance to legislators, a weekly newsletter of policy research and follow-up assessments of agencies with identified problems.⁹² Maine has already implemented its own version called the Office of Program Evaluation & Government Accountability (OPEGA).

Oversight: Good. Experienced staff working in these offices will help retain institutional knowledge and may improve the legislature’s oversight capabilities. An OPPAGA-type organization would greatly improve oversight by dedicating staff for that purpose.

Diversity: Good. Racial diversity will remain high with no change from the current demographics.

Minimize Potential for Corruption: Good. The potential for corruption remains low, because tenures remain equivalent to the status quo.

⁸⁹ Hodson, Telephone Interview, 2007.

⁹⁰ CGS has also called for the creation independent think tanks in Sacramento to provide legislators and staff with improved access to independent policy research. See Center for Governmental Studies, *A New Sacramento Policy Center: A CGS Feasibility Study*. 2004.

⁹¹ Florida Monitor: About OPPAGA, www.oppaga.state.fl.us/about.html 2007; OPPAGA was highly recommended by the NCSL (Bowser, Chi and Little 2006; Jennie Drage Bowser, Program Principal, National Conference of State Legislatures, Telephone Interview, March 13, 2007).

⁹² Florida Monitor: What OPPAGA Does, <http://www.oppaga.state.fl.us/whatwedo.html> 2007

Stewardship: Bad. New access to staff or research offices will not necessarily improve the time members spend tracking their passed legislation. Since tenures are unchanged, stewardship should go unchanged from the current level.

Quality of Policy Produced: Good. Improved policy research capability could streamline policy development. Better policy outcomes will result if members use non-partisan research sources in place of partisan ones.

Political Feasibility: OK. Implementation will not require legislation or voter approval, but it is always difficult to change the political system.

On one hand, addressing the root problems in this manner is an effective and practical solution. On the other hand, these alternatives are unstable solutions that could wither away over time if there are no mechanisms in place to institutionalize them. Stewardship remains low. There is also the possibility that agency oversight might stay the same.

Both houses must actively commit to adapting their institutional cultures for these goals, lest progress slowly erode. New members often fire existing staff and replace them with campaign staff.⁹³ This dispenses with years of institutional knowledge essential to oversight and policy production. Members should encourage senior staff to stay and must not carelessly replace experienced staff with younger, inexpensive staff. Implementation will require commitment and follow-through from the legislature.

The best feature of this reform option is that it can be implemented by itself or in conjunction with other reforms.

Alternative 5: Leave the Law As Is

Allowing present trends to continue will have positive and negative consequences (*see II. Impacts of Legislative Term Limits*). Some argue that the reason for stability of policy outcomes is that power has flowed to the executive. However, public policy made by the executive branch may or may not be worse for the state.

Oversight: Bad. Executive branch and administrative agency oversight will be sub-optimal because of time pressures will divert attention toward other legislative duties.

Diversity: Good. Frequent turnover in seats has significantly improved the representation of minority populations. Minority populations now closely approximate the voting composition of the state, but lag behind the resident population. No one term limits proposal will lead to more diversification, unless districts lines are redrawn.

Minimize Potential for Corruption: Good. Members spend a short time in the legislature and have little opportunity to be exposed to corrupting influences. If members' subjective

⁹³ Hodson, Telephone Interview, 2007.

impressions prove true, they spend most of their first two terms learning how to be a legislator. Without a deep and exploitable understanding of the legislative process, the perquisites of the office are unlikely to be used in a corrupt manner.

Stewardship: Bad. The median tenure for a legislator will still be approximately six years. This number will not increase much over time. Former legislators do not have the power of office to monitor programs and ensure their longevity.

Quality of Policy Produced: Good. There is no indication that the quality of policy has changed because of term limits. The legislative process is not as streamlined as it would be if committee members had more experience. However, every indication is that modifications to legislation in progress still occur, but happen at different stages in the process.

Political Feasibility: Good. Letting present trends continue assumes that no action is taken to change the status quo. Therefore, this alternative requires no further effort to be implemented.

V. CONCLUSION

Term limits passed in 1990 have affected the California legislature in a number of ways. The operation of the legislature has changed as bills are revised at later stages in the legislative process, committee chair positions are given to less experienced members and legislative leaders have much shorter time horizons. However, the institution is a robust body that has adapted well to the new time pressures. Minority representation has improved significantly. Public policy outcomes remain constant. Legislative tenures are shorter than many expected, and legislators rarely serve out the maximum number of terms.

A proposal to allow legislators to serve up to 12 years in the legislature instead of limiting time in the individual chambers has merit. Legislative diversity will remain constant, institutional expertise and oversight should improve, and the legislature may improve its ability to balance the executive branch.

A 12 year plan is potentially better for the state than the current limits. However, the proposal that made it to the ballot, Proposition 93, contains a troubling provision. Its “transitioning period” is too forgiving. The proposed reforms would better serve the public interest if sitting incumbents with experience in both chambers were termed out after 12 years of total service, not after 12 years in their current house. As designed, Proposition 93 allows most sitting Senators and three sitting Assemblymembers to exceed 12 years of service.

Without considering political realities, the best change to term limits may be a law that changes the lifetime ban to a ban on consecutive terms. This would better preserve gains in diversity and reintroduce expertise to the chambers. Eliminating the lifetime ban would be improved by also restoring non-partisan policy research groups and *using* them. Developing an organization like Florida’s Office of Program Policy Analysis and Government Accountability is worth considering in any context, but particularly as a means to strengthen the effectiveness of political oversight.

Term limits have not been as bad as opponents allege nor as beneficial as supporters claim. But they are a reality of California politics. Whether voters are willing to modify them will be decided in February 2008 and perhaps at a later election.

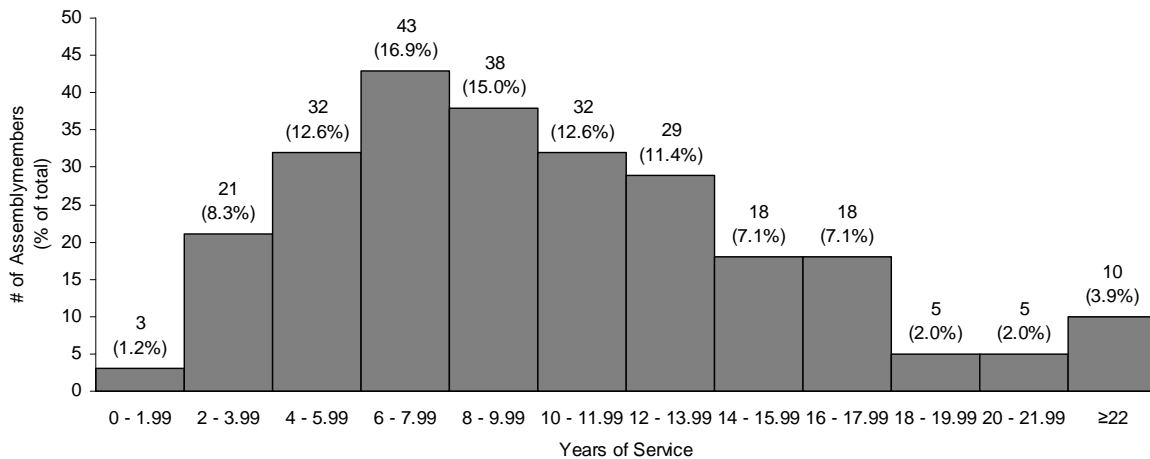
APPENDICES

Appendix 1: Legislative Tenures Prior to Term Limits

Figure A1 shows the distribution of tenures for Assemblymembers in office during the period 1970-1988, using the complete legislative histories of the members in office from the 1970-1988 period, including the time they served before 1970 and the time they served after 1988. The median Assemblymember was in office eight years.

In some cases, the first year term limits had any effect actually curtailed the service of some of the longest serving legislators. For that reason it is unknowable how long they would serve if totally unrestricted.

FIGURE A1: Distribution of Assembly Service, 1970-1988



The analysis is repeated in Figures A2 and A3 for the Senate and full legislature. In the Senate the median tenure was ten years. The jaggedness of the Senate distribution is due to staggered terms. In the full legislature the median tenure was 12 years.

FIGURE A2: Distribution of Senate Service, 1970-1988

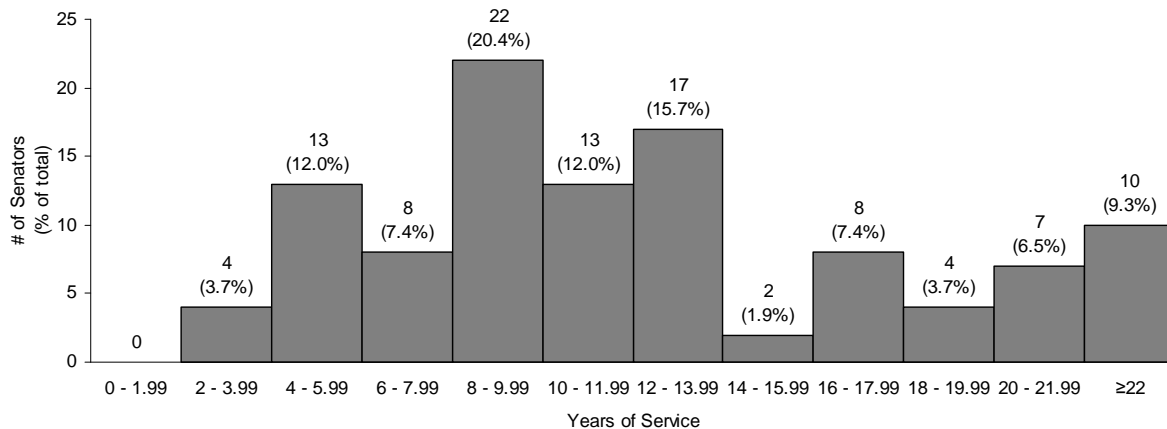
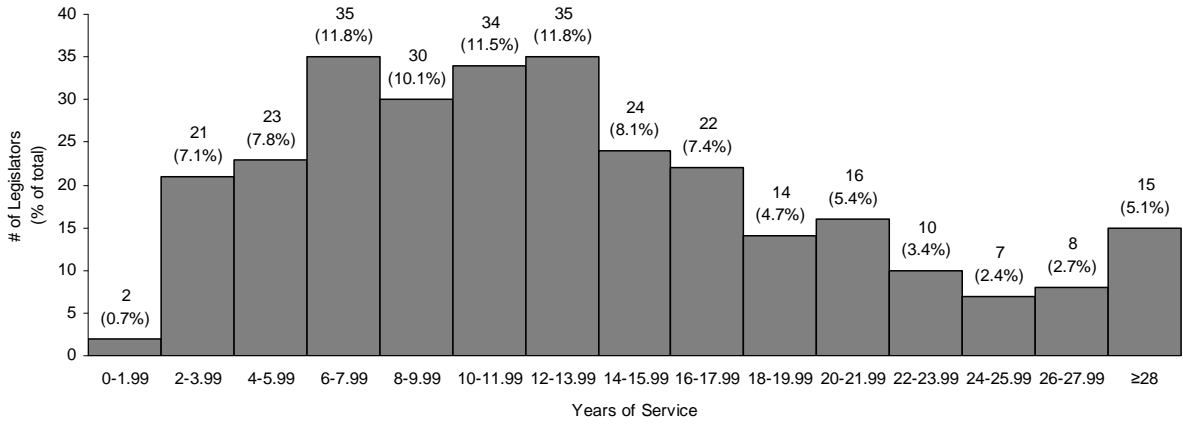


FIGURE A3: Distribution of Legislative Service, 1970-1988



Notes: Calculated by the author using data from the Handbook of the California Legislature, Who's Who in the California Legislature, California Journal Roster and Government Guide and www.joincalifornia.com.

Appendix 2: Budget Sizes and Delays

The California budget is due at midnight before July 1 each year. Figure 4 shows the delays for each year, from 1991 to 2006, and the size of that year's budget.

FIGURE A4: Budget Sizes and Delays, 1992-2006

Year	Days Late	Budget (in Billions)
2007	52	\$145
2006	0	131
2005	7	117.5
2004	29	105.3
2003	29	100
2002	62	98.9
2001	21	103
2000	0	99.4
1999	0	81.3
1998	42	71
1997	42	67.2
1996	8	60
1995	33	56.4
1994	4	54.6
1993	0	50.6
1992	60	53.5
1991	0	55

Notes: Compiled by the author from the Office of Assembly Clerk, *Budget Bill Passage History Table* and from news reports on the California budget.

Appendix 3: Tenures Under Term Limits in Oklahoma

Figure A5 shows the distribution of tenures for state House service in Oklahoma over the 16 years that term limits have been in effect. The median House member serves six years. This median tenure value is skewed downward because 90 of the 101 incumbents have not been in the House long enough to serve out the full 12 years. All 90 may eventually serve terms past 2008. The other 11 incumbents are serving their final terms and will be termed out in 2008. Figure A6 recalculates the distribution excluding incumbents from the current session. The median tenure increases to eight years.

FIGURE A5: Distribution of Oklahoma House Service, 1992-2008

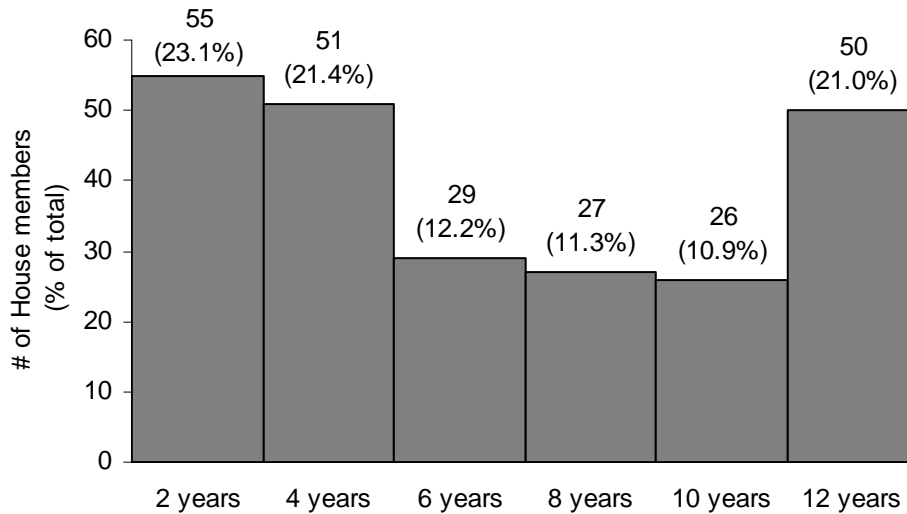
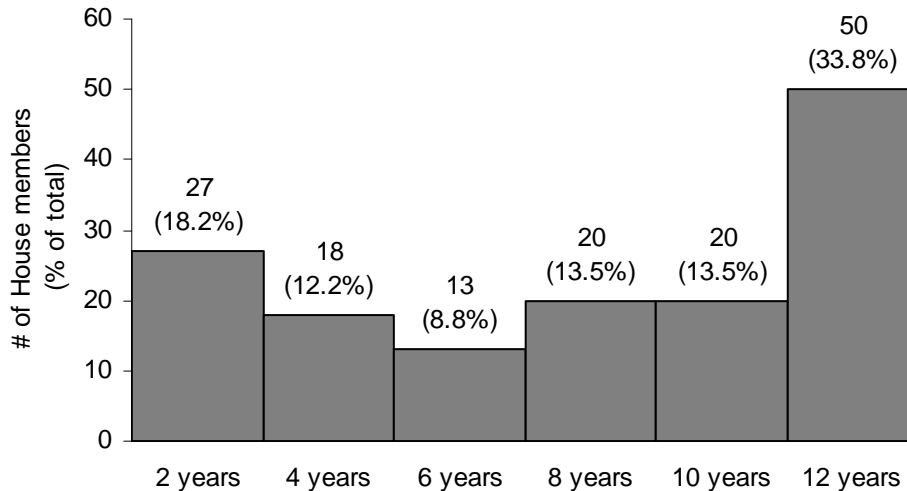


FIGURE A6: Distribution of Oklahoma House Service, current incumbents excluded, 1992-2008



Figures A7 and A8 display the distribution for the Oklahoma Senate. The median tenure for Senators is eight years; ten years when current incumbents are excluded.

FIGURE A7: Distribution of Oklahoma Senate Service, 1992-2008

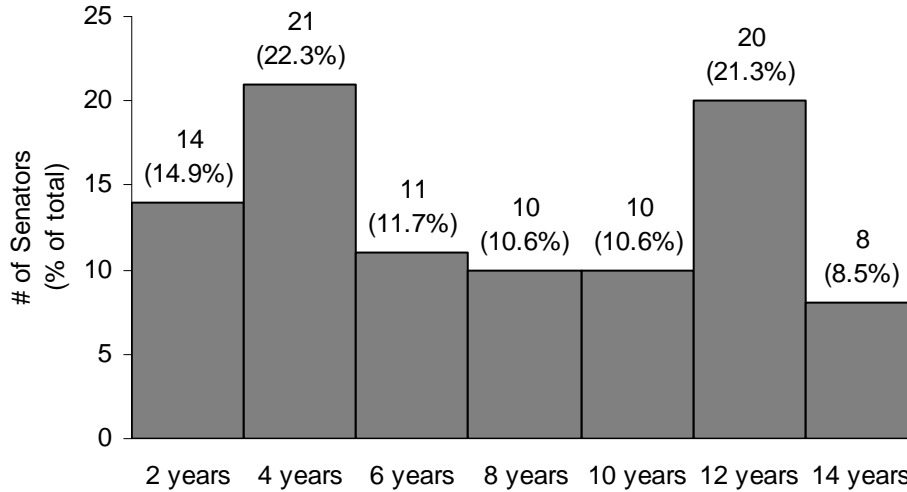
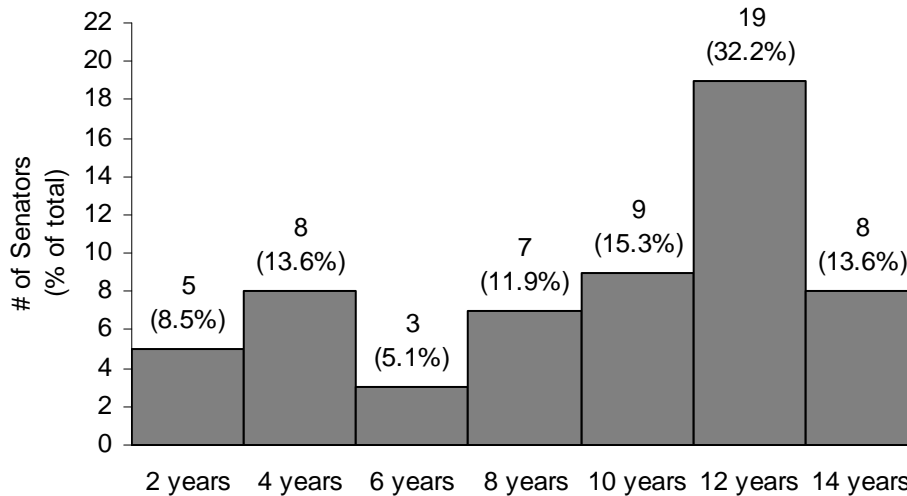


FIGURE A8: Distribution of Oklahoma Senate Service, current incumbents excluded, 1992-2008



Notes: The 12 year limit did not apply to years served between 1992 and 1994 if the Senator was elected in 1990. This exception allowed eight Senators to serve 14 years after term limits were enacted.

Figures A5 through A7 calculated by the author from the Roster of Oklahoma State and County Officers 1990-1992 (print) and 2000-2008 (online), and the CSG State Directory I, 1995-1999. Special elections are excluded because the data could not be located. Moreover, the errors would likely be random and the bias small.

Appendix 4: CGS Publications and Projects

Reports

In The Dead of the Night: How Midnight Legislation Weakened California's Campaign Finance Laws, And How to Strengthen Them (2007)

Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals (2006)

Keeping it Clean: Public Financing in American Elections (2006)

State Public Financing Laws (2005)

Public Financing Laws in Local Jurisdictions (2005)

California Fair Redistricting Act: A Model Law (2005)

PolicyArchive.Net: Assessing the Quality and Availability of Policy Research in the Internet World (2005)

Drawing Lines: A Public Interest Guide to Real Redistricting Reform (2005)

Video Voter: How to Produce Election Coverage in Your Community (2004)

Campaign Finance Disclosure Model Law CGS/Campaign Disclosure Project (2004)

Losing Ground: How Taxpayer Subsidies & Balkanized Governance Prop Up Home Building in Wildfire and Flood Zones (2004)

A New Sacramento Policy Center: A CGS Feasibility Study (2004)

Political Reform That Works: Public Campaign Financing Blooms in Tucson (2003)

Public Financing of Elections: Where To Get The Money? (2003)

Electronic Filing and Disclosure Update (2002)

A Statute of Liberty: How New York City's Campaign Finance Law Is Changing the Face of Local Elections (2002)

Alluvial Amnesia: How Government Plays Down Flood Risks in the Push for Development (2002)

Dead on Arrival? Breathing Life Into Suffolk County's New Campaign Finance Reforms (2002)

On the Brink of Clean: Launching San Francisco's New Campaign Finance Reform (2002)

Eleven Years of Reform: Many Successes, More to Be Done: Campaign Finance Reform in the City of Los Angeles (2001)

Access Delayed Is Access Denied: Electronic Reporting of Campaign Finance Activities (2000)

Campaign Money on the Information Superhighway: Electronic Filing and Disclosure of Campaign Finance Reports, CGS/National Resource Center for State and Local Campaign Finance Reform (1996-1999)

Promises to Keep and Miles to Go: A Summary of the Joint Meeting of the California Citizens Commission on Higher Education and the California Education Roundtable (1997)

Books

Investing in Democracy: Creating Public Financing of Elections In Your Community (2003)

Affordable Health Care for Low Income Californians: Report and Recommendations of the California Citizens Budget Commission (2000)

Toward a State of Learning: California Higher Education for the Twenty-First Century, Recommendations of the California Citizens Commission on Higher Education (1999)

A 21st Century Budget Process for California: Recommendations of the California Citizens Budget Commission (1998)

A State of Learning: California and the Dream of Higher Education in the Twenty-First Century, California Citizens Commission on Higher Education (1998)

Opportunity Through Technology: Conference Report on New Communication Technology and Low-Income Communities (CGS/ConnectLA 1997)

A Shared Vision: A Practical Guide to the Design and Implementation of a Performance-Based Budget Model for California State Health Services, California Citizens Budget Commission (1997)

The Price of Justice: A Los Angeles Area Case Study in Judicial Campaign Financing, California Commission on Campaign Financing (1995)

Reforming California's Budget Process: Preliminary Report and Recommendations, California Citizens Budget Commission (1995)

California at the Crossroads: Choices for Health Care Reform, Lucien Wulsin, Jr. (1994)

Democracy by Initiative: Shaping California's Fourth Branch of Government, California Commission on Campaign Financing (1992)

To Govern Ourselves: Ballot Initiatives in the Los Angeles Area, California Commission on Campaign Financing (1992)

Money and Politics in the Golden State: Financing California's Local Elections, California Commission on Campaign Financing (1989)

Money and Politics in Local Elections: The Los Angeles Area, California Commission on Campaign Financing (1989)

The California Channel: A New Public Affairs Television Network for the State, Tracy Westen and Beth Givens (1989)

Update to the New Gold Rush, California Commission on Campaign Financing (1987)

The New Gold Rush: Financing California's Legislative Campaigns, California Commission on Campaign Financing (1985)

Media Projects

Video Voter: A new system of interactive video information on candidates in federal, state and local elections (2001-present) (www.videovoter.org).

CalHealthReform.org: A joint project of the California HealthCare Foundation and the Center for Governmental Studies. Tracks health legislation online (www.calhealthreform.org).

HealthVote.org: A joint project of the California HealthCare Foundation and the Center for Governmental Studies. Provides non-partisan, detailed information about health-related measures on California's ballots (www.healthvote.org).

PolicyArchive.Net: A new web-based archive of public policy research (2002-present).

ConnectLA: A bi-lingual, web-based system of information and services for low-income users and communities of color (1998-present) (www.ConnectLA.org).

Digital Democracy: An email-based system of communication between citizens and elected officials on public policy issues (2002-present) (see www.cgs.org).

The Democracy Network: An interactive web-based system of political information for elections in California and other states (1996-2000) (www.dnet.org).

The Democracy Network: An interactive video-on-demand system of candidate information on Time-Warner's Full Service Network in Orlando, Florida (1996).

City Access: Report on the Design of a New Interactive System of Local Government (1995).

The California Channel: A satellite-fed, cable television network providing over six million California homes with gavel-to-gavel coverage of the state legislature (1989-1993) (www.CalChannel.com).

CGS has published dozens of major books and reports on campaign finance, political and media reform. Most of the reports can be downloaded from the CGS website, www.cgs.org or ordered by calling the Center for Governmental Studies, (310) 470-6590.

TERMED OUT

Reforming California's Legislative Term Limits



Termed Out analyzes California's 17 year experiment with term limits, concludes that term limits have had both strengths and weaknesses, and recommends reforms to improve legislators' expertise and executive agency oversight without curtailing opportunities for entry by new candidates.

Termed Out finds that California's legislative term limits have:

- Improved opportunities for candidates from underrepresented groups to enter the legislature.
- Opened additional legislative leadership opportunities for women.
- Diminished legislative experience by about one and a half years in the Assembly and over two years in the Senate.
- Allowed the legislature to uphold the quality of its legislation and public policy.

Termed Out also analyzes the impacts of a new ballot initiative that would allow legislators to serve up to 12 years in a single chamber or divided between both chambers. It finds:

- Legislators will build up more expertise in one chamber throughout their careers.
- Lawmakers will improve their oversight of administrative agencies and the executive branch.
- Newcomers will have fewer opportunities to enter the legislature.
- Three incumbent Assemblymembers and 38 Senators will be able to extend their terms beyond the proposed 12 year limit on legislative service.

Termed Out concludes that while California's current term limits are not significantly dysfunctional, a 12 year limit on total service will strengthen legislative expertise while maintaining significant opportunities for entry by new candidates.



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