

# Citizen Legislators or Political Musical Chairs: *Term Limits in California*



| by Ava Alexandar



CENTER *for* GOVERNMENTAL STUDIES

# Citizen Legislators or Political Musical Chairs?

*Term Limits in California*

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## Foreword:

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*Citizen Legislators or Political Musical Chairs? Term Limits in California* is the second Center for Governmental Studies (CGS) study of term limits in four years. The first CGS report, *Termed Out: Reforming California's Legislative Term Limits* (2007), concluded that California's 17-year experiment with term limits had accelerated the rate of increase of minority representation in the state legislature but decreased legislative expertise and oversight of the executive branch and administrative agencies. *Termed Out* also analyzed California Proposition 93 on the February 2008 ballot. That measure, subsequently defeated at the polls by California voters, would have allowed legislators to serve 12 years in either or both houses of the legislature, but it would have permitted many incumbent legislators to extend their time in office.

This second report on term limits attempts to answer a fundamental question: Have California's legislative term limits stimulated the election of "citizen legislators," as the proponents of term limits hoped, or simply encouraged incumbent politicians to play "political musical chairs" and move from the state legislature to other federal, state and local offices after being termed out? To answer this question, *Citizen Legislators* draws on original data, reviews academic literature and analyzes the impact of term limits on the composition and experience of the California legislature in a number of important categories, including gender, race, education, age, professional experience and expertise. It also reviews additional research on legislative-executive balance of power and lobbyist influence.

*Citizen Legislators* provides useful information for voters to assess a new California ballot initiative that has qualified for the statewide ballot and will, if approved by the voters, modify California's current term limits. This measure will appear on the 2012 ballot or sooner if the governor calls a special election in 2011.

The report is one in a series of more than 75 CGS books and publications on governance issues in California and other states. These analyses propose reforms in a broad range of areas, including campaign finance, ballot initiatives, redistricting, term limits, electoral systems and voter information.

Ava Alexandar, CGS Project Manager, principally researched and authored this report. She is also principal investigator on a research project for The Pew Charitable Trusts, which is analyzing the election information content of the websites of the 50 states and the District of Columbia (forthcoming 2011 publication). She also managed, wrote and edited content for Healthvote.org, created by CGS in partnership with the California HealthCare Foundation. Before CGS, Ms. Alexandar was a Public Affairs Specialist for the U.S. Department of Agriculture and an intern for U.S. Senator Tim Johnson of South Dakota and for the White House. She received her M.P.A from New York University and her B.A. in Political Science from UCLA.

CGS Chief Executive Officer Tracy Westen and CGS President Bob Stern provided substantive suggestions and editorial comments. Smart Art and Design, Inc., created the graphic cover design. Stacey Kam provided the design layout.

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.

CGS thanks the James Irvine Foundation for the generous support that made this report possible. The judgments and conclusions reached in this report are those of the author and CGS staff, however, and are not necessarily those of the James Irvine Foundation, the CGS Board of Directors, the interviewees or any other individual or agency.

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CENTER *for* GOVERNMENTAL STUDIES



10951 West Pico Boulevard, Suite 120  
Los Angeles, California 90064-2184  
Phone (310) 470-6590  
Fax (310) 475-3752  
[www.cgs.org](http://www.cgs.org)  
[center@cgs.org](mailto:center@cgs.org)

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## EXECUTIVE SUMMARY :

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Californians are poised once again to revisit term limits. Adopted by ballot initiative in 1990, California's term limits are among the strictest in the nation. State legislators are allowed to serve only six years in the Assembly and eight in the Senate for a potential maximum of 14 years in the legislature. Once legislators have served these terms, they are barred for life from returning to the state legislature.<sup>1</sup>

In 2008, voters decisively rejected a reform measure on the ballot that sought to soften these limits. The measure proposed to allow legislators to serve 12 years in either the Assembly or Senate, and it included a provision that permitted certain incumbents and legislative leaders to serve even longer.

Labor and business groups have now qualified another term limits initiative for the statewide ballot. It would also allow legislators to serve 12 years in either the Assembly or Senate, but unlike the 2008 measure, it would not allow current members to extend their terms in office. This measure will appear on the statewide ballot in 2012, or sooner if the governor calls a special election in 2011.

The growth of term limits is one of the most significant and far reaching changes in the American legislative process. The primary goal of the term limits movement was to create a "citizen legislature" of members who would presumably be more closely in touch with the electorate than a "professional legislature of career politicians." Term limits thus sought to shorten the terms of "professional legislators," provide more opportunities for "average citizens" to serve in the legislature and then allow them to return to the private sector.

Term limits have not realized this goal in California. Instead, the state has witnessed an enhanced form of political musical chairs, in which termed out state legislators simply move to other state or local political offices. Indeed, politicians are now moving faster and faster to the music, shifting their political offices to keep up with the pace of politics in California's post term limits world and continue to serve in public office.

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<sup>1</sup>The state legislatures of Arkansas and Michigan have the same lifetime ban after serving six years in the lower house and 8 years in the upper house.



This report analyzes the impact of term limits on California's pre- and post-term limit legislatures. Key findings include:

- **Gender** – Term limits by itself did not increase the number of women in the California state legislature. By comparison, California's congressional delegation, which did not have term limits, witnessed greater gains in gender diversity than did the term limited state legislature. While there are now more women in California's state legislature after term limits, those increases cannot solely be attributed to term limits.
- **Race** – Redistricting in the 1990s was the primary force stimulating greater racial diversity in the state legislature, but term limits accelerated legislative turnover, which in turn allowed a more racially diverse legislature to emerge more quickly.
- **Educational Diversity** – The legislature has grown in educational diversity. While term limits did not cause this directly, term limits have accelerated opportunities for new members with more diverse educational skills to join the legislative chamber.
- **Age** – The median age in the entire legislature was 57 years of age in both 1990 and in 2010. What has shrunk, however, is the range and diversity of legislators' ages. Over the past 20 years, the number of members in their fifties and sixties has significantly increased, while the number of younger members in their twenties and thirties and older members in their seventies and eighties has decreased.
- **Legislative Experience** – Members today have less state legislative experience than pre-term limits, which has produced a legislature that is more dependent on the expertise of lobbyists and staff and weaker in its relationships with the executive branch.
- **Post Legislative Careers** – Members in 2008 are just as likely to seek other public sector jobs after they leave the legislature as did their 1980s and 1990 counter-parts.

Most termed out legislators do not beat their political spears into plowshares and return to the civilian sector. Instead, they simply seek other positions in the political arena. Although term limits have encouraged more individuals to run for California elected offices, once there, they tend to remain and, when termed out, pursue other elected or appointed political offices. This form of political musical chairs has diminished the expertise of the legislature, but it has encouraged termed out legislators to take their experience to other government positions. Term limits, in other words, have converted the state legislature into a "farm team" of potential candidates for other public offices.

### HISTORY AND PHILOSOPHICAL UNDERPINNINGS

The debate over how best to represent the will of the people in a democracy dates back to the origins of democratic government itself, and the concept of placing limits on the time elected representatives serve in office has been an important part of that debate. Ancient Athenian officials and their Roman counterparts were allowed to serve for only one year.<sup>1</sup> Over two thousand years later, America’s Founding Fathers included term limits in the Articles of Confederation.<sup>2</sup> Although they did not subsequently include such limits in the U.S. Constitution, Thomas Jefferson<sup>3</sup> had called for term limits in 1789 “to prevent every danger which might arise to American freedom by continuing too long in office the members of the Continental Congress . . . ,”<sup>4</sup> and George Washington put term limits

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***America’s Founding Fathers included term limits in the Articles of Confederation.***

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into practice by voluntarily stepping down after only two terms as president in 1797. The 22<sup>nd</sup> Amendment to the Constitution, which imposed a limit of two four-year terms on the office of the President, was not ratified until 1951.

This ancient debate has continued—indeed intensified—into the 21st century: Who can better represent the people: “career legislators,” who understand the legislative process and have developed in-depth policy expertise over time, or “citizen legislators,” who temporarily leave their private lives to serve, with an understanding of the perspectives, problems and lives of the average person, and then promptly return to their former occupations, leaving room for other citizens to step forward?

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<sup>1</sup>Altman, Alex, *A Brief History of Term Limits*. Time Magazine October 3, 2008. <http://www.time.com/time/nation/article/0,8599,1846988,00.html>

<sup>2</sup>“No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.” *The Articles of Confederation*, Article V, Agreed to by Congress November 15, 1777; ratified and in force, March 1, 1781.

<sup>3</sup>Jefferson also said, “(t)he second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the Constitution permits it.” Thomas Jefferson’s letter to James Madison, December 20, 1787. <http://etext.virginia.edu/jefferson/biog/lj21.htm>.

<sup>4</sup>Jefferson, Thomas, *The Papers of Thomas Jefferson*, ed. Julian F. Boyd, et al., Princeton, N.J.: Princeton University Press, 1950, 1:411.

In the late 1980s, the growing concern of some reformers about who could best represent the people sparked a movement for term limits. The proponents of term limits argued that lengthy legislative service created “career politicians,” thwarted diversity and strengthened special interests. Proponents viewed legislators not as public servants but entrenched officials, serving their own interests and striving to stay in the legislature for decades. Instead, reformers envisioned “citizen legislators,” who would enter office with fresh ideas,

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***The proponents of California’s term limits argued that lengthy legislative service created “career politicians,” thwarted diversity and strengthened special interests.***

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beholden to no one, and then, after a few years in the legislature, would return to the private sector.<sup>5</sup> Reformers believed term limits would create a more diverse legislature, one that better reflected the

demographics of a complex state. They argued that legislatures needed fresh ideas, and that long-time legislators would inevitably become stale and unrepresentative.

Opponents of term limits argued that the voters have a right to elect whomever they want, and keep them however long they elected them, regardless of the number of terms a politician has served. They warned that term limits would deny voters the right to re-elect effective legislators and would thwart the ideals of majority rule and representative government. They feared term limits would create a legislature of inexperienced office-holders, who would of necessity have to rely on special interests or legislative staff for expertise. These opponents argued that the vision of citizen legislators serving short terms and “returning home” was naïve, and that term limits would simply encourage career politicians to seek other offices. Some contended that term limits were a political ploy by conservatives, who hoped eventually to impose term limits on Congress and break the 40 year Democratic lock on majority status in the U.S. House of Representatives.<sup>6</sup> There is some evidence that this was the case, since the term limits movement all but died following the U.S. Supreme Court’s 1995 decision in *U.S. Term Limits, Inc. v. Thornton*, which held unconstitutional the imposition of term limits on members of the House of Representatives.<sup>7</sup>

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<sup>5</sup>Some proponent ballot measure arguments, such as “create more competitive elections, so good legislators will always have the opportunity to move up the ladder,” implied that proponents do not oppose “professional politicians.”

<sup>6</sup>The Democratic Party maintained majority control of the House of Representatives from 1933-1995, with the exception of the 80<sup>th</sup> Congress (1947-1949) and 83<sup>rd</sup> Congress (1953-1955). Between 1995 and 2011 control of the House of Representatives has shifted between the Republican and Democratic Parties. The Republican Party maintained of the House from 1995 to 2007 and regained control again in 2011.

<sup>7</sup>Prior to the Supreme Court’s decision in *U.S. Term Limits, Inc., v. Thornton*, 514 U.S. 780, eighteen states enacted term limits, but only three states enacted term limits (1996, 1998 and 2000) after *Thornton*.

In 1990, California voters approved state legislative term limits and adopted a ballot initiative, Proposition 140. Written to become effective no sooner than 1996, the measure banned state legislators from serving more than a total of fourteen years in the state legislature—no more than three two-year terms in the Assembly (six years) and two four-year terms in the state Senate (eight years). In 2012, or in 2011 if Governor Brown calls a special election to address California’s budget problems, a new ballot measure, which has already qualified for the next statewide ballot, will ask voters whether they want to alter the state’s existing term limits—the third such ballot measure since 1990.<sup>8</sup>

This report presents new CGS research that examines the impact of California’s legislative term limits on the gender and race of its members, as well as their age, educational diversity, legislative experience and post legislative careers. It seeks, in short, to determine whether term limits have met the reformers’ goal of creating a “citizens’ legislature.”

## TERM LIMITS IN THE UNITED STATES

California, Colorado and Oklahoma led the term limits movement, each enacting laws in 1990. Eighteen states followed: Arizona, Arkansas, Florida, Idaho, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, Ohio, Oregon, South Dakota, Utah, Washington and Wyoming. At the peak of the term limits movement,

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21 states had passed term limit reform  
measures affecting their state legislatures.***

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21 states had passed term limit reform measures affecting their state legislatures.

Citizen ballot initiatives enacted most of these laws by amending

state statutes or constitutions. Since then, six states, Idaho, Massachusetts, Oregon, Utah, Washington and Wyoming, have rescinded their term limit laws by court opinion or legislative statute.

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<sup>8</sup>Propositions 45 (2002) and 93 (2008) unsuccessfully attempted to amend California’s term limits law.

TABLE 1. Term Limits in the United States

State	Enacted	House	In Effect	Senate	In Effect	Type	Constitutional/ Statutory	Status
Arizona	1992	8	2000	8	2000	Consecutive	Constitutional	In Effect
Arkansas	1992	6	1998	8	2000	Lifetime	Constitutional	In Effect
California	1990	6	1996	8	1998	Lifetime	Constitutional	In Effect
Colorado	1990	8	1998	8	1998	Consecutive	Constitutional	In Effect
Florida	1992	8	2000	8	2000	Consecutive	Constitutional	In Effect
Idaho	1998						Statutory	Legislature Repealed
Louisiana	1995	12	2007	12	2007	Consecutive	Constitutional	In Effect
Maine	1993	8	1996	8	1996	Consecutive	Statutory	In Effect
Massachusetts	1994						Statutory	Overturned
Michigan	1992	6	1998	8	2002	Lifetime	Constitutional	In Effect
Missouri	1992	8	2002	8	2002	Lifetime	Constitutional	In Effect
Montana	1992	8	2000	8	2000	Consecutive	Constitutional	In Effect
Nebraska*	2000	na	na	8	2006	Consecutive	Constitutional	In Effect
Nevada	1996	12	2010	12	2010	Lifetime	Constitutional	In Effect
Ohio	1992	8	2000	8	2000	Consecutive	Constitutional	In Effect
Oklahoma	1990	12	2004	12	2004	Lifetime	Constitutional	In Effect
Oregon**	1990						Constitutional	Overturned
South Dakota	1992	8	2000	8	2000	Consecutive	Constitutional	In Effect
Utah	1994						Statutory	Legislature Repealed
Washington	1992						Statutory	Overturned
Wyoming	1992						Statutory	Overturned

\*Unicameral government.

\*\*Violated single subject rule.

Data collected from *"Institutional Change in American Politics: The Case of Term Limits."*  
Edited by Kurtz, Cain, and Niemi and *Ballotpedia*.

Lifetime bans also include bans on consecutive services after a proscribed number of terms.

Table 1 shows the states that have enacted term limit laws, the year they adopted them, the number of years legislators may serve, the year term limits became effective, the type of law passed and whether the law is currently in effect.

Term limit laws have taken two forms. Some ban legislators from serving more than a prescribed number of consecutive terms, but they allow politicians to return to the legislature after the lapse of a specific time period. Others, including California's law, impose a lifetime ban on legislators, preventing them from ever returning to the legislature again after they have served their prescribed number of terms. As Table 1 shows, nine states allow legislators to return to legislative service after a period of time out of the legislature, and five states currently impose a lifetime ban.

## IMPACT ON STATE LEGISLATURES: STATE-BY-STATE

A primary goal of term limits is to increase competition for legislative seats by forcing incumbent legislators to vacate their seats. As Table 2 illustrates, over 2,200 legislators in 16 states have been termed out of specific legislative offices since term limit laws were

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first passed in 1990.<sup>9</sup>

***California has termed out 241 members of the legislature since the law went into effect in 1996.***

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The median number of legislators termed out during each two-year period—there have been 9 such periods from 1996-2010—was 268,

and the average was 260. The median number of legislators termed out of specific individual offices per state in 16 states across the nation between 1996 and 2010 was 128.

Michigan has had the highest turnover, terming out over 300 legislators starting in 1998, while Nevada had the lowest level of turnover, terming out just 17 legislators. Nevada enacted its term limits law in 1996; however, it did not begin terming out members until 2010. California has termed out 241 members of the legislature since the law went into effect in 1996.

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<sup>9</sup>Oregon termed out 46 members before a court overturned its term limits law.

**TABLE 2. Termed Out Legislators**

State	1996	1998	2000	2002	2004	2006	2007	2008	2010	Total Termed Out Members
Arizona			22	15	7	6		9	23	82
Arkansas		48	38	25	36	30		32	47	256
California	35	27	27	27	26	38		34	27	241
Colorado		27	21	12	12	15		15	12	114
Florida			66	26	7	24		33	31	187
Louisiana							60			60
Maine	30	12	24	36	28	20		21	25	196
Michigan		64	21	50	37	29		44	63	308
Missouri		1	8	85	25	13		25	62	219
Montana			47	22	16	21		27	30	163
Nebraska						20		13	1	34
Nevada									17	17
Ohio			51	13	12	21		25	20	142
Oklahoma					41	22		12	10	85
Oregon		24	22							46
S. Dakota			33	11	10	9		19	12	94
<b>TOTAL</b>	<b>65</b>	<b>203</b>	<b>380</b>	<b>322</b>	<b>257</b>	<b>268</b>	<b>60</b>	<b>309</b>	<b>380</b>	<b>2,244</b>

Data collected from National Conference of State Legislatures. <http://www.ncsl.org/default.aspx?tabid=14842>.

Louisiana's law took effect in 2007, Nevada's law took effect in 2010.

Oregon term limits law was overturned in 2002. In Idaho, Massachusetts Utah, Washington and Wyoming, term limits laws were overturned or repealed before legislative members were termed out.

Table does not include members that left due to early retirement or early removal from office.

## PUBLIC OPINION

Voter support for term limits can be seen in the 19 states that enacted citizen-initiated ballot measures to limit legislative terms and in repeated public opinion polls.<sup>10</sup> Yet despite California voters' continued support for strict term limits in two elections since 1990 (2002 and 2008), recent polls show public opinion toward the California legislature has fallen to new lows. Voters currently look more favorably on the job performance of their non-term limited congressional officeholders than the job performance of their term-limited state legislature. According to polls conducted in March of 2011 by the Public Policy Institute of California (PPIC), 30% of Californians approved of the "way that the U.S. Congress (was) handling its job."<sup>11</sup> During the same time period, however, 24% of Californians<sup>12</sup> approved of the "way that the California Legislature was handling its job."<sup>13</sup>

## JUDICIAL OPINIONS

The courts have reviewed many term limit legal challenges since 1990. Some courts have upheld the laws, while others have invalidated them. In each state where a term limits law was overturned, the law was statutory rather than constitutional, with the exception of Oregon. California's term limits law, a constitutional amendment, was challenged in court

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***California's term limits law, a constitutional amendment, was challenged in court but ultimately upheld by the U.S. Ninth Circuit Court of Appeals.***

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but ultimately upheld by the U.S. Ninth Circuit Court of Appeals. (California's term limit challenges are discussed in more detail in the next section.)

Four state supreme courts have invalidated voter-enacted term limits laws. In 1994, Massachusetts voters narrowly passed Question 4,<sup>14</sup> which limited members of the state legislature to eight years in the upper house and eight years in the lower house. "Rather than directly imposing term limits, the law . . . prevented elected officials who had served eight years from having their names on

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<sup>10</sup>Quinnipiac University in Hamden, CT, has conducted polls in several states over the last few years. They show that voters consistently favor some form of term limits for political office. See, e.g., Quinnipiac University Polls Press Releases, for New York, October 21, 2008 (at <http://www.quinnipiac.edu/x1302.xml?ReleaseID=1222>); Florida, April 15, 2009, (at <http://www.quinnipiac.edu/x1297.xml?ReleaseID=1286>); and Pennsylvania, May 30, 2007 (at <http://www.quinnipiac.edu/x1297.xml?ReleaseID=1286>).

<sup>11</sup>NBC/*Wall Street Journal* poll." PPIC Statewide Survey, *Californians and their Government*, 2010.

<sup>12</sup>Public opinion can shift during short time periods, for example, the PPIC poll in the Spring of 2010 found that about 31% of Californians approved of the performance of the United States Congress compared to just 16% that approved of the state legislature.

<sup>13</sup>PPIC, *Time Trends: Job Approval Ratings for U.S. Congress* (updated on 3/23/2011) and *Time Trends: Job Approval Ratings for California State Legislature* (updated on 3/23/2011) <http://www.ppic.org/main/dataset.asp?i=927>

<sup>14</sup>*Massachusetts Elections Statistics 1994*. Public Document No. 43, Massachusetts Secretary of the Commonwealth, Elections Division.



the ballot and from being paid if they got re-elected through a write-in campaign.”<sup>15</sup> The Supreme Judicial Court of Massachusetts unanimously ruled that an initiative statute could not amend the Massachusetts Constitution.<sup>16</sup>

Like Massachusetts, high courts in Wyoming and Washington invalidated voter initiated term limits. Wyoming voters passed term limits in 1992 with 77% of the vote.<sup>17</sup> Before any Wyoming legislators were actually termed out, Wyoming’s Supreme Court ruled, in *Cathcart v. Meyer*, that the term limits law was unconstitutional because it improperly attempted to amend the state constitution.<sup>18</sup> Likewise, in 1992, Washington voters passed Initiative 573 with 52.4% of the vote.<sup>19</sup> Washington’s State Supreme Court subsequently ruled that initiative statutes<sup>20</sup> could not amend the state constitution.<sup>21</sup>

In 1992, voters passed Oregon’s Measure 3, a constitutional amendment that restricted both state and federal legislators to eight years in the upper house and six years in the lower house.<sup>22</sup> In 2002, Oregon’s Supreme Court invalidated Measure 3 because it violated the State Constitution’s single subject rule.<sup>23</sup>

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***The United States Supreme Court nullified federal term limit laws in 23 states that had imposed them on members of Congress with the Thornton decision.***

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In 1995, the United States Supreme Court struck down the portion of the Oregon measure that affected members of Congress. In *U.S. Term Limits, Inc. v. Thornton*, the Court found that the “state lacked authority to impose restrictions on the qualifications

for federal office.”<sup>24</sup> The United States Supreme Court nullified federal term limit laws in 23 states that had imposed them on members of Congress with the *Thornton* decision.<sup>25</sup> In the 5-4 decision, Justice John Paul Stevens, writing for the majority, said, “Permitting individual States to formulate diverse qualifications for their congressional representatives would result in a patchwork that would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States.”<sup>26</sup>

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<sup>15</sup>Rimer, Sara, *Top Massachusetts Court Overturns Term Limits*. New York Times. July 12, 1997.

<sup>16</sup>*League of Women Voters of Massachusetts v. Secretary of the Commonwealth*, 425 Mass. 424 (1997)

<sup>17</sup>Wyoming Secretary of State, *Official Vote – General Election, November 3, 1992*.

<sup>18</sup>*Cathcart v. Meyer* 88 P.3d 1050 (Wyo. 2004).

<sup>19</sup>Washington Secretary of State, *Elections and Voting*,

[http://www.sos.wa.gov/elections/results\\_report.aspx?e=3&c=&c2=&t=&t2=&p=&p2=573&y=](http://www.sos.wa.gov/elections/results_report.aspx?e=3&c=&c2=&t=&t2=&p=&p2=573&y=)

<sup>20</sup>Initiative 573 was not a constitutional amendment.

<sup>21</sup>*Gerberding v. Munro*, 134 Wash. 2d 188, 210, 949 P.2d 1366, 1377 (1998)

<sup>22</sup>*Statement of the Vote. State Measures*, Oregon Secretary of State, 1992.

<sup>23</sup>*Lehman v. Bradbury*, 333 Or. 231, 37 P.3d 989 (2002).

<sup>24</sup>*U.S. Term Limits, Inc., v. Thornton*, 514 U.S. at 780.

<sup>25</sup>Alaska and North Dakota passed term limits laws on their federal legislative candidates, but not on their state legislative candidates. Richardson, Sula, *Term Limits for Members of Congress: State Activity*. CRS Report for Congress. <http://congressionalresearch.com/96-152/document.php?study=Term+Limits+for+Members+of+Congress+State+Activity>

<sup>26</sup>*U.S. Term Limits, Inc., et al. v. Thornton et al.* 1994. 514 U.S. 779, 780 (1995).

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## TERM LIMITS IN CALIFORNIA

### HISTORY

California was an early leader in the term limits movement, adopting its law in 1990. Since then, California's term limits law and its supporters have successfully rebuffed several challenges in the courts and at the ballot box. As a result, 241 California legislators have exhausted the number of years that they may serve in the state legislature. The debate, however, is not over. Californians will vote on another ballot initiative seeking to soften term limits. The measure has qualified for the ballot in the next statewide election.

#### Adopted in 1990

In 1990, reformers put a term limits constitutional amendment (Proposition 140) on the November California ballot.<sup>27</sup> They called for an end to a “system that created a tiny elite

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***California legislators are barred from serving more than three two-year terms in the Assembly and two four-year terms in the Senate, and they are subject to a lifetime ban after serving those terms.***

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[of legislators] with almost limitless power over the lives of California tax payers and consumers.”<sup>28</sup> California voters approved the measure with 52% of the vote<sup>29</sup> putting in place one of the strictest legislative term limits laws in the nation. Under its provisions, California legislators are barred from serving more than three two-year terms in the Assembly and two four-year terms in the Senate, and they are subject to a lifetime ban after serving those terms.

In 1990, the proponents of Proposition 140 argued, in the California Voter Guide, that passage of the measure would:

- *“reform the political system that has created a legislature of career politicians in California...*
- *“limit State Senators to two terms (eight years); limit Assembly members to three terms (six years); limit the Governor and other elected constitutional officers to two terms (eight years)...*

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<sup>27</sup> Proposition 140 also reduced the amount of funds legislators could spend on personal office expenses and legislative staffers, and ended pensions for legislators.

<sup>28</sup> California Secretary of State, *1990 California Secretary of State's Voter Information Guide*. Pg. 70.

<sup>29</sup> California Secretary of State, *Statement of Vote, General Election, November 6 1990*. <http://www.sos.ca.gov/elections/sov/1990-general/1990-general-sov.pdf>

## CITIZEN LEGISLATORS OR POLITICAL MUSICAL CHAIRS?

- *“create more competitive elections, so good legislators will always have the opportunity to move up the ladder...*
- *“end the ingrown, political nature of both houses...*
- *“remove the grip that vested interests have over the legislature...*
- *“end life-time legislators, who have developed cozy relationships with special interests...*
- *“remove the Speaker’s cronies...put an end to the Sacramento web of special favors and patronage...*
- *“end the reign of the Legislature’s powerful officers...*
- *“put an end to a system that make incumbents a special class of citizen...*
- *“restore true democracy...*
- *“give you [voters] real choices of candidates...*
- *“open up the political system...*
- *“cut the ties between corrupting special interest money and long-term legislators”<sup>30</sup>*

Opponents of Proposition 140 argued, among other things, that it would:

- *“take away your right to choose our legislators...*
- *“[not] tell you that 140 is a lifetime ban...*
- *“[be a] blatant power grab by Los Angeles contributors and lobbyists...*
- *“[serve] no need . . . [t]he vast majority of the Legislature already serves less than 10 years...*
- *“upset the system of checks and balances...*
- *“force representatives to become even more dependent on entrenched bureaucrats and shrewd lobbyists...”<sup>31</sup>*

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<sup>30</sup>California Secretary of State, *California Ballot Pamphlet General Election*, November 6, 1990, p. 70-71.

<sup>31</sup>Ibid.

After Proposition 140 was enacted, California Assemblyman Tom Bates (D-Berkeley) and others challenged it in U.S. District Court, claiming that Proposition 140's lifetime limits violated the federal constitution. One of the plaintiffs, Assemblywoman Martha Escutia (D-Los Angeles), testified that, "[f]rom her observation, legislators serving their final term became less effective because people dealing with them knew that they would soon be gone. She therefore fear[ed] that term limits will strengthen lobbyists and the executive branch at the expense of the legislature . . . [and that] term limits impede the formation of experienced minority leadership."<sup>32</sup>

"Bates testified that term limits are detrimental to the ability of legislators to represent their constituents effectively. According to Bates, it takes time for legislators to become familiar with their own districts and to develop areas of expertise. He believes that, as legislators gain expertise, their dependence upon lobbyists and executive branch agencies diminishes."<sup>33</sup> Bates also asserted that the language of the ballot measure was not sufficiently clear, and that voters did not realize that they were placing a lifetime ban on legislators once they were termed out. U.S. District Court Judge Claudia Wilken sided with Bates. She ruled that voters were unaware that they were imposing lifetime limits and blocked the implementation of Proposition 140.

The Ninth Circuit Court of Appeals overturned the lower court's ruling in *Bates v. Jones* (December 1997). Writing for the court, Judge David R. Thompson declared:

*[L]ifetime term limits do not constitute a discriminatory restriction. Proposition 140 makes no distinction on the basis of the content of protected expression, party affiliation or inherently arbitrary factors such as race, religion or gender . . . . Term limits, like any other qualification for office, unquestionably restrict the ability of voters to vote for whom they wish. On the other hand, such limits may provide for the infusion of fresh ideas and new perspectives, and may decrease the likelihood that representatives will lose touch with their constituents.*<sup>34</sup>

## Extension Rejected in 2002

In 2002, California State Senate President Pro Tem John Burton became the driving force in placing Proposition 45 on the ballot. Proposition 45 was a constitutional initiative that would have allowed termed out legislators to serve a maximum of four additional years in office if voters from their legislative districts submitted a petition seeking to place the

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<sup>32</sup>Bates v. Jones, 958 F.Supp. 1446, 1457 (ND CA 1997).

<sup>33</sup>Ibid.

<sup>34</sup>Bates v. Jones, 131 F. 3d 843, 847, (9th Cir. 1997).

legislator's name on the ballot. This option could only be utilized once per legislator.<sup>35</sup> The proponents of Proposition 45 argued that it would “empower the people with the option of keeping their own representative.”<sup>36</sup> Opponents argued that it would “destroy term limits in California, and allow career politicians and their powerful special interest allied to expand their stranglehold on power in Sacramento.”<sup>37</sup> California voters rejected Proposition 45 by 58% to 42%.<sup>38</sup>

### Modification Rejected in 2008

In 2008, many California Democratic legislators supported an initiative that again sought to change term limits. Proposition 93 (the “Term Limits and Legislative Reform Act”), on the February 2008 ballot, sought to reduce the total number of years that members could serve from 14 to 12, but it allowed members to serve all 12 years in either the California State Senate or Assembly. Proposition 93, however, also “reset the clock” on existing members to allow them to remain in the legislature for an additional four to six years. “For example, a legislator who joined the Senate after spending six years in the Assembly, would not be termed out until he or she reach[e] 12 years in the Senate, a total of 18 years served. Individuals that enter[ed] the legislature after 2008 and those who move[d] to the other chamber after 2008 [were] unaffected by the provision.”<sup>39</sup>

Proponents for Proposition 93 said it would create “a reasonable balance between the need to elect new people with fresh ideas, and the need for experienced legislators with the knowledge and expertise to solve the complex problems facing our state.”<sup>40</sup> The California Teachers Association, AFSCME, Speaker Fabian Nunez, future Speaker Karen Bass and many other members of the Democratic caucus strongly supported Proposition 93. Republican Governor Arnold Schwarzenegger reversed his initial stance on term limits a month before the election and wrote in a *Los Angeles Times* opinion piece, “Under the current system, our elected officials are not given the time they need to reach their full potential as public servants . . . Imagine what would happen if we told a big-city police chief or a sheriff he could stay in the job just long enough to start mastering it and then had to move on.”<sup>41</sup>

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<sup>35</sup>California Secretary of State, *California Primary Election Tuesday, March 5, 2002, Official Voter Information Guide*. [http://www.sos.ca.gov/elections/viguide\\_pe02/bp\\_pe02.pdf](http://www.sos.ca.gov/elections/viguide_pe02/bp_pe02.pdf), p. 27.

<sup>36</sup>California Secretary of State, *California Primary Election Tuesday, March 5, 2002, Official Voter Information Guide*. [http://www.sos.ca.gov/elections/viguide\\_pe02/bp\\_pe02.pdf](http://www.sos.ca.gov/elections/viguide_pe02/bp_pe02.pdf), p. 28.

<sup>37</sup>Ibid.

<sup>38</sup>California Secretary of State, *Statewide Measures Submitted to a Vote of Voters*. [http://www.sos.ca.gov/elections/sov/2002\\_primary/measures.pdf](http://www.sos.ca.gov/elections/sov/2002_primary/measures.pdf)

<sup>39</sup>Horowitz, Sasha, *Termed Out: Reforming California's Legislative Term Limits*, Center for Governmental Studies, Los Angeles, 2007, p. 8.

<sup>40</sup>California Secretary of State, *California Presidential Primary Election Official Voter Information Guide*, p. 20.

<sup>41</sup>Schwarzenegger, Arnold, *Reform Term Limits*. *Los Angeles Times*, January 15, 2008, <http://articles.latimes.com/2008/jan/15/news/OE-SCHWARZENEGGER15>

Critics decried Proposition 93 as a “Trojan Horse,” because it included a grandfather clause that allowed current Assembly members to extend their service by an additional six years and Senate members to extend their terms by an additional four years, all the while claiming to be a “term limits” measure. The official ballot argument opposing the measure declared, “(i)t is intentionally deceptive because it claims to toughen term limits when it would in fact cripple term limits.”<sup>42</sup> “[O]pponents, led by Insurance Commissioner Steve Poizner, say the measure is a trick and a power grab . . . [that] provides a transition period that would give current office holders a windfall term extension of up to 12 years in their current legislative house.”<sup>43</sup> U.S. Term Limits, Howard Jarvis Taxpayers Association, the California Republican Party and former California Governor Pete Wilson opposed the measure.

Newspaper editorials across the state split. Field Polls showed that likely voters significantly supported Proposition 93 early in the campaign. In August 2007, 59% of the public supported the measure, while just 30% opposed it. That support was soft, however, and on February 5, 2008, California voters rejected Proposition 93 by a 54% to 46% margin.<sup>44</sup>

#### Modification Proposed for 2011 or 2012

In 2009, the law firm of Olson, Hagel & Fishburn submitted a proposed ballot initiative, the “California Legislative Term Limits Reform Act of 2010,” to the California Attorney General for captioning on behalf of Los Angeles Chamber of Commerce and Los Angeles Labor Federation. The measure has qualified for the ballot, and despite the date in the measure’s title, it is scheduled to appear on the ballot during the next statewide election—probably June 2012, although it will appear on a 2011 ballot if the governor calls a special election before the end of this year.

Like Proposition 93 in 2008, this measure seeks to reduce the total number of years legislators can serve in the state legislature—from 14 to 12 years—but it would allow them to serve the full 12 years in either chamber. The only substantive difference between the new measure and Proposition 93 in 2008 is that it does not include, as did Proposition 93, a “grandfather clause” to extend the terms of any incumbents. The upcoming measure specifically states that it “shall only apply to those Members of the Senate or the Assembly first elected to the Legislature *after the effective date* of this subdivision and who have not previously served in the Senate or Assembly.”<sup>45</sup>

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<sup>42</sup>California Secretary of State, *California Presidential Primary Election Official Voter Information Guide*.

<sup>43</sup>Chorneau, Tom, *Prop. 93 on Feb. 5 Ballot has Two Faces*, San Francisco Chronicle, January 22, 2008.

<sup>44</sup>California Secretary of State, *Supplemental to the Statement of the Vote County Summary*, 2008.

[http://www.sos.ca.gov/elections/sov/2008\\_primary/ssov/ballot\\_measures\\_all.pdf](http://www.sos.ca.gov/elections/sov/2008_primary/ssov/ballot_measures_all.pdf)

<sup>45</sup>California Attorney General, *California Legislative Term Limits Reform Act of 2010*. [http://ag.ca.gov/cms\\_attachments/initiatives/pdfs/i845\\_initiative\\_09-0048\\_\(a1s\).pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i845_initiative_09-0048_(a1s).pdf). (emphasis added).

## IMPACT OF TERM LIMITS ON INDIVIDUAL LEGISLATORS

*The principal difficulty lies, and the greatest care should be employed, in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them.*<sup>46</sup>

John Adams, April 1776

The impact of term limits may be viewed through two lenses: how term limit reforms have affected the characteristics of individual legislators, and how they have affected the legislative chamber as a whole. Characteristics of individual legislators can be defined as their previous elected government experience, private sector employment and demographic characteristics, such as race, gender, education and age. Characteristics of the legislature as a whole can be defined as accumulated expertise over the legislative process, including state budgeting, shifts in the balance of power between the executive

and legislative branches and increases or decreases in lobbyist influence over legislation.

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***The impact of term limits may be viewed through two lenses: how term limit reforms have affected the characteristics of individual legislators, and how they have affected the legislative chamber as a whole.***

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A central goal of the term limits movement has been to replace career politicians with citizen legislators. But have term limits increased the opportunity for citizen legislators to win elected office? To answer that question, we must first define “citizen legislator.” For our purposes, a citizen

legislator is a person from the private sector who has not previously been elected or appointed to a governmental office, and who returns to the private sector after serving in the legislature.

This study analyzes gender, race, age, academic attainment and pre- and post-legislative careers to determine whether members of the California legislators have the characteristics of the citizen legislators envisioned by the reformers. If a “citizens’ legislature,” significantly composed of “citizen legislators,” has emerged, we would expect to find it more ethnically diverse, with more women, more individuals from the private sector, greater variation in educational attainment and a broader range of age groups. We would also expect to see citizen legislators return to the private sector during their post legislative careers. In other words, it should be, in John Adams’ words, “*an exact portrait of the people at large.*”

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<sup>46</sup>Adams, John, Thoughts on Government, Papers 4:86—93, Apr. 1776. [http://press-pubs.uchicago.edu/founders/print\\_documents/v1ch4s5.html](http://press-pubs.uchicago.edu/founders/print_documents/v1ch4s5.html)



This report uses descriptive statistics to analyze California legislator characteristics in 1990, 2008 and 2010. The report selected 1990 (with legislators elected in November 1990) as its “pre-term limits” sample, because this legislative class won their elections before term limits became effective and thus their legislator characteristics (age, gender, race, education) were not affected by term limits. We then compared these 1990 legislators to the classes of 2008 (last elected in November 2004 or 2006) and 2010<sup>47</sup> to determine whether term limits had changed the legislature’s composition. We collected this data in the winter and spring of 2009 and fall of 2010 from several sources, including direct contact with legislators’ offices, Internet web sites and Legislative Handbooks from multiple years.<sup>48</sup>

Since term limits had an impact on the legislative class of 1990, this study also analyzes the post legislative careers of California members who left office during the 1980s prior to the enactment of term limits and members that were termed out in 2008 (last elected in 2004 or 2006) to determine whether they remained in public service. The study reviews academic research on legislative expertise, the shifting balance of power between the legislative and executive branches and lobbyist influence on legislators in term-limited states.

## Gender

Did the forced retirement of sitting state legislators provide opportunities for women to take their places in the California State Legislature? Women remain significantly under-represented in almost all legislative bodies. In California, women have consistently made

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***Although female representation has increased marginally in state legislatures, most of those gains are attributable to factors other than term limits.***

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up slightly over half of the population but remain a smaller portion of the legislature. Although researchers have found that female representation has increased marginally in state legislatures, most of those gains are attributable to factors other than term limits.

At first glance, term limits may seem to have increased female representation in the California legislature. For example, Table 3 shows that between 1990 and 2010, female representation in the California Assembly increased almost 30%, from 20% to 26%. Women made even more significant gains in the State Senate. In 1990, women made up about 13% of the State Senate, but by 2010 women made up about 28% of the State Senate, an increase of about 115% (see Table 4).

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<sup>47</sup>Elected in November 2010.

<sup>48</sup>Since some of the information about legislators is self-reported and/or subject to web site error, inaccuracies in the data are possible.



**TABLE 3. Gender in the California Assembly**

Gender	1990		2008		2010*	
	California Population	State Assembly	California Population	State Assembly	California Population	State Assembly
<b>Female</b>	49.9%	20.3%	50.2%	25.0%	50.1%	26.3%
<b>Male</b>	50.1%	79.8%	49.8%	75.0%	49.9%	73.8%

\*2010 data does not reflect deceased members.

1990 collected from “*Termed Out*” Horwitz, Sasha, Center for Governmental Studies, 2007.

1990 California Gender data from U.S. Census.

**TABLE 4. Gender in the California Senate (Elected 1990, 2008 and 2010)**

Gender	1990		2008		2010*	
	California Population	State Senate	California Population	State Senate	California Population	State Senate
<b>Female</b>	49.9%	13.2%	50.2%	27.5%	50.1%	28.2%
<b>Male</b>	50.1%	86.9%	49.8%	72.5%	49.9%	71.8%

\*2010 data does not reflect deceased members.

1990 and 2008 Senate data collected from “*Termed Out*” Horwitz, Sasha, Center for Governmental Studies, 2007.

1990 California Gender data from U.S. Census.

A comparison of California’s term-limited and non term-limited elected legislators, however, suggests that increases in female representation in the California State Legislature were probably the result of factors other than term limits. We compared California’s non term-limited Congressional House of Representatives delegation to California’s term-limited State Assembly in 1990, 2008, and 2010, to determine if gains in female representation could be attributed to term limits. We selected these two legislative bodies because their elections were held on the same day and subject to the same electorate, political, social, demographic and socio-economic factors.

Table 5 shows that, in 1990, women represented 20.3% of the State Assembly and 6.6% of the California House of Representatives Delegation. By 2010, however, women

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***Female representation in the non term-limited California House of Representative delegation increased by more than 400%.***

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represented 26.3% of the Assembly and 35.8% of the California House of Representatives delegation.

Put another way, female representation in the non term-limited California House of Representative delegation increased by

more than 400% between 1990 and 2010, compared to an increase of about 30% in the term-limited California State Assembly. Based on these statistics, one can conclude that term limits were not responsible for increases in female representation in the California legislature between 1990 and 2010.<sup>49</sup>

**TABLE 5.  
Gender Comparison in the California Assembly  
and California Congressional Delegation**

	Female	Male
<b>CA 1990 Population</b>	49.9%	50.1%
<b>1990 State Assembly (Non-Term Limited)</b>	20.3%	79.8%
<b>1990 California House Delegation (Non-Term Limited)</b>	6.6%	93.4%
<b>CA 2008 Population</b>	50.2%	49.8%
<b>2008 State Assembly (Term-Limited)</b>	25.0%	75.0%
<b>2008 California House Delegation (Non-Term Limited)</b>	38.4%	61.6%
<b>CA 2010 Population</b>	50.1%	49.9%
<b>2010 State Assembly (Term-Limited)</b>	26.3%	73.8%
<b>2010 California House Delegation (Non-Term Limited)</b>	35.8%	64.2%

1990 and 2008 Senate data collected from “*Termed Out*” Horwitz, Sasha, Center for Governmental Studies, 2007.  
 1990 California Gender data from U.S. Census.  
 2010 data does not reflect deceased members.

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<sup>49</sup>In 1990, 33% (1 of 3) of women in the California House of Representatives delegation had former state legislative experience. By 2010, 47% (9 of 19) of the women in the California House of Representatives delegation had former state legislative experience.

California’s experience parallels other research on female representation post term limits. In 2006, Carey *et. al.* conducted a nation-wide survey and found that the total number of women serving in state legislatures that had term limits increased slightly since term

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***Other “intervening” factors, such as redistricting, likely encouraged the overall marginal increases in female representation.***

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limits were enacted, but after controlling for other variables they were “unable to attribute any part of this change to the extraordinary opening up of legislative seats that occurred as term limits took effect.”<sup>50</sup> Researchers theorized that other “intervening” factors, such as redistricting, likely encouraged the

overall marginal increases in female representation. These increases, however, were likely slowed as term limits removed many long-serving women from state legislatures and by “political recruitment practices [that] continue to advantage men.”<sup>51</sup>

## Race

Has term limits changed the racial makeup of the California legislature? This report does not attempt to control for other variables that researchers have found to have had an impact on racial representation or determine whether changes in racial representation were the result of term limits. Rather, it simply reports changes in racial representation in California before and after term limits.

Representation patterns are affected by voter registration and turnout.<sup>52</sup> Comparisons of the composition of the legislature with the general population may not take into consideration the fact that people who turn out to vote may not accurately reflect the entire population, which means that the composition of legislative bodies may more closely reflect the voting population than the population at large. We therefore compared the composition of the California legislature with both the composition of the entire California population and California’s registered voters.

African American population and legislative representation trends in California have remained relatively constant over time. Table 6 show that in 1990 and 2008, African Americans comprised 7% of the population and in 2010 decreased slightly to 6%.

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<sup>50</sup>Carey, John M., Richard Niemi, Lynda W. Powell and Gary Moncrief. *The Effects of Term Limits on State Legislatures: Results from a New Survey of the 50 States*. Legislative Quarterly 30:105-34. 2006, p. 115.

<sup>51</sup>Hawkesworth, Mary and Katherine E. Kleeman, *Term Limits and the Representation of Women*, Center for American Women and Politics, Eagleton Institute of Politics, Rutgers, The State University of New Jersey. May 2001, p. 20.

<sup>52</sup>Voter participation increases during presidential election years. Thus comparisons between voting patterns between 1990 and 2008 are likely to be somewhat skewed. In addition, the historic candidacy of Barack Obama in 2008 may have altered racial voting patterns. According to *Voting and Registration in the Election of November 2008*. Issued in May 2010 by the U.S. Census, “Relative to the presidential election of 2004, the voting rates for Blacks, Asians, and Hispanics each increased by about 4 percentage points, while the voting rate for non-Hispanic Whites decreased by a single percentage point in 2008.”

Throughout this period, African Americans accounted for 6% of the registered electorate—in 1990, 2008 and 2010. African Americans were slightly over-represented in both the state legislature and congressional delegation. In 1990 and 2008, African American representation in the state legislature was 8%. This decreased slightly to 7% in 2010. In California’s non-term limited Congressional delegation, African American representation in 1990 was slightly higher at 9% and decreased slightly to 8% in both 2008 and 2010.

By contrast, California’s Latino population has exploded, yet Latinos continue to be under-represented in both the state legislature and California’s congressional delegation.<sup>53</sup> In 1990, Latinos represented 24% of California’s population and 10% of its electorate but represented just 6% of the state legislature and 7% of the congressional delegation.

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***Latino representation increased more in the term-limited California state legislature than in the non-term limited California congressional delegation.***

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In 2008, Latinos represented 35% of California’s population and 21% of the electorate, but only 23% of the state legislature and 17% of the congressional delegation. In 2010, Latinos represented 37% of the state’s population and 21% of the

electorate, but their representation actually dropped to 19% in the state legislature and 15% in the congressional delegation. This is, in part, due to low levels of Latino participation on Election Day. Still, Latino representation increased more in the term-limited California state legislature than in the non-term limited California congressional delegation.

Asians, like Latinos, continue to be under-represented in the state legislature and the California congressional delegation. Asians made up 9% of the population and 5% of the electorate in 1990, and 12% of the population and 8% of the electorate in 2008 and 2010, but Asians represented 0% of the legislature in 1990, 6% of the legislature in 2008 and 8% of the legislature in 2010. Asians are even more poorly represented in the California congressional delegation. In 1990 and 2008, Asians represented just 4% of the congressional delegation and 6% in 2010. While Asians continue to be under-represented, they have made gains in representation in the legislature. However, low levels of Asian participation continue to play a role in holding back Asian representation in the state house and congressional delegation.

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<sup>53</sup>NALEO Educational Fund, *2010 Latino Electoral Profile* “Between 2000 and 2008, Latinos accounted for 86% of the state’s population growth...” [http://www.naleo.org/downloads/CA\\_2010\\_Primary\\_Profile\\_FINAL.pdf](http://www.naleo.org/downloads/CA_2010_Primary_Profile_FINAL.pdf)

In terms of the state's population, whites continue to be over-represented in both the state legislature and congressional delegation. In 1990, whites represented 57% of the population and 78% of the electorate, but they held 87% of the seats in the California legislature and 80% of the seats in the California congressional delegation. By 2010, whites represented 43% of the population and 64% of the electorate, yet held 66% of the seats in the state legislature and 72% of the seats in the congressional delegation.

**TABLE 6. Racial Diversity**

	<b>African American</b>	<b>Asian</b>	<b>Latino</b>	<b>White (Non Hispanic)</b>
<b>CA 1990 Population</b>	7%	9%	24%	57%
<b>CA 1990 Electorate</b>	6%	5%	10%	78%
<b>1990 State Legislature (Non-Term Limited)</b>	8%	0%	6%	87%
<b>1990 California Congressional Delegation (Non-Term Limited)</b>	9%	4%	7%	80%
<b>CA 2008 Population</b>	7%	12%	35%	44%
<b>CA 2008 Electorate</b>	6%	8%	21%	65%
<b>2008 State Legislature (Term-Limited)</b>	8%	6%	23%	63%
<b>2008 California Congressional Delegation (Non-Term Limited)</b>	8%	4%	17%	72%
<b>CA 2010 Population</b>	6%	12%	37%	43%
<b>CA 2010 Electorate</b>	6%	8%	21%	64%
<b>2010 State Legislature (Term-Limited)</b>	7%	8%	19%	66%
<b>2010 California Congressional Delegation (Non-Term Limited)</b>	8%	6%	15%	72%

1990 data collected from "Termed Out: Reforming California's Legislative Term Limits" Horwitz, Sasha, Center for Governmental Studies, 2007.

2010 California population data collected from *Current Population Survey: California Two-Year Average Series*. March 2000-2009 Data. California Department of Finance, September 2010.

The census data in the table includes undocumented individuals who cannot vote, thus, making it appear as if Latinos are more under represented.

1990 Electorate data by race collected from CPS Voter Supplements, 1990-2000.

2008 Electorate data by race collected from California Opinion Index The Changing California Electorate, Field Research Corporation, August 2009.

2010 Electorate data by race collected from The Field Poll Release #2320.

While researchers in other states initially found an increase in African American and Latino representation post-term limits, they concluded overall that these changes were more likely caused by reapportionment and acceleration of previously existing representation trends. In *Effect of Term Limits on the Election of Minority State Legislators*, for example, Caress *et al* found increases in minority representation were attributable to redistricting. They concluded that after controlling for “other intervening variables,” such

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***Increases in African American and Latino representation post-term limits were more likely caused by reapportionment and acceleration of previously existing representation trends.***

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as reapportionment, term limits would be “beneficial to the growth in minority officeholders only if there is pent-up minority voting strength resulting from minority increases in the general population.”<sup>54</sup>

Berman’s study of Arizona in 2004 also found that increases in minority representation were also more likely to be the result of other factors such as redistricting.<sup>55</sup> And, according to *Institutional Change in American Politics, The Case of Term Limits*, “for most states, such demographic representation was not significantly lagging behind prior to the imposition of term limits, so term limits did not appreciably alter the demographic mix of the legislature.”<sup>56</sup>

Our research supports earlier CGS findings that racial representation in the California state legislature today more closely parallels the state’s voting population than its overall population.<sup>57</sup>

Recent research on term limits has found that increases in racial representation in state legislatures post term limits has primarily resulted from redistricting and increases in minority-majority districts where traditional minorities are in the majority.

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<sup>54</sup>Caress, Stanley M., Charles Elder, Richard Elling, Jean-Philippe Faletta, Shannon K. Orr, Eric Rader, Marjorie Sarbaugh-Thompson, John Strate, Lyke Thompson, *Effect of Term Limits on the Election of Minority State Legislators*, State and Local Government Review, Vol. 35, No. 3 (Fall 2003): 183-95, p. 195.

<sup>55</sup>Berman, David, R., *Effects of Legislative Term Limits in Arizona*, Final Report for the Joint Project on Term Limits 2004, p. 2. <http://www.ncsl.org/jptl/casestudies/CaseContents.htm>

<sup>56</sup>*Institutional Change in American Politics, The Case of Term Limits*. Edited by Kurtz, Cain and Niemi, University of Michigan Press, Ann Arbor, 2010. Chapter 2 by Gary Moncrief, Lynda W. Powell and Tim Storey, Composition of Legislatures, p. 28.

<sup>57</sup>Horowitz, Sasha, *Termed Out. Reforming California’s Legislative Term Limits*, Center for Governmental Studies, Los Angeles 2008, p. 15.

## Education

One legislator characteristic that is rarely analyzed in term limit studies is educational diversity. This section explores whether legislators' educational attainment changed during the post-term limits years.

Each legislator brings his or her own unique skills and abilities to the legislature, and their academic attainment may indicate the skills and abilities that they contribute to the policy process. According to Bowen's *Investment in Learning, The Individual and Social Value of American Higher Education*, higher education brings "about desired change in the cognitive and affective traits and characteristics of human beings."<sup>58</sup> Higher levels of educational attainment could indicate higher levels of cognitive ability, greater problem solving skills and greater understanding of relevant disciplines.<sup>59</sup> Greater legislative expertise in finance, economics, law, health and medicine could improve the legislative process, since legislators must develop expertise in these areas to represent their constituents effectively.

**TABLE 7. Assembly Educational Attainment**

Highest Level of Education	Assembly 1990 %	Assembly 2008 %	Assembly 2010 %
High School	7.7%	2.6%	3.8%
Some Community College (No Degree)	2.6%	–	–
Some College (No Degree/Degree Unknown)	5.1%	3.8%	3.8%
Associates Degree	1.3%	2.6%	2.6%
BA/BS	42.3%	34.6%	41%
MA/MS/MPA	14.1%	29.5%	26.9%
JD	20.5%	21.8%	19.2%
Ph.D	2.6%	2.6%	–
DDS/DO*	2.6%	2.6%	–
MD	1.3%	–	2.6%

\*DDS is a Doctor of Dental Surgery and DO is a Doctor of Optometry.

Table does not include unknowns, vacancies, military only and law enforcement education.

Unknowns and vacancies are not included in the percentage calculations.

<sup>58</sup>Bowen, Howard R. *Investment in Learning The Individual and Social Value of American Higher Education*. Johns Hopkins University Press, Baltimore, 1997, p. 8.

<sup>59</sup>"Nor must we omit to mention among the benefits of education the incalculable advantage of training up able counselors to administer the affairs of our country in all its departments, legislative, executive and judiciary, and to bear their proper share in the councils of our national government: nothing more than education advancing the prosperity, the power, and the happiness of a nation." Thomas Jefferson, *Report for University of Virginia*, 1818.

Educational attainment levels in the Assembly have increased between 1990 and 2010. For example, Table 7 shows that members with only a high school education have been reduced almost in half, dropping from about 8% to 4% between 1990 and 2010. The percentage of members with a B.A. or B.S. degree or less dropped from 59% in 1990 to 44% in 2008, but increased to 51% in 2010. In 1990, 41% of members of the Assembly

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in the legislature have increased  
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held advanced degrees. By 2008, advanced degrees increased by 16 percentage points to about 57% but then dropped in 2010 to 49%.

Table 8 shows that like the Assembly, the number of Senate members with only a high school education was cut by about 75% between 1990 and 2010, dropping from 8% to 2.5%. The number of Senate members with only a B.A. or B.S. degree increased from 25% to 44%. It appears that gains in the percentage of members with a B.A. or B.S. degree were attributable to losses in the percentage of members with advanced degrees. While the percentage of members with advanced degrees increased in the Assembly between 1990 and 2010, the percentage of members of the State Senate with advanced degrees decreased sharply. In 1990, 62% of State Senate members held advanced degrees, but by 2010 about 48% had advanced degrees. This loss is due to the remarkable drop in the percentage of members who had law degrees. In 1990, lawyers made up 39% of the Senate, but by 2010 those with law degrees represented just 20% of the Senate, the same percentage as the Assembly.

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**TABLE 8. Senate Educational Attainment**

Highest Level of Education	Senate 1990 %	Senate 2008 %	Senate 2010 %
High School	8%	2.6%	2.5%
Some Community College (No Degree)	3%	–	–
Some College (No Degree/Degree Unknown)	3%	2.6%	2.5%
Associates Degree	–	2.6%	2.5%
BA/BS	25%	42.1%	43.6%
MA/MS/MPA	17%	21.0%	12.2%
JD	39%	21.0%	20.5%
Ph.D	6%	7.8%	10.2%
DDS/DO*	–	–	5.0%
MD	–	–	–

\*DDS is a Doctor of Dental Surgery and DO is a Doctor of Optometry.

Table does not include unknowns, vacancies, military only and law enforcement education.

Unknowns and vacancies are not included in the percentage calculations.

Overall, the 2010 full legislative class has cut in half the number of members with less than a B.A. or B.S. degree when compared to its 1990 counterpart from about 14% to about 9% and members with only a high school education went from 7% in 1990 to about 3% in 2010. Table 9 shows that between 1990 and 2010 the percentage of members with only a B.A. or B.S. degree has increased from 37% to 42%. Members with master degrees have increased from 16% to 23%, and the percentage of lawyers has fallen from 26% to 20%. The percentage of members with advanced degrees has increased only marginally between 1990 and 2010 in the entire legislature and decreased significantly in the state's upper house.

While term limits did not directly affect differences in legislators' types of education, they are likely to have accelerated the rate of member replacement—and new members had more diverse types of education.<sup>60</sup> One can speculate that a variety of educational experience may allow members to bring different skills and perspectives to the legislature, but further study is necessary to determine the effects of educational attainment and educational variety on legislators and the legislative body.

<sup>60</sup>Californians on average became more educated between 1990 and 2005. California Postsecondary Education Commission. "Public Higher Education Performance Accountability Framework Report: Goal – Contributions to Economic, Civic, and Social Development Measure: Educational Attainment of Population." <http://www.cpec.ca.gov/completereports/2007reports/07-11.pdf>

**TABLE 9. Entire Legislature Educational Attainment**

Highest Level of Education	Full Leg 1990 %	Full Leg 2008 %	Full Leg 2010 %
High School	7.0%	2.6%	2.6%
Some Community College (No Degree)	3.4%	–	–
Some College (No Degree/Degree Unknown)	2.6%	3.4%	3.4%
Associates Degree	0.8%	2.6%	2.6%
BA/BS	36.5%	37.0%	41.9%
MA/MS/MPA	15.7%	26.7%	23.3%
JD	26.1%	21.6%	19.8%
Ph.D	3.5%	4.3%	3.4%
DDS/DO*	1.7%	1.7%	1.7%
MD	0.8%	–	1.7%

\*DDS is a Doctor of Dental Surgery and DO is a Doctor of Optometry.

Table does not include unknowns, vacancies, military only and law enforcement education.

Unknowns and vacancies are not included in the percentage calculations.

### Age

Some believe that the lack of term limits allowed legislators, who had remained in the legislature for decades and lost their effectiveness, to stay in the legislature because of their incumbency status. They argue that term limits remove these senior legislators and provide opportunities for younger candidates to take their place. Some believe that, at a certain point, a legislator may be too old to represent the people of his or her district effectively.

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***Some believe that the lack of term limits allowed legislators, who had remained in the legislature for decades and lost their effectiveness, to stay in the legislature because of their incumbency status.***

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Others believe that with age comes knowledge, experience and expertise. Still others believe that a greater variety of ages brings legislators with differing perspectives and experiences to the legislature, and that legislators spread across a greater range of ages can best represent the people.

This report draws no conclusions about the benefits or drawbacks of age. It simply reports the changes in California legislator age statistics from 1990 to 2010. Table 10 shows the median age in the Assembly rose from 47 in 1990 to 54 years of age in 2010. The range in age in the Assembly was 29-77 years of age in 1990, but by 2010 the range decreased to 32-71 years of age. In 2010, there are fewer members of the legislature in their 20s and 30s

and more members in their 60s. In 1990, 30 members (38%) of the Assembly were 50 or older and 9 (11%) were 60 or older. By 2010, 52 members (65%) of the Assembly were 50 or older and 25 (31%) were 60 or older.

**TABLE 10. Assembly Age**

AGE	1990 Assembly	2008 Assembly	2010 Assembly
Median	47	51	54
Average	48	51	53
Range	29 – 77	32 – 69	32 – 71
Unknown	3	0	0
Twenties	1	0	0
Thirties	20	14	9
Forties	24	19	19
Fifties	21	30	27
Sixties	8	17	24
Seventies	1	0	1
Eighties	0	0	0
Vacancy	1	0	0

Age is determined by age in 1990, 2008 and 2010.

Conversely, the median age in the State Senate has dropped from 62 years of age in 1990 to 57 years in 2010. Table 11 shows the age range has tightened in the State Senate from a 44 year span (38-82) in 1990 to a 40 year span (32-72) in 2010. In 1990, 28 (74%)

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***In 1990, the Senate had five members in their 70s and two were in their 80s (the oldest was 82), but the 2010 class had only one member 70 or older (age 72).***

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members were over 50 and 20 (53%) were over 60 years old. By 2010, 32 (82%) were over 50 and 15 (38%) were over 60 years of age. The 1990 Senate class differs most dramatically from the 2010 class

in the members over 70. In 1990, the Senate had five members (13%) in their 70s and two (5%) were in their 80s (the oldest was 82), but the 2010 class had only one member 70 or older (age 72).

**TABLE 11. Senate Age**

AGE	1990 Senate	2008 Senate	2010 Senate
Median	62	55	57
Average	59	56	56
Range	38 – 82	35 – 70	32 – 72
Unknown	0	0	0
Twenties	0	0	0
Thirties	2	2	2
Forties	8	6	5
Fifties	8	19	17
Sixties	13	11	14
Seventies	5	1	1
Eighties	2	0	0
Vacancy	2	1	1

Age is determined by age in 1990, 2008 and 2010.

One would have expected term limits to usher in a new era of younger members, but that expectation was not realized. In the California legislature overall, including both houses, the post term limit years have shown a noticeable decrease in the number of members at the ends of the age spectrum—in their 20s and 30s, and in their 70s and 80s—and an increase in the number of legislators in the middle—in their 50s and 60s. Table 12 shows that in 1990 there were 23 (20%) members of the entire legislature that were in their 20s or 30s, but by 2010 there were only 11 (9%) members in those age ranges. Likewise, in

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***The median age in the entire legislature remained 57 years old in both 1990 and 2010.***

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the 1990s the entire legislature had nine (8%) members in their 70s or 80s; by 2008 the legislature had just one member in the 70s and no members in their 80s; and by 2010 there were just two members in that age range.

The largest change appears in members in their fifties and sixties. In the 1990 entire legislature, there were 50 members (43%) in their 50s and 60s; by 2008, there were 77 members (65%) of the legislature in their 50s and 60s; and by 2010, there were 82 members (69%) in their 50s and 60s. Yet the average age remained constant at about 52-53.5 years old in 1990, 2008 and 2010 and the median age in the entire legislature remained 57 years old in both 1990 and 2010. Thus, while there were fewer very old members, younger members in their 20s and 30s also declined.

**TABLE 12. Entire Legislature Age**

<b>AGE</b>	<b>1990 Full Leg</b>	<b>2008 Full Leg</b>	<b>2010 Full Leg</b>
<b>Median</b>	57	55	57
<b>Average</b>	53.5	53.5	52
<b>Range</b>	29 – 82	32 – 70	32 – 72
<b>Twenties</b>	1	0	0
<b>Thirties</b>	22	16	11
<b>Forties</b>	32	25	24
<b>Fifties</b>	29	49	44
<b>Sixties</b>	21	28	38
<b>Seventies</b>	7	1	2
<b>Eighties</b>	2	0	0
<b>Vacancy</b>	3	1	1
<b>Unknown</b>	3	0	0

Age is determined by age in 1990, 2008 and 2010.

### Professional Governmental Experience

One of the primary goals of term limits was to remove career politicians. It is, therefore, not surprising that fewer members of the California Assembly have significant elected state legislative experience and more local elected government experience during the post-term limit years. Table 13 shows that in 1990, the majority (34 members or 43%) of Assembly members had ten or more years of elected state legislative experience, and five (6%) members had 20 or more years of elected state legislative experience. In 2010, the vast majority (76 members or 95%) had four or fewer years of elected state legislative experience.<sup>61</sup> In 1990, the median years of elected state legislative experience was eight years, with the range of experience reaching from zero to 32 years of legislative experience. In the post-term limits California Assembly, the median years of elected state legislative experience is two years and the range is zero to 20 years of elected legislative or government experience.<sup>62</sup>

<sup>61</sup>In 2010, 56 out of 80 Assembly members had two or fewer years of elected legislative experience.

<sup>62</sup>Charles Calderon has served 20 years in the California legislature. He served in the Assembly from 1982-1990 prior to the passage of Proposition 140. He then served in the State Senate from 1990-1998 and returned to the Assembly in 2006.

**TABLE 13. Elected State Legislative Experience in the Assembly**

Elected State	1990 Assembly	2008 Assembly	2010 Assembly
Median Years	8	2	2
Average Years	8.3	2.3	4.8
Range	0 – 32	0 – 18	0 – 20
0 – 4 years	27	76	76
5 – 9 years	17	1	0
10 – 19 years	29	3	3
20 – 29 years	4	0	1
30 – 39 years	1	0	0
Vacancy	1	0	0
Unknown	1	0	0

“Years of experience” is determined based on experience level in 1990, 2008 and 2010.

Table 14 shows that in 1990, the median years of elected state legislative experience for members of the State Senate was 16 years and the range was one to 34 years of experience. The 2010 Senate class’s median years of experience was eight and the range was zero to 12 years. The 1990 Senate class had 28 members (74%) with ten or more years of experience, and 13 members (34%) had 20 or more years of experience. Most Senate members (17 or 44%) in 2010 had five to nine years of experience, and 12 members (31%) had more than 10 years of experience.<sup>63</sup>

**TABLE 14. Elected State Legislative Experience in the Senate**

Elected State	1990 Senate	2008 Senate	2010 Senate
Median Years	16	8	8
Average Years	17	7.4	7.3
Range	1 – 34	2 – 12	0 – 12
0 – 4	3	3	10
5 – 9 years	6	24	17
10 – 19 years	15	13	12
20 – 29 years	12	0	0
30 – 39 years	1	0	0
Vacancy	2	0	1
Unknown	1	0	0

“Years of experience” is determined based on experience level in 1990, 2008 and 2010.

One 1990 member of the Senate, Ralph Dills, had more than 50 years of governmental experience (legislative and judicial).

<sup>63</sup>No member in the Senate class of 2010 had more than 12 years of experience.

Opponents of term limits argue that term limits would not produce a citizens’ legislature; instead, it would simply allow career politicians with less experience to fill the seats of termed out legislators. This report, therefore, sought to determine whether the level of local political experience changed during the post term limits years.

**TABLE 15. Legislator Local Elected Experience**

Percentage of Members with Local Elected Experience	Elected Local (%)
1990 Assembly	28%
2008 Assembly	70%
2010 Assembly	68%
1990 Senate	35%
2008 Senate	72%
2010 Senate	70%

“Years of experience” is determined based on experience level in 1990, 2008 and 2010  
 Percentage calculation does not include missing and/or unknown data.

In California’s term limited legislature, legislators’ previous government experience comes primarily from city and local government. In 1990, 28% of Assembly members and 35% of the State Senators had previous local elected experience. That percentage more than doubled by 2008, when 70% of Assembly members and 72% of State Senators had local elected experience. In 2010, that percentage decreased slightly with 68% of Assembly members and 70% of Senators having previous local elected experience.

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***Termed out state Assembly members were more likely to switch legislative positions and move from the Assembly to the State Senate, rather than return to the private sector and provide opportunities for new citizen legislators to serve.***

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The goal of term limits was to provide an opportunity for a citizen’s legislature to emerge. Reformers believed that incumbency and name recognition often overwhelmed newcomers’ ability to compete with incumbents for state

legislative seats. However, a review of the state senate in 2008 and 2010 (Table 16) indicates that, post term limits, termed out state Assembly members were more likely to switch legislative positions and move from the Assembly to the State Senate, rather than

return to the private sector and provide opportunities for new citizen legislators to serve. In 1990, about 68% of senators had previous experience in that Assembly. Nearly all of the state senators in 2008 (93%) and 2010 (92%) had previous Assembly experience.<sup>64</sup>

**TABLE 16. State Senators with Assembly Experience**

	Senate 1990 %	Senate 2008 %	Senate 2010 %
<b>Assembly Experience</b>	68%	92.5%	92%

“Years of experience” is determined based on experience level in 1990, 2008 and 2010.

These findings are mirrored in other term limits research in Ohio and Colorado. Farmer and Little found in their study of Ohio’s legislature post term limits that “[t]he legislature contains fewer citizen legislators [than before term limits], according to the knowledgeable observers. . . These observers are likely referring to the fact that many new members have previous elected experience. Candidates are often county or municipal officials.”<sup>65</sup> Staayer and Bower’s study of Colorado had similar findings. “Examination of the political career patterns of members of the Colorado General Assembly suggest that term limits, rather than doing what the reformers wanted, may have produced a boomerang effect. A tracking of the immediate post-legislature activity of 191 members who left the legislature from 1990 through 2002 shows that the proportion of lawmakers who seek continued elective public office is going up, not down.”<sup>66</sup>

### Post Legislative Work

Term limit proponents base their position on a key premise: that reform will give citizen legislators an expanded opportunity to serve in the state legislature, after which they will return to the private sector and allow other citizen legislators to take their place. Although the findings from the CGS data in this report are preliminary and primarily provide a snapshot of legislators’ pre- and post-term limit careers, they suggest some possible conclusions and potential areas for future study.<sup>67</sup> Members of the 2008 California

<sup>64</sup>In 1990, there were 12 Senate members without previous Assembly experience (2 vacancies). In 2008 there were only two members, Alex Padilla and Jeff Denham, who did not have previous Assembly experience (1 vacancy). In 2010 there were only three members, Alex Padilla, Anthony Cannella and Michael Rubio, who did not have Assembly experience (2 vacancies).

<sup>65</sup>Farmer, Rick and Thomas H. Little. *Legislative Power in the Buckeye State: The Revenge of Term Limits* 2004 Joint Project on Term Limits. National Conference of State Legislatures.

<sup>66</sup>Staayer, John A. and Jennie Drage Bowers, *Colorado’s Legislative Term Limits*, Joint Project on Term Limits 2004. Conference of State Legislatures, p. 19.

<sup>67</sup>The sample size in the data collected for California post legislative careers is insufficient to draw hard and fast conclusions about member careers after they leave the legislature. If members were over the age of 62 and we could not locate a record of their post legislative employment, for example, we assumed that they were retired.



legislature behaved in a manner very similar to their pre-term limits counterparts that left the legislature between 1980 and 1990. Legislators leaving the legislature continued to seek careers in the public sector.

This study compared the post legislative careers of members that left the California legislature before term limits between 1980 and 1990 and members that were termed out in 2008 to determine whether the reform had an impact on the entrenched culture of “political musical chairs” in Sacramento.

There is very little change in the post legislative careers of California legislators after term limits.<sup>68</sup> Table 17 shows that the post legislative career choices of the 1980-1990 and 2008 legislative classes are very similar. In the 1980s, 60% of Assembly members and 30% of Senate members continued to work in the public sector in either elected or appointed

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***There is very little change in the post legislative careers of California legislators after term limits.***

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positions during their post legislative careers. In 2008, 60% of termed out Assembly members and 40% of termed out Senate members continued to work as either elected or appointed positions in the public sector during their post legislative

careers. In the 1980s, about 36% of Assembly members and 61% of Senate members either returned to the private sector, retired or chose not to work. Forty-one percent of Assembly members and 60% of Senators termed out in 2008 either returned to the private sector, retired or chose not to work.

These findings suggest that California’s term limits have not created an environment in which citizen legislators temporarily serve in the state capitol and then return to the private sector. Rather, it suggests that professional legislators pre and post term limits continued to seek careers in other governmental positions—a form of political musical chairs for governmental office.

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<sup>68</sup>Members termed out in 2008 have only had two years to seek new positions; thus, it is possible that, as new opportunities for elective or appointed office occur, members of the 2008 group will re-enter public life causing the percentages to rise. Further, the data does not include legislators that ran for public office and lost during their post legislative careers in the “public sector” category.

**TABLE 17. Post Legislative Careers**

	Public Sector	Other*	Retired	Deceased	Jailed	Unknown
<b>Assembly – Members that Left Office Between 1980-1990 (82 Members)</b>	60%	32%	4%	4%	1%	0%
<b>Assembly – Termed Out 2008 (25 Members)</b>	60%	24%	17%	0%	0%	0%
<b>Senate –Members that Left Office Between 1980-1990 (26 Members)</b>	30%	46%	15%	4%	4%	4%
<b>Senate – Termed Out 2008 (10 Members)</b>	40%	30%	30%	0%	0%	0%

\*Other represents members that are under 62 and have chosen not to work or have returned to the private sector. The 2008 retired senator category may be inflated, since they have only had two years to seek another position. Former legislators were defined as retired if they were over 62 and their post legislative employment information was not available. Members were categorized as “deceased” if they passed within two years of leaving office.

## IMPACT OF TERM LIMITS ON THE LEGISLATURE

*The experts have taken over, [Governor Jerry] Brown told me, referring to the more permanent class of legislative aides and lobbyists. “The elected people are the ones who ought to be thinking about this, but they are all thinking about their next job. It has actually created more insecurity and less independence on the part of representatives.” The days when legislation could be drafted by five elected officials in a room—the governor and the majority and minority leaders of each party—are gone.<sup>69</sup>*

Academics have explored the effects of term limits on legislative leadership, the balance of power between the executive and legislative branches and the changes in relationships between legislators and lobbyists. What follows is a brief review that charts some of the academic research on the effects of term limits on representation in California and in states across the nation.

<sup>69</sup>Nagourney, Adam, *Jerry’s Last Stand* (Interview with Governor Jerry Brown), New York Times, May 4, 2011.

## Legislative Leadership – National

In states without term limits, legislative power is typically concentrated in the hands of legislative leaders. The leadership rewards member loyalty and longevity with plum committee assignments and leadership positions. Members slowly build policy expertise. Over time they become committee chairs and move up to leadership positions. In the term limit states, however, this process is fundamentally altered. Forced legislator retirements and early departures in anticipation of term limits have dramatically increased turnover.<sup>70</sup> In these states, legislators may become chairmen during their first terms, and some will become house leaders within two years of their arrival in the legislature. In California, for example, John Perez assumed office in December 2008 and took over as Speaker of the Assembly (its most powerful legislative position) 14 months later on March 10, 2010.

While one can cite individual cases throughout history where an individual legislator rose to power quickly and became speaker, majority or minority leader, or chairman of powerful committees, the systematic removal of all experienced legislators in term limited states creates a very different legislative environment.

Farmer and Little's study of the impact of term limits on the Ohio's state legislature found that the legislative process post term limits had become "chaotic and unpredictable."<sup>71</sup> In Ohio the minority party leadership was significantly weakened after term limits. "Several minority leaders left the legislature just before they were termed in search of other opportunities. . . Most of these transitions took place mid-term. This left the minority struggling internally to find its voice while the majority marched forward under strong leadership."<sup>72</sup>

Studies of Arizona and Colorado also found the leadership weakened under term limits. Berman's study of Arizona found that "leaders under term limits as less likely to do an effective job because they emerge without the benefit of years of training and because they become relatively powerless lame ducks much sooner than in the past." Staayer and Bowers note in their study of Colorado that "(l)eaders seem to be weaker, party discipline

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<sup>70</sup>"The average turnover for all house chambers in 2004 was 20.6 percent, compared to 37.1 percent in term-limited house chambers." Bowser, Jennifer Drage, *The Effects of Legislative Term Limits*, The Council of State Governments, p. 112.

<sup>71</sup>Farmer, Rick and Thomas H. Little. *Legislative Power in the Buckeye State: The Revenge of Term Limits* 2004 Joint Project on Term Limits. National Conference of State Legislatures. "The loss of relationships, long associated with successful legislative activity, can be directly attributed to the rapid turnover of members who are either forced out by term limits or leave early to take advantage of a timely opportunity. The constant flow of new members, inexperienced committee chairs and revolving door leaders has created a much more chaotic and unpredictable process. Further, the relative inexperience of many of the members has significantly increased the workload for everyone associated with the legislature," p. 17.

<sup>72</sup>Farmer, Rick and Thomas H. Little. *Legislative Power in the Buckeye State: The Revenge of Term Limits* 2004 Joint Project on Term Limits. National Conference of State Legislatures, p. 8.

is down but partisanship is up, civility and procedural order have suffered, the clout of the lobby, governor and staff members has increased and members are both less inclined and less able to address the state's major problems in long-term fashion."<sup>73</sup>

Larry Levine, a long-time California political consultant, wrote in a *Los Angeles Times* Op-Ed:

*In the Assembly, one-third of the members — those with the most experience and knowledge — are termed out every two years. This assures constant instability. Members no longer have time to become expert in particular policy areas or to develop trust in their colleagues on policy matters. A successful legislature requires leaders who can stand up to interest groups, force competing interests to deal with each other and assert the discipline required to enforce compromise. With term limits, leaders aren't around long enough to earn and develop that strength and ability.*<sup>74</sup>

According to Cain and Kousser, “[m]any committees lack the experience to weed out bad bills and ensure that agencies are acting efficiently and in accordance with legislative intent.”<sup>75</sup> La Raja and Appollonio’s research also supports this conclusion. “The unfortunate combination of lame duck status and inexperience... make it difficult for chairs to manage their committees effectively or efficiently. Committees [are] less likely to be repositories of policy expertise since turnover among members and staff will be high.”<sup>76</sup> Cain and Kousser asserted that term limits have deprived committees of the legislative expertise needed to recognize potential problems in bills, and the Assembly is more likely to see bills “hijacked” and “guttled” by the Senate.<sup>77</sup>

A significant body of academic research has found that weakened state legislatures are one of the unintended consequences in states with term limits. The mass exodus of experienced legislators, coupled with a simultaneous influx of inexperienced new legislators, causes a dearth of policy experience and leadership. “The difference is that before term limits took hold, these legislatures generally had a handful of members who served for many years, and their leadership and expertise were a valuable resource to the institution. Term limits have removed these long-serving members, and the effects of that are proving to be profound.”<sup>78</sup>

<sup>73</sup>Staayer, John A. and Jennie Drage Bowers, *Colorado's Legislative Term Limits*, Joint Project on Term Limits 2004. Conference of State Legislatures, p. 17.

<sup>74</sup>Larry Levine, *The Late Great California Legislature. Ours was once a Showcase among State Governments, but we Reformed Ourselves into a Mess*, *Los Angeles Times* Op-Ed, April 19, 2011.

<sup>75</sup>Cain, Bruce E. and Thad Kousser, *Adapting to Term Limits in California: Recent Experiences and New Directions*. Joint Project on Term Limits 2004, National Conference of State Legislatures 2004, National Conference of State Legislatures 2005.

<sup>76</sup>La Raja, Raymond J. and Dorie Apollonio, *Term Limits and Campaign Contributions: Do Lame Ducks Suffer?* UC Berkeley Working Paper 99-6. 1999 Annual Meeting of Midwest Political Science Association, Chicago, Illinois, April 15-17, 1999.

<sup>77</sup>Cain and Kousser, *Adapting to Term Limits in California: Recent Experiences and New Directions*. Joint Projects on Term Limits 2004, National Conference of State Legislatures, 2005, p. 2.

<sup>78</sup>Bowser, Jennifer Drage, *The Effects of Legislative Term Limits*, The Council of State Governments.

## Legislative-Executive Balance of Power

Recent studies indicate that the unintended consequence of term limits is a less effective legislature that lacks policy expertise and a dramatic loss of institutional memory and loyalty. All of this has weakened legislative leadership and shifted the balance of power to the executive branch in states with term limits.

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***Recent studies indicate that the unintended consequence of term limits is a less effective legislature that lacks policy expertise and a dramatic loss of institutional memory and loyalty.***

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Richard J. Powell's chapter in *The Case of Term Limits* explains that prior to term limits in California, Willie Brown, a 32 year veteran of the Assembly who spent 16 years as Speaker, along with "several of his experienced Democratic colleagues served as powerful counterweights to several successive Republican governors."<sup>79</sup> Powell

reviewed several studies and surveys found that "greater turnover generated by term limits puts legislatures at an informational disadvantage relative to executives. Quite simply, legislatures possess significantly less policy expertise under term limits. When pitted against experienced officials in the executive branch, the disadvantage becomes readily apparent."<sup>80</sup>

Staayer and Bowers' study of Colorado post term limits found that certain members of the legislature, knowing that they will be seeking appointments from the executive, no longer protected the power of the legislature. "The effects of this movement of former legislators into high level executive branch positions is two-fold. First, the chances of a post-legislative job on the executive side provides an incentive to support the governor. . . Second, it [term limits] arms the executive with persons who are legislative process savvy; indeed, they know the process and policies better than the members, initially at least."<sup>81</sup>

The lack of legislator experience induced by term limits has also negatively affected the budgeting process and the balance of power between the legislative and executive branches. Cain and Kousser report that the "[l]egislature is less likely to alter the Governor's Budget, its own budget process neither encourages fiscal discipline nor links legislators' requests to overall spending goals . . . [and] legislative oversight of the executive branch has declined significantly."<sup>82</sup>

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<sup>79</sup>Kurtz, Karl T., Bruce Cain and Richard G. Niemi, *The Case of Term Limits*, p. 136.

<sup>80</sup>Kurtz, Karl T., Bruce Cain and Richard G. Niemi, *The Case of Term Limits*, p. 137.

<sup>81</sup>Staayer, John A. and Jennie Drage Bowers, *Colorado's Legislative Term Limits*, Joint Project on Term Limits 2004. Conference of State Legislatures, p. 110.

<sup>82</sup>Cain and Kousser, *Adapting to Term Limits in California: Recent Experiences and New Directions. Joint Projects on Term Limits 2004*, National Conference of State Legislatures, 2005, p. 2.

According to *The Executive Branch of State Government: People, Process, and Politics*, the policy process—developing policy agendas, adopting bills, implementing and evaluating legislation—is too lengthy to allow a term-limited legislator to follow the process from beginning to end. “Other actors . . . play a more active role in all the steps of policy development because they have greater longevity. Clearly, this lessens the legislature’s overall political power and diminishes its relative position in dealing with the governor.”<sup>83</sup>

### Lobbyist Influence

Contrary to the goal of breaking the ties between lobbyists and legislators espoused by of the term limits movement, academics and the media have shown that the effect of term limits is to increase lobbyist influence over the policy process in state legislatures.

Some have found that inexperienced legislators rely more heavily on lobbyists. The San Jose Mercury News noted that term limits have led to inexperienced legislators that are too dependent on lobbyists.

*[S]tate lawmakers, lacking experience in an era of term limits, increasingly depend on outside interests for their success. . . . [S]ponsored bills made up more than a third of the proposed laws introduced in the Legislature in 2007-08, the most recently completed session. The paper’s analysis also helps explain the heady combination of pressures and enticements that lead legislators to rely so heavily on sponsored bills, favoring private interests rather than the public interest they were sent to Sacramento to serve.*<sup>84</sup>

Berman’s study of term limits in Arizona found that “[l]obbyists have also taken advantage of legislative turnover by bringing back bills rejected in previous years, hoping no one is around who remembers why they were rejected.”<sup>85</sup> The study goes on to explain that term limits have forced lobbyists to work harder to get to know new members. “The future belongs to those willing and able to win over transitory leaders, work harder to ingratiate themselves with a continuous parade of new members and new leaders.”<sup>86</sup>

<sup>83</sup>Ferguson, Margaret Robertson, *The Executive Branch of State Government: People, Process, and Politics*. ABC-CLIO, Inc., Santa Barbara, CA. 2006, p. 201. In *Theories of the Policy Process*, (edited by Paul Sabatier, Westview Press, Boulder 1999) Sabatier supports this proposition, explaining “(the policy) process usually involves time spans of a decade or more, as that is the minimum duration of most policy cycles, from emergence of the problem through sufficient experience with implementation to render a reasonably fair evaluation of program impact,” p. 3.

<sup>84</sup>De Sa, Karen, *Part 2: Term limits shift balance of power to special interests*, San Jose Mercury News, July 17, 2010.

<sup>85</sup>Berman, David R. *Effects of Legislative Term Limits in Arizona*. Joint Project on Term Limits 2004. National Conference of State Legislatures, 2005, p. 12.

<sup>86</sup>*Ibid.*

In a study of term limits in Ohio, researchers found that freshman legislators were initially wary of lobbyists. “Freshmen legislators, like ordinary citizens, tend to view lobbyists with suspicion. Most tend to overcome their fears as relationships begin to develop.”<sup>87</sup>

Many researchers believe that term limits have strengthened the grip of lobbyists on the policy process. “Term limits advocates . . . initially predicted that this reform would reduce the influence that lobbyists and interest groups have in the legislative process . . . . [I]t is clear that these predictions have not been fulfilled.”<sup>88</sup> According to Cain and Kousser, term limits have increased the power of lobbyists over the California legislature. Inexperienced new legislators rely on lobbyists for policy information when they are unable to obtain information from other members or their staffs. “A few new members confessed that in their first year, over 90 percent of their bills were drafted or given to them by lobbyists.”<sup>89</sup> Others say that the practice of lobbyists writing legislation pre-dates term limits and also occurs in the United States Congress, which does not have term limits.

The political culture in each state appears to influence the impact of term limits on lobbyist influence over the legislative process. It is possible that, as term limits mature in the states, researchers will find additional outcomes. More research in this important area will be essential to fully understand the impact of term limits on the relationship between legislators and lobbyists.

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<sup>87</sup>Farmer, Rick, *Legislative Power in the Buckeye State: The Revenge of Term Limits* Joint Project on Term Limits 2004. National Conference of State Legislatures, 2005, p. 11.

<sup>88</sup>Edited by Kurtz, Cain and Niemi, *Institutional Change in American Politics, The Case of Term Limits*. (University of Michigan Press, Ann Arbor, 2007), Chapter 8 by Christopher Z. Mooney, Lobbyists and Interest Groups, p. 133.

<sup>89</sup>Cain and Kousser, *Adapting to Term Limits in California: Recent Experiences and New Directions. Joint Projects on Term Limits 2004*, National Conference of State Legislatures, 2005, p. 25-26.



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## CONCLUSION

Term limit reformers hoped to create a citizen's legislature. They believed that incumbency and name recognition provided incumbents with an overwhelming advantage that was nearly impossible for newcomers to overcome.<sup>90</sup> By forcing out long-term legislators, they believed citizen legislators would emerge. These citizen legislators would come from the

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***Members of the California state legislature are just as likely to seek further elective or appointed office after leaving the legislature as did their pre-term limit counterparts.***

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private sector and, after a few years of service, return to the private sector.

Term limits in California, however, have not encouraged termed out legislators to return to the private sector. Indeed, the vast majority of newcomers to the state legislature are not citizen legislators at

all, but rather political professionals from local government. Our preliminary data shows that, at least in California, members of the state legislature today are just as likely to seek further elective or appointed office after leaving the legislature as did their pre-term limit counterparts.

Did term limits alter California legislators' characteristics as predicted? African Americans continue to be slightly over-represented, but this has not changed post-term limits. Latinos have made significant gains, but their representation falls behind their population percentages. Asian representation has increased, but it still remains below the proportion of the Asian population and electorate. Minority gains in representation that have occurred are probably attributable to redistricting, not term limits. Non-Hispanic whites continue to dominate the state legislature.

Women have gained in recent years in the California legislature, but they are still under-represented when compared to their overall proportion of the population. Gains in female representation in the state legislature were over-shadowed by the much greater gains in women in the non-term limited California congressional delegation. This suggests that gains in female representation are not the result of term limits.

California's legislative term limits have witnessed increased diversity in educational attainment. Once the legislature was dominated by lawyers, but now many more members have advanced degrees in varying fields. This variety in educational attainments offers

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<sup>90</sup>The incumbency advantage is well document and a very real challenge to newcomers hoping to unseat them.



differing skills, abilities and perspectives. Future research and comparisons with California's non-term limited Congressional delegation will provide additional insights into the role term limits has played in fostering greater educational diversity in officeholders.

Term limits swept out California's most elderly members in their 70s and even 80s and ushered in an era of dominance by members in their 50s and 60s. Between 1990 and 2010, the number of members in their 50s in the entire legislature rose from 29 to 44 and in their 60s from 21 to 38 members. While the average legislator's age in the entire legislature remained 52-54 for 1990, 2008 and 2010 (the median was 57 in 1990 and 2010), term limits narrowed the age range. In 1990, members had a 53-year age span (from 29 to 82). By 2010, that age span dropped to just 40 years (from 32 to 72). During that same time period, the number of members in their 20s, 30s and 40s combined dropped from 55 members to 35 members.

According to many researchers, term limits in the states have undermined the relative power of the legislative branch. Legislative leadership and experience has weakened, leading to less effective oversight of the executive branch, lower levels of legislative expertise in the policy process and increased dependence on lobbyists.

Did term limits encourage the emergence of citizen legislators, a new breed of politician who came to the state house, served and, when termed out, returned to the private sector? Did term limits create a more diverse legislature? The answer to both of those questions is a clear no.

Term limits failed to create a citizen legislature. Career politicians are still more likely to succeed than newcomers when seeking elective office in the California state legislature.

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## RECOMMENDATIONS

While the bulk of the evidence suggests repealing term limits altogether would improve the effectiveness of the legislature, the public's strong support for term limits makes this an unlikely outcome. Given these circumstances, CGS continues to recommend that the total number of years that a member can serve in the state legislature be reduced from 14 to 12 years, but that members should be allowed to serve that entire 12 years in either chamber. This revision would allow members to acquire more policy expertise and increase the institutional memory of the legislature, but it would continue the goal of term limits by maintaining a limit on legislative tenure. This revision should not apply to sitting members and therefore would not extend their tenure in office.

CGS also recommends that the life-time ban on allowing termed out members to return to the legislature be eliminated, and that termed out members be allowed to run for office again after passage of a reasonable period of time (e.g., four years). This recommendation furthers the intent of the reformers to increase competition and address the overwhelming power of incumbency. It provides an opportunity for voters to return experienced legislators to office, and it could strengthen the legislature relative to the executive by increasing policy expertise and lessening the need of legislators to seek that expertise from lobbyists.



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# Citizen Legislators or Political Musical Chairs: *Term Limits in California*

*Political Musical Chairs* concludes that the goal of California term limit reformers—to create a “citizens legislature” of ordinary Californians, who, presumably being more in touch with everyday concerns than “career politicians,” would come to the state capitol, serve for limited terms and then return to the private sector—has failed.

The state instead has witnessed an enhanced form of political musical chairs, in which termed out state legislators simply take their accumulated expertise and move to other state or local political offices. California legislators today are just as likely to seek further elective or appointed political offices after leaving the legislature as they did before term limits. The legislature thus loses its expertise, but other government offices gain it.

During California’s term limits era, legislators’ educational attainments have increased, along with their city and county government experience. At the same time, their legislative experience has decreased, and the breadth of their age group diversity has shrunk. The number of California female legislators has grown significantly faster in the U.S. House of Representatives, which does not have term limits, than in the California State Assembly.

*Political Musical Chairs* recommends that California amend its term limits law to reduce from 14 to 12 the total number of years members can serve, but allow members to serve the entire 12 years in either chamber. It also recommends that California remove its life-time ban on termed out legislators, allowing them to run again for the legislature after a reasonable interval out of office. These reforms will preserve some of the benefits of term limits, while at the same time increase the expertise of those holding office.

CGS helps civic organizations, decision-makers and the media to strengthen democracy and improve government processes by providing rigorous research, nonpartisan analysis, strategic consulting and innovative media models of public information and civic engagement.

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