

ORIGINAL

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SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2006) Appeal from the
Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR
2005-2006 #75

BENNETT S. AISENBERG AND
FEDERICO C. ALVAREZ
OBJECTORS,

Petitioners,

v.

JOHN K. ANDREWS, JR. AND
KATHLEEN A. LECRONE
PROPOSERS;
WILLIAM A. HOBBS, JASON DUNN
AND DAN CARTIN
TITLE BOARD,

Respondents.

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FILED IN THE
SUPREME COURT

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OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

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Case No.: 06 SA 63

ANSWER BRIEF OF TITLE BOARD

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William A. Hobbs, Jason Dunn and Dan Cartin, the Title Setting Board (hereinafter "Board"), by and through undersigned counsel, hereby submit their Answer Brief.

STATEMENT OF THE ISSUES

The Board adopts the Statement of Issues set forth in the Petitioners' brief.

STATEMENT OF THE FACTS

The Board adopts the Statement of Facts set forth in the Petitioners' brief.

STATEMENT OF THE CASE

The Board adopts the Statement of the Case set forth in the Petitioners' brief.

SUMMARY OF THE ARGUMENT

The titles adopted by the Board are accurate and fair. The central feature of the proposal is the amendment to state constitutional provisions governing the length of terms of judges of the Colorado Court of Appeals and justices of the Colorado Supreme Court, including judges and justices presently serving on these courts. The impact of the measure on sitting judges and justices is a secondary feature of the measure. The Board properly declined to include provisional terms in the titles. The fact that the certain existing constitutional provisions will be superceded is not significant.

The phrase "term limits" is not a catch phrase.

ARGUMENT

I. The titles are fair, clear and accurate.

The proposed measure would create a new section 27 to article VI of the Colorado Constitution. It provides:

Terms of office for the Court of Appeals and Supreme Court judges shall be four years. At each level, no one shall serve more than three terms of office. A provisional term shall be a term of office. Anyone who has served twelve years or more at one court level shall not be eligible for another term at that level.

The title set by the Board states:

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level.

The ballot title and submission clause contains the same language, except it is in the form of a question.

Section 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles.

It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #256, 12 P.3d 246, 256 (Colo. 2000) (#256). However, the Board is not required to set out every detail. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002* #21 and #22, 44 P.3d 213, 222 (Colo. 2002). In setting titles, the Board may not ascertain the future effects, either practical or legal, of a measure, #256, 12 P.3d at 257, or its efficacy. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #246(e), 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. #256, 12 P.3d at 219. The Court grants great deference to the Board in the exercise of its drafting authority.

Id. The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Auto. Ins. Coverage,"* 877 P.2d 853, 857 (Colo. 1994).

A. The titles should not distinguish between sitting appellate judges and justices and future appellate judges and justices.

The Objectors contend that the titles are incomplete because they do not mention the impact on current judges on the Court of Appeals and justices on this Court. In particular, they contend that the titles must discuss: (1) the limitation on terms of sitting appellate judges and justices, and (2) the alteration of the length of terms of current appellate judges and justices.

With regard to the arguments concerning sitting judges and justices, the Objectors ask the Court to make a distinction that the measure itself does not make. The Objectors are asking this Court to single out and discuss the effect of this measure on the group of judges or justices who are in office during the transition period.

The Court must reject the claim. The measure discusses all appellate judges and justices. It does not distinguish in any manner between sitting and future judges and justices. If the measure passes, all persons who presently, and in the future will, occupy these positions will be similarly treated. The Board is not

required to discuss the impact of the measure on a subgroup of persons subject to the measure, when the measure itself does not discuss this impact.

The Objectors cite *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993) (“*ERA*”) and *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257 (Colo. 1999) (“*#29*”) to support their arguments. These cases are inapposite. In *ERA*, the proponents presented a complex, multi-subject measure. Among other matters, the measure specified a change in the number of state senate and house districts. The Court found that the proposal would unequivocally require reapportionment, thereby resulting in a change of representatives for at least some districts. The measure, if passed, would have immediately changed the structure of the legislative branch. *ERA*, 852 P.2d at 36.

In the case now before this Court, the measure on its face does not immediately alter the structure of the judicial branch. The number of judges on the Court of Appeals and the Supreme Court remains the same, and the jurisdiction of each court is unchanged. Thus, the citizenry will not be affected as voters would have been if the *ERA* measure had passed.

#29 is also inapposite. In *#29*, the proponents sought to make wholesale changes to provisions governing the appointment of judges. The measure had an

inherent ambiguity or a surreptitious provision that also was reflected in the title. The ambiguity or surreptitious provision arose “from its stated effective date of November 6, 2000, in comparison with its provision of three four year future terms of office and the fact that the year 2000 election will occur on November 7, 2000.” #29, 972 P.2d at 267. The measure and the titles did not clarify whether the initiative, which was effective the day before the general election, would shorten the term of the judges who were retained at the general election.

In the present case, the measure is neither ambiguous nor surreptitious. Its text does not distinguish between sitting and future judges. The terms of all judges will be shortened if the measure passes. The titles accurately reflect this provision within the measure.

**B. The Board did not err by refusing to include
“provisional terms in the title.**

The Objectors also contend that the Board should have included a statement that a provisional term counts as a full term. The Court must reject this argument.

First, mentioning “provisional term” in the title may actually mislead the public. “Provisional term” is a term of art used in Colo. Const. art. VI, § 20 to describe the time between a judge’s initial appointment and the judge’s first retention election. The public may very well confuse this term with the more generally known partial terms. Colo. Const. art. IV, § 1; art. V, § 3(2); art. VIII,

§ 11. Partial terms cover any period of time within a term of office. The measure does not discuss partial terms, and whether a partial term counts as a full term is not specifically discussed in the measure.

Moreover, the Objectors' argument is based upon the presumption that a provisional term will, for all practical purposes, reduce the actual length of potential service on the bench from twelve years to two years. As noted in the colloquy between the Mr. Hobbs and Mr. Andrews, this result may not actually occur.

MR. HOBBS: I'm wondering if, in fact, that means you get two years for sure, and then that at the end of two years, its an additional amount of time.

MR. ANDREWS: I believe that it does—it does mean that and—and—that, in fact, would create some circumstances where future appointees, depending on where they came in the cycle, would, in fact, serve more than ten but less than 12.

MR. HOBBS: It could be—

MR. ANDREWS: It's another reason—

MR. HOBBS: --almost 12 years.

MR. ANDREWS: Yeah, it could be. It could be 12 years less a day or two.

....

So there would—there could be a circumstance where somebody would serve three years and 50 weeks, perhaps. I think we maybe tangling ourselves up more than we need to.

(Tr. February 15, 2006, p. 33, ll. 1-25). It is just as likely as not that most judges will be able to serve close to a full 12 years.

Under these circumstances, including a statement about provisional terms in the title will not enhance voter understanding of the measure.

C. The Board properly refused to include a statement in the titles that the measure repeals existing provisions in the law.

The Objectors contend that the titles should state that the measure will repeal existing limits on the terms of appellate judges and justices of this Court.

According to the Objectors, the public must be informed that there are existing term limits. Whether the provisions of the measure establish new limits or amend existing limits is immaterial. The key function is to describe the new limits. The titles indeed describe the new limits.

D. “Term limits” is not a catch phrase.

A catch phrase consists of “words that work to a proposal’s favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). Catch phrases “form the

basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment that prejudices the voter understanding of the issues presented to the voters.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #227 and #228*, 3 P.3d 1, 6-7 (Colo. 2000). The existence of a catch phrase must be determined in the context of contemporary political debate. The “task is to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal.” *Id.*

The phrase “term limits” does not generate support for a proposal independent of the content of the measure. Colorado voters approve term limit provisions irrespective of the use of the phrase. The titles and Blue Book explanations did not use the phrase “term limits” describing the 1990 term limits measure. *An Analysis of 1990 Ballot Proposals* (1990) pp. 19-22.¹ The measure passed. The title for the 1994 term limits measure did not use the phrase term limits. However, the Blue Book contained numerous references to “term limits” in explaining Amendment 17. For example, it stated:

- “The term limits now in place in Colorado would not be changed”
- “Term limits in other states”. . . . Fifteen states have adopted term limits”

¹ The Blue Book excerpts are attached.

- “Term limits for local governments”

An Analysis of 1994 Ballot Proposals, Research Publication No. 392 (1994) pp. 53-54. The measure passed.

In 1996, the title of a term limits ballot proposal included the phrase “term limits.” The title stated, “An amendment to the Colorado Constitution concerning congressional term limits.” *An Analysis of 1996 Ballot Proposals*, Research Publication No. 415 (1996) p. 14. The measure passed.

In 2002, the General Assembly referred a measure to the voters seeking to exempt district attorneys from term limits. The measure was entitled “An amendment to the constitution of the state of Colorado exempting district attorneys from constitutional term limits.” *2002 Ballot Information Booklet*, Research Publication No. 502-10 (2002) p. 76. The description of the measure is replete with the phrase “term limits.”

- The Table of Contents states, “Exempt Elected District Attorneys from Term Limits”
- The title of the first section in the section entitled “Background” is “Term Limits.”
- The arguments for and against the measure both use the phrase “Term Limits.”

Id. at pp. 21-23. Voters rejected the measure.

The one consistent fact is that voters approve term limits, irrespective of the use of the phrase, when asked to limit terms and reject removing term limits. The phrase "term limits" does not generate support for the measure. It is the concept behind the phrase that matters to Colorado's voters.


The Objectors presented evidence that the proponents used the phrase "term limits" in some of the public statements. However, they presented no proof that the voters would be influenced by the phrase. Moreover, they have not presented any evidence that voters in the 1990, 1994, 1996 or 2002 elections were influenced by the phrase. One can conclude that there is no evidence from prior elections that the phrase influenced voters.

Finally, the phrase is nothing more than an objective short-hand reference to describe the provision. For example, this Court has used the phrase "term limits" as an objective short-hand reference in analyzing prior measures seeking to impose judicial term limits. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #104*, 987 P.2d 249, 260 (Colo. 1999) (section of opinion entitled "Term Limits"); *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 268 (Colo. 1999) (section of opinion entitled "Term Limits Requirement"). It is nothing more than a descriptive term.

CONCLUSION

For the above-stated reasons, the Board respectfully requests that the Court approve the titles.

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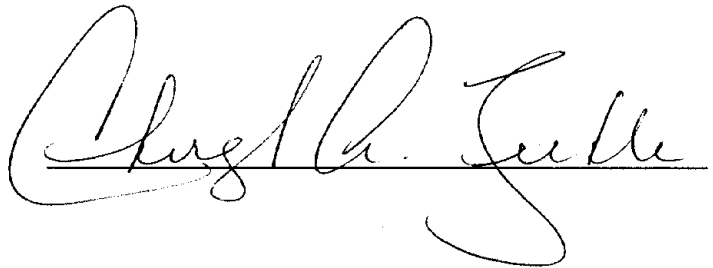
CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER BRIEF
OF TITLE BOARD upon all parties herein by depositing copies of same,
express mail, at Denver, Colorado, this 3rd day of April, 2006 addressed as
follows:

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A handwritten signature in cursive script, reading "Cheryl A. Zerkle", is written over a horizontal line.

Limitation of Terms

AMENDMENT NO. 5 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limitation of Terms

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

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

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

History

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

Comments on the Proposed Amendment

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

Limitation of Terms

TABLE I

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

Colorado Delegation to U.S. Congress

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

State Offices

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

* includes unfinished terms through 1990

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

TABLE II

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

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

* indicates # of newly elected/total # of seats

TABLE III

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

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

* indicates # elected/# seeking reelection

Limitation of Terms

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

Arguments For

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

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

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

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

Arguments Against

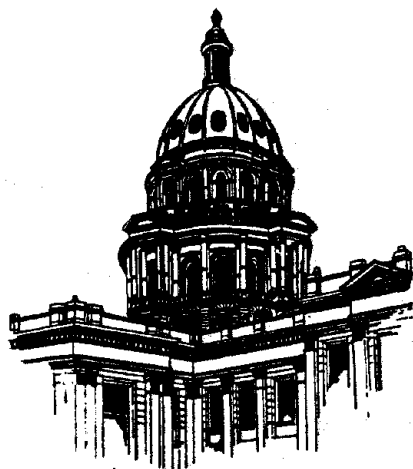
1) This measure should be rejected because it fails to address what ails our political system. The problems of corruption and incumbency advantage will persist even if term limitations are instituted. If our aim is to have more competitive elections and to limit the advantages of the incumbent, we can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

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

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

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

**LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY**



**AN ANALYSIS OF
1994 BALLOT PROPOSALS**

**Research Publication No. 392
1994**

AMENDMENT 17 - TERM LIMITS

one town to another to satisfy a patron request? Book dealers, video store owners, film distributors and movie theater owners must, on a daily basis, try to determine what material appeals to potential customers without breaking the laws of obscenity. Since a criminal defense can cost tens of thousands of dollars, businesses and libraries will be forced to conform to the most restrictive standard enacted by a local government.

In addition, health organizations which distribute information about AIDS, birth control, abortion, or human sexuality will become more vulnerable to legal challenges regarding sexually explicit educational and instructional materials. Although such challenges may eventually be defeated in court, the court challenges would cost time and money and could be used by opponents of health organizations as harassment.

5) The proposed amendment will allow political subdivisions to assess whether material is obscene, based on local community standards rather than a statewide standard. These aspects of the proposed amendment raise critical issues. First, the result will be a patchwork of local ordinances in the state, and determining the constitutionality of the local ordinances could require years of court action. Second, the strictest local standard could, in effect, become the statewide standard because libraries and other distributors of materials may not be willing to risk criminal prosecution by testing variations in obscenity standards from place to place.

6) The proposed amendment may result in censorship. The dictionary defines a censor as "an official who examines books, plays, news reports, motion pictures, radio and television programs, letters, cablegrams, etc, for the purpose of suppressing parts deemed objectionable on moral, political, military, or other grounds." In other words, censorship is the limitation by government of what people can read, see, and hear: it is a substitution of judgement by the government. A second definition of censor is "any person who supervises the manners or morality of others." The proposed amendment is both kinds of censorship.

7) No link between pornography and violence against women and children has been proven. The final report of the 1986 U.S. Attorney General Edwin Meese's Commission on Pornography has been criticized for its predetermined bias in favor of censorship, which many observers believe led to a predetermined conclusion. A Meese Commission member who wrote the draft report stated in a separate commentary that he did not make the claim, nor did the Meese Commission report, that a causal relationship exists between sexually explicit materials and acts of sexual violence. The commission member also wrote that he considered the deregulation of sexually explicit materials "only quite sensible." Furthermore, some experts believe that pornography provides a release for sexual urges that otherwise could take the form of inappropriate sexual conduct. A constitutional amendment to limit free speech, to deny adults access to certain materials, and to create a "chilling" effect for book dealers and video store owners would be inappropriate, given the lack of consensus concerning the effect of viewing pornography.

Amendment 17 - Term Limits

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

The proposed amendment to the Colorado Constitution would:

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

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

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

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

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

Background

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

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

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

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

Colorado General Assembly -

Senators - two consecutive terms or eight years

Representatives - four consecutive terms or eight years

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

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

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

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

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

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

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

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

Arguments For

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

AMENDMENT 17 - TERM LIMITS

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

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

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

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

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

Arguments Against

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

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

AMENDMENT 18 - STATE MEDICAL ASSISTANCE - REPAYMENT

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

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

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

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

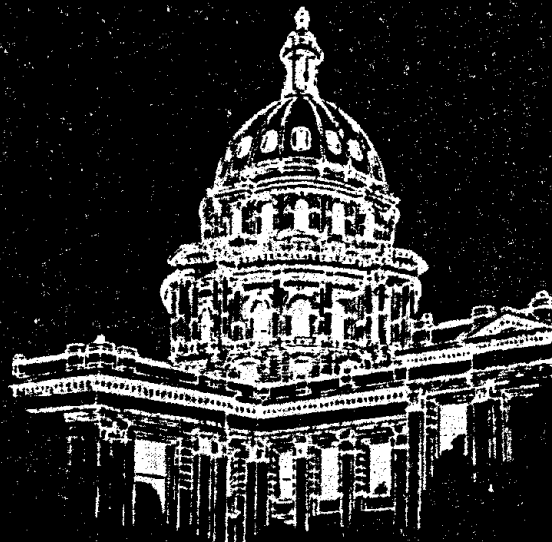
AMENDMENT 18 - STATE MEDICAL ASSISTANCE - REPAYMENT

Ballot Title: AN AMENDMENT TO THE COLORADO CONSTITUTION TO PROVIDE, EFFECTIVE JULY 1, 1995, THAT ANY PAYMENT OF MEDICAL ASSISTANCE BY ANY AGENCY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO A BIOLOGICAL PARENT OR THIRD PARTY ON BEHALF OF OR FOR THE BENEFIT OF THAT BIOLOGICAL PARENT'S CHILD BORN ON OR AFTER JULY 1, 1995, FOR ANY MEDICAL ASSISTANCE RENDERED TO THE CHILD SHALL CONSTITUTE A DEBT OWED TO THE AGENCY JOINTLY AND SEVERALLY BY: A) THE BIOLOGICAL PARENT WHO IS NOT THE APPLICANT FOR OR RECIPIENT OF THE MEDICAL ASSISTANCE PAYMENT, UNTIL THE CHILD REACHES FULL AGE, AND B) EACH BIOLOGICAL OR ADOPTIVE PARENT OF A MINOR BIOLOGICAL PARENT OF THE CHILD, UNTIL THE INCOME, PROPERTY AND RESOURCES OF THE PARENT BECOME INSUFFICIENT OR UNTIL THE MINOR BIOLOGICAL PARENT REACHES FULL AGE; TO REQUIRE THAT THE APPLICANT FOR OR RECIPIENT OF ASSISTANCE SHALL ASSIST THE APPROPRIATE AGENCY IN ESTABLISHING THE PATERNITY OF THE CHILD; AND TO EXEMPT FROM THE INCURRED DEBT MEDICAL ASSISTANCE RENDERED TO THE BIOLOGICAL PARENT OR CHILD WHEN SUCH ASSISTANCE IS AVAILABLE TO THE PUBLIC WITHOUT REGARD TO ECONOMIC STATUS.

The proposed amendment to the Colorado Constitution would:

- require that any costs for medical assistance provided by the state, or any of its political subdivisions, to parents receiving medical assistance on behalf of their children born on or after July 1, 1995, shall constitute a debt owed to the state;
- state that medical assistance would include, but not be limited to, prenatal care, birth delivery, and post-partum care;

LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY



An Analysis of 1996 Ballot Proposals

**Research Publication No. 415
1996**

AMENDMENT 12 — TERM LIMITS

fortunate in society, but taxing churches and other nonprofit organizations will only reduce their ability to provide charitable services.

- 3) Imposing property taxes on churches and charitable organizations will force some to close, eliminating the activities and services they offer. Government cannot possibly replace them all since no increased money will be available and some rely on volunteers today. Services that may be lost include those that the community has a duty to provide, such as medical assistance, food banks, child care, meals on wheels, soup kitchens, and social activities for youth and the elderly. Further, many communities in Colorado are served by nonprofit hospitals, which are currently exempt. This amendment could force many of these hospitals to increase their charges for services, possibly reducing access to health care for many Coloradans.
- 4) Taxing churches could lead to excessive involvement by the state in religious activities, which is prohibited by the federal constitution. By eliminating the exemption for religious property, this proposal would expand government interaction with religious organizations through the valuation of church property, reporting and auditing requirements, and the potential for tax liens and tax foreclosures.
- 5) Residential property owners in some areas could pay more in property taxes because of this measure. The main beneficiaries will be businesses and industries because they pay the largest share of property taxes. The small benefit to taxpayers is not worth the \$70 million burden that this amendment places on religious and charitable organizations.

AMENDMENT 12 — TERM LIMITS

Ballot Title: An amendment to the Colorado Constitution concerning congressional term limits, and, in connection therewith, specifying a proposed amendment to the U.S. Constitution that limits U.S. senators to two terms, former and incumbent U.S. senators to one additional term, U.S. representatives to three terms, and former and incumbent U.S. representatives to two additional terms; instructing Colorado's state senators and representatives to vote to apply for an amendment-proposing convention; instructing Colorado's U.S. senators and representatives to pass said term limits amendment; requiring that all election ballots have "disregarded voter instruction on term limits" next to the name of an incumbent U.S. senator or representative or incumbent state senator or representative when such senator or representative fails to take specific actions in support of said term limits amendment; providing that non-incumbent candidates for U.S. and state senator and representative be given an opportunity to take a pledge in support of said term limits amendment; requiring that primary and general election ballots have "declined to take pledge to support term limits" next to the name of a non-incumbent candidate who has not signed such pledge; authorizing the Secretary of State to determine whether the terms of this amendment have been complied with and whether such

AMENDMENT 12 — TERM LIMITS

designations should appear on the ballot; and allowing any legal challenge to this amendment to be filed with the Supreme Court of Colorado as an original action.

The complete text of this proposal can be found on pages 52-53 of this booklet.

The proposed amendment to the Colorado Constitution:

- ✓ begins the process in Colorado to call a convention to propose an amendment to the U.S. Constitution to limit congressional terms;
- ✓ provides that the congressional term limits amendment considered at the amendment-proposing convention, commonly referred to as a constitutional convention, restricts members of the U.S. House of Representatives to three two-year terms and members of the U.S. Senate to two six-year terms, and limits former and current House members to two additional terms and Senate members to one additional term;
- ✓ instructs each Colorado state legislator to vote for a constitutional convention to propose a congressional term limits amendment to the U.S. Constitution and to ratify the amendment when it is referred to the states;
- ✓ requires that, until the congressional term limits amendment is approved by the Colorado General Assembly, all election ballots identify any state legislator who failed to vote for the amendment during the steps necessary to amend the U.S. Constitution;
- ✓ instructs each member of Colorado's congressional delegation to vote for the amendment;
- ✓ requires election ballots to identify each member of Congress from Colorado who fails to vote for the amendment during the steps in the process necessary to win its approval;
- ✓ requires primary and general election ballots to identify which non-incumbents running for Congress and the state legislature have not signed a pledge to vote for the term limits amendment; and
- ✓ provides that challenges to the amendment be filed before the Colorado Supreme Court.

Background

First in 1990, then in 1994, Colorado voters limited the terms of office for elected officials to the U. S. Congress. These limitations, along with congressional term limits approved by 22 other states, were struck down by the U.S. Supreme Court in 1995.* In its decision, the Supreme Court ruled that congressional term limits can only be established in the U.S. Constitution, not by action of the individual states. Local and state term limits, such as those in Colorado, are unaffected by the court's decision.

1. *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842 (1995).

AMENDMENT 12 — TERM LIMITS

The U.S. Constitution provides two methods by which amendments may be proposed. Congress can propose an amendment by a two-thirds vote of each house's members, or two-thirds of the states can pass a resolution to apply to Congress to call a constitutional convention. In either case, a constitutional amendment must be approved by the legislatures of three-fourths of the states or in conventions of three-fourths of the states. At least 34 states must adopt a resolution to convene a constitutional convention for term limits. In 1996, at least 17 states have attempted to get this initiative on their state ballots, and 10, thus far, have been successful in doing so.

Members of U.S. Congress. Eighteen persons from Colorado have served in the U.S. House of Representatives since 1970. Of these 18 members, the number of terms served range from three members serving 13, 12, and 8 terms down to one member serving one term. Of the total membership of the 1995-96 U.S. House of Representatives, about 51 percent have served more than three terms, or more than six years. The average number of terms served by current members of the U.S. House of Representatives is about five terms or 10 years.

Eight persons from Colorado have served in the U.S. Senate since 1970. Of these eight members, the number of terms have ranged from a high of one member serving three terms (18 years) to three members serving one term. Of the 100 members of the 1995-96 U.S. Senate, 45 have served more than two terms, i.e., more than 12 years. The average number of terms served by the entire 1995-96 membership of the U.S. Senate is 2.6 terms or slightly over 15 years.

Arguments For

- 1) We cannot expect Congress to act against its self interest; voters must force the issue by initiating a proposal limiting their representatives' terms. For example, 33 term limit measures have been introduced in the present Congress. None received the necessary votes for a constitutional amendment. Efforts are underway in at least 14 states to place the issue before the voters.
- 2) Term limits will make Congress a citizen legislature and will focus Congress on national instead of parochial interests. Many qualified individuals will be willing to serve four or six years in Washington and then will return home to resume their careers. The turnover from term limits will bring more real world experience to the decisions made by Congress. For Colorado members who have served in the House of Representatives since 1970, the average number of years served is about nine, more than the six-year limit in the proposal.
- 3) This initiative gives voters the opportunity to know how candidates stand on the issue of congressional term limits. First, the ballot will indicate whether a non-incumbent candidate has pledged to vote at every opportunity for a congressional term limits amendment. Second, a ballot designation reflects incumbents' legislative actions on this issue. These methods are ways of holding candidates accountable to the voters.

AMENDMENT 13 — PETITIONS

- 4) The claim argued by opponents that a constitutional convention could radically alter the Constitution is unreasonable. Three-fourths of the states must ratify any constitutional amendment passed by the convention. Thirty-eight states still must ratify any proposed amendment.

Arguments Against

- 1) Calling for a constitutional convention could result in changes far beyond the term limit issue. Although a convention might be called for a specific purpose, such as a term limits amendment, there is nothing in this proposed amendment or in federal law that restricts a constitutional convention from going beyond the term limits issue. Even if the Congress limits the issues considered at a constitutional convention, convention delegates could go beyond the legal boundaries. In fact, at the original constitutional convention in 1787, delegates disregarded the rules and altered the ratification process. Thus, a "runaway" convention is possible.
- 2) In a representative democracy, people should be able to vote for the candidates they want to have in office without arbitrary limits. There is nothing wrong with having long-time experience in public office. To believe otherwise is to believe that elective office is the one vocation where experience is an obstacle to good performance. The price of this measure will be a shift in power from elected officials to lobbyists and nonelected officers, including administrative and congressional staff, because term limits result in a loss of institutional memory and continuity in elected positions.
- 3) This proposal subverts the basic idea of representative government. The initiative instructs Colorado state and congressional elected officials to vote for a congressional term limits amendment at every opportunity. Colorado has never required that its elected officials pledge to vote on any issue. Coloradans send elected representatives to the state legislature and to Congress to exercise their best judgement on a wide variety of matters affecting the welfare of citizens. When voters lose confidence in the judgement of their elected representatives, those representatives are voted out of office.
- 4) This measure fails to address what ails the current political system. Non-competitive elections and advantages of incumbency can be reduced without limiting terms of office. For instance, campaign spending could be limited, congressional sessions could be shortened, mailing and traveling privileges could be reduced or withdrawn, congressional salaries could be reduced, and district lines can be redrawn for more competitive races.

AMENDMENT 13 — PETITIONS

Ballot Title: An amendment to the Colorado Constitution concerning petitions, and, in connection therewith, changing initiative and referendum rights and procedures; extending petition powers to registered voters of all local governments;

2002 BALLOT INFORMATION BOOKLET

Analysis of Statewide Ballot Issues and Recommendations on Retention of Judges

Para recibir una copia del Folleto de Información de Balota de 2002 en español, llame a su oficina de contestación atendido las 24 horas del día al 303-763-2438 (en el área metropolitana de Denver) o al 1-800-557-4888 (fuera de Denver).

STATEWIDE ELECTION DAY IS
Thursday, November 5, 2002

Polling places open from 7 a.m. to 7 p.m.
(Early Voting Begins October 21, 2002)

**A YES vote on any ballot issue is a vote IN FAVOR OF
changing current law or existing circumstances, and
a NO vote on any ballot issue is a vote AGAINST
changing current law or existing circumstances.**

attorneys holding office on the effective date of this amendment shall continue in office for the remainder of the respective terms for which they were elected or appointed. ELECTED DISTRICT ATTORNEYS SHALL NOT BE SUBJECT TO THE TERM LIMITS ENUMERATED IN SECTION 11 OF ARTICLE XVIII OF THIS CONSTITUTION.

SECTION 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either "Yes" or "No" on the proposition: "AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO, EXEMPTING DISTRICT ATTORNEYS FROM CONSTITUTIONAL TERM LIMITS."

SECTION 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted "Yes", the said amendment shall become a part of the state constitution.

REFERENDUM B
PUBLIC/PRIVATE OWNERSHIP OF
LOCAL HEALTH CARE SERVICES

Ballot Title: An amendment to section 2 of article XI of the constitution of the state of Colorado, concerning the authorization for local governments to become a partner with a public or private entity in the provision of health care services, and, in connection therewith, authorizing a local government to become a subscriber, member, or shareholder in or a joint owner with any person or company, public or private, in order to provide such health care without incurring debt.

Text of Proposal:

Be It Resolved by the Senate of the Sixty-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Section 2 of article XI of the constitution of the state of Colorado is amended to read:

REFERENDUM
EXEMPT ELECTED DISTRICT ATTORNEYS
FROM TERM LIMITS

Ballot Title: An amendment to the constitution of the state of Colorado, exempting district attorneys from constitutional term limits.

Text of Proposal:

Be It Resolved by the Senate of the Sixty-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Section 11 (1) of article XVIII of the constitution of the state of Colorado is amended to read:

Section 11. Elected government officials - limitation on terms. (1) In order to broaden the opportunities for public service and to assure that elected officials of governments are responsive to the citizens of those governments, no nonjudicial elected official of any county, city and county, city, town, school district, service authority, or any other political subdivision of the State of Colorado, no member of the state board of education, and no elected member of the governing board of a state institution of higher education shall serve more than two consecutive terms in office, except that with respect to terms of office which are two years or shorter in duration, no such elected official shall serve more than three consecutive terms in office; EXCEPT THAT THIS SECTION SHALL NOT APPLY TO ELECTED DISTRICT ATTORNEYS. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1995. For purposes of this Section 11, terms are considered consecutive unless they are at least four years apart.

Section 13 of article VI of the constitution of the state of Colorado is amended to read:

Section 13. District attorneys - election - term - salary - qualifications. In each judicial district there shall be a district attorney elected by the electors thereof, whose term of office shall be four years. District attorneys shall receive such salaries and perform such duties as provided by law. No person shall be eligible to the office of district attorney who shall not, at the time of his OR HER election, possess all the qualifications of district court judges as provided in this article. All district

2) The speed by which a student learns cannot be mandated by law. The proposal creates an unrealistic expectation that English can be learned by all children in one year. However, the speed by which a child becomes fluent in English depends on the child's age, cultural circumstances, previous education, and socioeconomic background. Some children may take longer than one year to achieve a level of proficiency comparable to their English-speaking peers. If programs are too rigid, students' individual needs may not be met.

3) The proposal adds another layer of testing requirements for English learners. School districts will have to test English learners in English every year using a national test in addition to the Colorado Student Assessment Program (CSAP) tests. The additional testing for English learners means further administrative expense and time away from classroom teaching.

Estimate of Fiscal Impact

While the proposal will not increase or decrease state expenditures, local school districts' expenditures will be impacted. Under the proposal, some school districts will have to revamp their curricula, staff assignments, and testing procedures. However, the net impact to all school districts cannot be predicted because the impacts will vary depending on how each individual school district implements the proposal.

REFERENDUM A EXEMPT ELECTED DISTRICT ATTORNEYS FROM TERM LIMITS

The proposed amendment to the Colorado Constitution:

- ◆ eliminates term limits for elected district attorneys.

Background

Term limits. Colorado has term limits for elected state and local officials. The Colorado Constitution limits the length of office for the governor, lieutenant governor, secretary of state, state treasurer, and attorney general to two consecutive four-year terms. Members of the Colorado legislature may serve up to four consecutive two-year terms in the House of Representatives and two consecutive four-year terms

in the Senate. Members of the State Board of Education and the University of Colorado Board of Regents are limited to two consecutive six-year terms.

The maximum term of office for local elected officials is two consecutive terms. Although not expressly stated in the constitution, the Colorado Attorney General interprets the limits on terms of local elected officials to also apply to elected district attorneys. The Colorado Constitution allows the voters of a political subdivision to eliminate or change the term limits for a local official. However, the Colorado Secretary of State determined that only the state legislature can put a proposal before the voters of a judicial district to alter term limits for that district. District attorney term limits can also be altered through a constitutional amendment. This proposal amends the constitution to repeal term limits for district attorneys.

District attorneys. Colorado is divided into 22 judicial districts. The voters in each judicial district elect one district attorney who is responsible for the prosecution of criminal cases in that district. The district attorney determines which crimes to prosecute and recommends a penalty to the court. The district attorney also provides legal advice to police officers, assists in preparing search warrants, advises grand jury investigations, and may defend the counties of the district in court. In addition, the district attorney oversees an office of deputy district attorneys and support staff and prepares and administers a budget for the office. The Colorado Constitution requires a district attorney to be a licensed attorney for at least five years prior to being elected and to be a resident of the district throughout his or her term in office. A district attorney's term of office is four years.

Arguments For

1) Eliminating term limits allows residents of a judicial district to retain the expertise and experience of their district attorney. District attorneys must have specialized legal skills including knowledge of criminal law, court procedures, and police functions. Seventeen of the 22 district attorneys, with a combined total of over 200 years in office, will be term limited in 2004.

2) Term limits are unnecessary because district attorneys are already accountable to the public. Voters may remove a district attorney through the normal election process or by a recall election. District attorneys work in a public forum where their acts are a matter of public record and open to review by citizens. Further, smaller, more rural districts may have difficulty attracting a candidate who meets the requirements of the position.

3) This proposal would eliminate the destabilizing effect that term limits could have on a district attorney's office. Citizens and law enforcement officers within a judicial district rely on consistent law enforcement practices that may change when term limits force a district attorney to step down. New district attorneys may be placed at a disadvantage when taking over complex cases from a term-limited district attorney. In addition, term limits might discourage skilled attorneys from running for district attorney as their prosecutorial career could end after two terms. Of the 17 states with term limits, only Colorado limits the length of service for the district attorney.

Arguments Against

1) Term limits provide a check on the decision-making power of district attorneys. A district attorney decides who to charge and which crimes to charge. Limiting district attorneys to two terms could lessen any concern the public may have that politically motivated decision-making occurs within the office. An exception should not be made for this elected official who has significant power to enforce criminal laws. In 2004, term limits will affect district attorneys for the first time, and this proposal removes term limits before their effects can be evaluated.

2) Term limits could result in more candidate choices for the voter. Incumbents have name recognition and financial advantages that are difficult for challengers to overcome. In the past 20 years, 78 percent of the district attorneys running for reelection did not have a challenger. Term limits could provide greater opportunity for attorneys who are not career prosecutors to bring new ideas to law enforcement. More competition for the office could also lead to more aggressive prosecutorial policies and greater responsiveness to public opinion over the long term. Unlimited years of service do not necessarily provide the citizens with better prosecutors or a more responsive and sound prosecutorial policy. Voters can be trusted to fill the office with a qualified candidate.

Estimate of Fiscal Impact

The proposal does not increase state or local expenditures or taxes, nor does it affect the amount of taxpayer refunds from either the state or local governments.