

# Term Limits in State Legislative Elections: Less Value for More Money?†

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Our country's contemporary experiment with state legislative term limits is now sufficiently underway to begin meaningfully to assess the actual impact of these limits in a variety of areas. This Article considers whether term limits are providing less of their promised salutary effects on legislative composition while at the same time contributing to rising campaign costs. In particular, the Article focuses on data suggesting that term limits have done nothing to halt, and instead may be one factor in the continuing rapid escalation in both campaign expenditures and contributions. Indeed, the author's pilot study of campaign financing in races for the Ohio legislature found notable increases in several categories after the onset of term limits, and provides greater detail than two previous studies about the nature of these changes in particular types of legislative races. To the extent that these increases may be associated with term limits, the Article argues that adoption of term limit measures has done little to reduce the influence on the political process of special interests and sophisticated political contributors. The Article also explores some implications of these findings on state campaign finance reform efforts, arguing that absent substantial change in the system of funding elections, term limits are not likely to deliver on their promised diversification and purification of state legislatures.

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## INTRODUCTION

Responding to a national fervor, twenty-one states in the early 1990s adopted statutory or constitutional provisions limiting the number of years that an individual could serve in the state's own legislature.<sup>1</sup> These measures attracted widespread popular support<sup>2</sup> on the basis that they would oust entrenched representatives who had lost touch with their constituents, free legislators from the control of special interests, and restore law-making institutions to their proper composition by enabling a more representative and diverse group of citizens to serve as lawmakers.<sup>3</sup> Opponents predicted that term limits would not achieve these objectives, and instead would deprive legislatures of their most experienced and capable members.<sup>4</sup> Nevertheless, the rapid adoption of these measures in close to half of the United States over only a few years was but one sign of the increasing dissatisfaction many citizens were feeling with the performance of their core democratic institutions.

Typically unwilling to impose term limits retroactively on their then-sitting legislators, however,<sup>5</sup> most states chose not to preclude incumbents from seeking

1. Specifically, the twenty-one states were: Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. *See infra* notes 81-85 and accompanying text. Most of these states' provisions also limited the number of terms that a person could serve that state in the United States Congress. In addition, three other states—Alaska, New Hampshire, and North Dakota—imposed only *congressional* term limits. *See infra* note 63.

2. Indeed, all but two were adopted by popular initiative, typically by wide margins and often in the face of legislative opposition. *See infra* notes 81-87 and accompanying text.

3. *See infra* notes 68-72 and accompanying text.

4. *See infra* notes 73-80 and accompanying text.

5. At the congressional level, states also were loath to "term out" their own delegation unilaterally, and thereby leave to other states the powers and benefits of congressional seniority. For a thorough discussion of this collective action problem, see Einer Elhauge, *Are Term Limits Undemocratic?*, 64 U. CHI. L. REV. 83, 85-86, 114-54 (1997).

reelection until six to twelve years in the future.<sup>6</sup> In only two states did term limits provisions begin to displace state legislators as early as 1996, when incumbents in the Maine legislature and the California legislature were precluded from seeking reelection. In 1998, incumbents in the Colorado legislature and the lower houses of the Arkansas, Michigan, and Oregon legislatures first felt the preclusive effect of their states' term limits provisions. The election of 2000 then witnessed the largest single impact of term limits,<sup>7</sup> as incumbent legislators in both houses of the legislatures of five more states—Arizona, Florida, Montana, Ohio, and South Dakota—as well as the upper house of the Arkansas legislature, were prevented from remaining in office.<sup>8</sup>

The time thus is now ripe to begin to assess how legislative term limits may be affecting, and may continue to affect, the operations of state legislatures around the country. Over the past decade, several legal commentators have offered predictions about the impact or desirability of legislative term limits, but their focus was primarily on term limits in Congress, and their work was necessarily constrained by a lack of empirical data concerning the impact of term limits on legislative life.<sup>9</sup> Although that constraint no longer precludes analysis of the effects of term limits in well over half the states with term-limit provisions, almost no legal scholarship has yet addressed the actual impact of term limits on state legislative processes.<sup>10</sup> The number of topics in

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6. In 1995, before the effective date of these provisions had arrived, the United States Supreme Court invalidated limits on congressional terms as violating the U.S. Constitution. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). Similarly, under provisions of their state constitutions, state courts in Nebraska, Massachusetts, Washington, and Oregon struck down their limits on state legislative terms in 1996, 1997, 1998, and 2002, respectively. *See infra* notes 88-90. Nebraska then adopted another term limits provision in 2000. *See infra* note 89. In February 2002, the Idaho legislature voted to repeal Idaho's statutory term limits provision, and in March 2003 the Utah legislature similarly repealed Utah's statutory term limit, leaving sixteen states today with effective legislative term limits measures. *See infra* note 91.

7. The National Conference of State Legislatures reported that, as a result of term limits, 52 state legislators nationwide were termed out in 1996, 203 were termed out in 1998, 380 were termed out in 2000, and 322 were termed out in 2002. *See* National Conference of State Legislatures, *Members Termed Out: 1996-2002* (on file with author).

8. In 2002, term limits took effect in Michigan's upper house, as well as in both houses of the Missouri legislature. Oregon's upper house also would have felt the impact of term limits in 2002, had the Oregon Supreme Court not invalidated the state's term limit provision early that year. *See infra* note 90. Over the upcoming elections of 2004, 2006, 2007, 2008, and 2010, the five remaining states with legislative term limits—Oklahoma, Wyoming, Louisiana, Nebraska, and Nevada, respectively—will first experience the direct effect of term limits.

9. *See, e.g.*, Elhauge, *supra* note 5; Elizabeth Garrett, *Term Limitations and the Myth of the Citizen-Legislator*, 81 CORNELL L. REV. 623 (1996); Linda Cohen & Matthew Spitzer, *Term Limits*, 80 GEO. L.J. 477 (1992); Erik H. Corwin, *Recent Developments: Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569 (1991).

10. One state legislator has written a short recounting of some effects of term limits. *See* Rhine L. McLin, *The Hidden Effects of Term Limits: Losing the Voices of Experience and Diversity*, 32 U. TOL. L. REV. 539 (2001). Preliminary political science analyses suggest that term limits are not fundamentally altering the characteristics of the legislators themselves, but are altering the balance of power among various legislative actors, such as representatives, lobbyists, party leaders, and legislative staff. *See, e.g.*, THE TEST OF TIME: COPING WITH LEGISLATIVE TERM LIMITS (Rick Farmer et al. eds., 2003); MARY HAWKESWORTH & KATHERINE E. KLEEMAN, CENTER FOR AMERICAN WOMEN AND POLITICS, TERM LIMITS AND THE REPRESENTATION OF WOMEN (2001), at <http://www.rci.rutgers.edu/~cawp/Research/Reports/Term%20LimitsFullReport.pdf>; JOHN M. CAREY ET AL., TERM LIMITS IN THE STATE

need of continuing study in this area is large and likely to evolve as the impact of state legislative term limits changes over time.

One topic deserving attention is the relationship between term limits and campaign financing in legislative races. Individual states have long experimented with a variety of measures to regulate the influence of money in politics.<sup>11</sup> Indeed, many of the same concerns that prompted states to adopt term limits—such as a drive to reduce the influence of special interests and to encourage a greater and more “representative” range of citizens to serve as lawmakers—also underlie efforts to control the financing of political campaigns. Are these efforts synergistic? Are they merely duplicative? Or might the interplay between term limits and some forms of campaign finance reform perhaps be more complex, and even antagonistic?

This Article begins to explore these questions by considering the experiences to date of California, Michigan, and Ohio, whose term limits provisions first applied to at least one house of their state legislatures in 1996, 1998, and 2000, respectively. The Article includes a preliminary study of Ohio’s recent state legislative elections that shows, in greater depth than previous California and Michigan studies, sizable increases in certain campaign costs after term limits, particularly at the primary election stage. Although it is somewhat early to determine just how much responsibility term limits bear for increases in state campaign expenditures, these data at least suggest that term limits have failed to reduce the influence of money in the electoral process. The Article concludes that this failure provides another basis to question the wisdom of not only term limits themselves, but also the larger campaign finance landscape created by the Supreme Court’s 1976 decision in *Buckley v. Valeo*.<sup>12</sup> In addition, the continuing financial demands of competing for open seats even in term-limited legislatures provide further reason to favor certain types of campaign finance reform for state legislatures, namely public funding or partial removal of contribution limits.

The Article proceeds in three parts. Part I provides an overview of the recent term-limits and campaign finance reform movements. After reviewing the principal justifications offered for each movement, this Part also summarizes key predictions about the impact of term limits on the types of candidates seeking and winning representative office, and on the influence of money in politics.

Part II then presents campaign data relevant to these predictions. This Part first examines previous reports and studies that address the impact of term limits on the election of state legislators. The bulk of this Part then presents a new and more detailed pilot study of legislative elections in Ohio between 1996 and 2000, when Ohio’s term limit provision first precluded state legislators from seeking reelection. Part II concludes by summarizing several studies of the effect of term limits on the

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LEGISLATURES (2000); *see infra* notes 193-212 and accompanying text.

11. *See infra* note 41. Over the past decade, the issue of campaign finance reform also has taken on an increasingly high national profile, culminating in its prominent position in the 2000 presidential election and in the subsequent congressional agenda, ultimately leading to the enactment in 2002 of the Bipartisan Campaign Finance Reform Act. Although the issue was shelved temporarily after the events of September 11, 2001, the Enron debacle brought it back to life. *See* N.Y. TIMES, Jan. 22, 2002, at A1; N.Y. TIMES, Jan. 25, 2002, at A1.

12. 424 U.S. 1 (1976); *see infra* text accompanying notes 48-50. The Supreme Court’s recent decision in *McConnell v. FEC*, 124 S. Ct. 619 (2003), enhances the possibility that the Court itself may be questioning the *Buckley* framework, although this framework continues to dominate the campaign finance landscape.

composition of state legislatures, finding that essentially the same type of candidates continue to win election under term limits.

Part III reflects on these empirical findings concerning the effects of term limits on both campaign costs and the characteristics of legislative candidates. In addition to identifying some questions in need of further study, this Part explores the implications of the present findings on other aspects of the ongoing dialogue about both term limits and campaign finance. This Part also discusses possible adjustments to the election processes for state legislators. Absent some such adjustment, term limits will continue to have an adverse effect on state legislatures, rather than helping to produce a more diverse and publicly responsive group of legislators.

#### I. CYNICISM AND DISTRUST: COMMON ORIGINS OF TERM LIMITS AND CAMPAIGN FINANCE REFORM

Although driven by different groups of core proponents, both the term limits movement of the 1990s and the ongoing campaign finance reform movement have drawn upon widespread popular discord about the unresponsiveness of government institutions and the improper motives of elected officials. Because the battle that led twenty-one states to adopt some form of term-limits measure for state legislators between 1990 and 1995 occurred at a time when federal constitutional law seemed inhospitable to many potential campaign finance reforms, term limits may have served at least to some supporters as an alternative means of checking the influence of special interests on the political process. Nevertheless, even states with term limits have continued to pursue a variety of campaign finance reforms, and have generally done so without regard to how term limits have altered the campaign landscape. Meanwhile, several key justifications for legislative term limits also have involved severing or at least weakening the link between special interests and elected officials.

##### A. Contemporary Frustration with Democratic Institutions

Fed largely by cynicism about the operation of the federal government (and Congress in particular) during an era of divided party control, the term limits movement in the early 1990s also took root in a more universal distrust of politicians generally.<sup>13</sup> Supporters of term limits argued that in contemporary America, entrenched legislators had lost touch with their constituents, become beholden to a narrow group of special interests, and pursued careerism at the expense of the public good.<sup>14</sup> These perceived characteristics of a political system run by “career politicians” were not only considered bad in themselves, but also were blamed as a significant factor in voter apathy and in the high level of citizen disinterest in—and distrust of—politics generally.<sup>15</sup>

The hostility towards career or “professional” politicians that fed the term limits movement drew at least some of its strength from the idea of a “citizen legislator.” The best-known historical example is that of the Fifth-Century B.C. Roman patriot Lucius

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13. Cf. Alan Rosenthal, *The Effects of Term Limits on Legislatures: A Comment*, in *LIMITING LEGISLATIVE TERMS* 205 (Gerald Benjamin & Michael J. Malbin eds., 1992) (describing anger at Congress as key cause of state term limits).

14. See Corwin, *supra* note 9, at 605; Elhauge, *supra* note 5, at 88 & n.10.

15. See Cohen & Spitzer, *supra* note 9, at 480.

Quinctius Cincinnatus, renowned for twice abandoning his plow for transitory service as the Roman dictator. Each time, the story is told, Cincinnatus served briefly, and only as long as necessary to defend his city from hostile threats. At that point, he resigned the dictatorship and returned to his farm.<sup>16</sup>

George Washington's revered example of voluntarily quitting the Presidency after two terms, coupled with other stories of the ways in which many of the Framers served as politicians for short but critical periods,<sup>17</sup> have embedded the appeal of the legend of Cincinnatus in American society.<sup>18</sup> Some of the appeal of this legend inevitably lies in the sense it conveys that citizens living "ordinary" lives can, through punctuated efforts at service, make valuable political contributions to their community and society. But certainly another aspect of the appeal is Cincinnatus' apparent lack of ambition or glory. Both aspects are related in the modern-day appeal of term limits: "Career" politicians are distrusted because of the perception that they are highly ambitious and self-serving.<sup>19</sup> In turn, their pursuit of this ambition is perceived as antithetical to the public interest. This conflict arises because careerist ambition distorts politicians' ability to represent "ordinary" citizens by driving them to curry favor with narrow interest groups, and also because continuous "professionalized" pursuit of public office displaces truly public-spirited individuals from serving for brief periods as elected representatives of their communities.<sup>20</sup>

Accordingly, in the 1990s many citizens articulated frustration with career politicians both in terms of the lack of representativeness of elected officials, and in terms of the corrupting effect of money in politics. In many states, these two distinct frustrations with career politicians were both shaped by the increasing "professionalization" of legislative institutions, a development that occurred primarily in the 1960s and 1970s.<sup>21</sup> In some states, memories were still fresh of the days when the state's legislators, like Cincinnatus, had come in from the fields to handle the

16. See Richard H. Underwood, *Perjury: An Anthology*, 13 ARIZ. J. INT'L & COMP. L. 307, 308 (1996).

17. See GIDEON DORON & MICHAEL HARRIS, TERM LIMITS 7-10 (2001); John H. Fund, *Term Limitation: An Idea Whose Time Has Come*, in LIMITING LEGISLATIVE TERMS 225, 226-27 (Gerald Benjamin & Michael J. Malbin eds., 1992); Mark P. Petracca, *Rotation in Office: The History of an Idea*, in LIMITING LEGISLATIVE TERMS 19, 29-36 (Gerald Benjamin & Michael J. Malbin eds., 1992).

18. Prominent examples of rotation in office exist beyond the founding era as well. Abraham Lincoln, for instance, relinquished his congressional seat after a term to keep a rotation agreement he had made with intra-party political rivals. See Charles R. Kesler, *Bad Housekeeping: The Case Against Congressional Term Limits*, in LIMITING LEGISLATIVE TERMS 241, 244 (Gerald Benjamin & Michael J. Malbin eds., 1992).

19. Indeed, this ambition is the typical assumption in studies of political behavior. See, e.g., CAREY ET AL., *supra* note 10, at 3; GARY F. MONCRIEF ET AL., WHO RUNS FOR THE LEGISLATURE? 29-30 (2001).

20. Accordingly, some term limits supporters described their virtues in terms of removing barriers to entry. See Einer Elhauge et al., *How Term Limits Enhance the Expression of Democratic Preferences*, 5 SUP. CT. ECON. REV. 59, 68-69 (1997).

21. A wide variety exists in the level of professionalization of state legislatures around the country. As the term is typically understood, a "professional" legislature is one that is in session at most seasons of the year, pays legislators well, and employs a meaningful complement of staff. See Bruce E. Cain & Mark A. Levin, *Term Limits*, in ANNUAL REVIEW OF POLITICAL SCIENCE, 1999, at 163, 173; CAREY ET AL., *supra* note 10, at 145-49; MONCRIEF ET AL., *supra* note 19, at 21.

necessary legislative business for a brief season of only a few weeks every other year, received only a small stipend for their service, and then returned home to take up their plows again.<sup>22</sup> In contrast, the professionalization of state legislatures that occurred in the latter twentieth century seemed to have encouraged a new type of careerism among many states' legislators.<sup>23</sup> This professionalization contributed to dramatic increases in campaign costs and gave interest groups a more powerful place at the policy-making table.<sup>24</sup> Professionalization also discouraged many types of citizens from serving as elected officials, as legislatures became more labor-intensive and institutionalized.<sup>25</sup>

This is not to say that professionalism alone accounted for the cynicism and hostility towards state legislatures, but rather that public perceptions of "career politicians" seem to have contributed to widespread dissatisfaction with representative democracy.<sup>26</sup> It was therefore easy for mounting frustrations with Congress to spill over against the increasingly professionalized state legislatures as well.<sup>27</sup> At the center

22. Cf. William Pound, *State Legislative Careers: Twenty-Five Years of Reform*, in CHANGING PATTERNS IN STATE LEGISLATIVE CAREERS 9-15 (Gary F. Moncrief & Joel A. Thompson eds., 1992) (describing recent rapid changes in legislative salaries, staff levels, and lengths of session).

23. For example, 43% (57 of the 132 members) of Ohio's 124th General Assembly (2001-02) self-identified their occupation solely as full-time legislator. See generally THE OHIO SENATE, 124TH GENERAL ASSEMBLY (on file with author); THE OHIO HOUSE OF REPRESENTATIVES, 124TH GENERAL ASSEMBLY (on file with author). This is in marked contrast to Petracca's data showing that with the advent of term limits in California (the state generally regarded as having the most professional legislature), the percentage of California legislators who call themselves full-time legislators had dropped from 36% in 1986 to 3.4% in 1995. See MARK P. PETRACCA, A LEGISLATURE IN TRANSITION: THE CALIFORNIA EXPERIENCE WITH TERM LIMITS 19 (Institute of Governmental Studies, Working Paper No. 96-19, 1996), cited in Cain & Levin, *supra* note 21, at 175. But see Richard A. Clucas, *California: The New Amateur Politics*, in THE TEST OF TIME 17, 22-23 (Rick Farmer et al. eds., 2003) (finding 47% of California Assembly and 37% of California Senate members—"record numbers"—listing legislative service as their career in 1999).

24. See Gary F. Moncrief, *Candidate Spending in State Legislative Races*, in CAMPAIGN FINANCE IN STATE LEGISLATIVE ELECTIONS 47 (Joel A. Thompson & Gary F. Moncrief eds., 1998); William E. Cassie & Joel A. Thompson, *Patterns of PAC Contributions to State Legislative Candidates*, in CAMPAIGN FINANCE IN STATE LEGISLATIVE ELECTIONS 166-67 (Joel A. Thompson & Gary F. Moncrief eds., 1998).

25. See MONCRIEF ET AL., *supra* note 19, at 23.

26. For instance, of four categories of term limits supporters articulated by Robert Kurfirt (and employed by Cain & Levin), three are premised on different visions of the value of amateur politics. See Cain & Levin, *supra* note 21, at 168-72. Furthermore, there appears to be some correlation between the level of professionalization of a state's legislature and the harshness of its particular term limits measure, with more professionalized legislatures subject to shorter term limits. See *id.* at 166-67, 173.

27. See, e.g., Sandy Theis, *Ex-Opponent Backs Term Limits*, DAYTON DAILY NEWS, Nov. 11, 1991, at A3 (reporting state legislator's observation that "disgust with Congress" was fueling interest in state term limits); Mark Petracca, *Political Careerism Is the Bane of True Democracy*, N.Y. TIMES, Oct. 17, 1990, at A26 ("Professionalism and careerism in politics [are] the bane of democratic governance."); GERALD BENJAMIN & MICHAEL J. MALBIN, Preface, in LIMITING LEGISLATIVE TERMS, at xi (Gerald Benjamin & Michael J. Malbin eds., 1992) (blaming rise of political careerism for public cynicism towards legislatures). Ironically, the late-twentieth century professionalization of state legislatures in part responded to earlier concerns about excessive legislative turnover. See David H. Everson, *The Impact of Term Limitations on the States: Cutting the Underbrush or Chopping Down the Tall Timber?*, in LIMITING LEGISLATIVE

of these frustrations was a sense that "special interests" had become unduly influential in the legislative process, while ordinary constituents were increasingly marginalized.

At both the state and national level, the term limits movement thus responded to growing public concern about influence peddling in politics. As Professors Daniel Farber and Philip Frickey summarized it at the time, "[a] major argument in favor of term limits is that campaign funding by interest groups tends to lock incumbents into place, with the effect that legislators are less responsive to the public interest."<sup>28</sup> Or, as President George H.W. Bush more popularly explained in his 1991 State of the Union Address, "[O]ne of the reasons . . . there is so much support across this country for term limitations is that the American people are increasingly concerned about big-money influence in politics."<sup>29</sup> Many others were making similar arguments, including the claim that term limits would produce "citizen legislators" less corrupted by the impact of money in politics, more representative of their constituents, and more responsive to the concerns of ordinary voters.<sup>30</sup>

Of course, similar concern about the influence of money in politics has been the primary motivating force behind the modern campaign finance reform movement, a movement that typically traces its contemporary roots to the Federal Election Campaign Act of 1971 and its subsequent revision in light of the events of Watergate.<sup>31</sup> As in the term limits context, this concern also is often articulated in two different but related ways, one that focuses on perceived corruption in the political process, and the other that focuses on perceived inequalities in political participation and power.<sup>32</sup> Indeed, the U.S. Supreme Court relied in part on this distinction in its landmark *Buckley v. Valeo*<sup>33</sup> decision invalidating portions of the Federal Election Campaign Act. The Court viewed government efforts to preclude corruption or the appearance of corruption as a legitimate basis for some restrictions on free speech rights, but saw efforts to equalize citizens' ability to contribute to political debate as "wholly foreign to the First Amendment."<sup>34</sup>

Thus, a generalized concern about the potential corrupting and distributional effects of money in politics underlies both the modern campaign finance and term

TERMS 189, 191-94 (Gerald Benjamin & Michael J. Malbin eds., 1992).

28. Daniel A. Farber & Philip P. Frickey, *Forward: Positive Political Theory in the Nineties*, 80 GEO. L.J. 457, 463-64 (1992).

29. President George H. W. Bush, State of the Union Address (1991), in PUBLIC PAPERS OF THE PRESIDENT 77 (1991).

30. See, e.g., GEORGE F. WILL, RESTORATION 56-57 (1992); Richard Cohen, *It's Time to Limit Terms*, WASH. POST, Dec. 7, 1990, at A23.

31. See FRANK J. SORAU, INSIDE CAMPAIGN FINANCE 1-9 (1992).

32. See, e.g., David A. Strauss, *Corruption, Equality, & Campaign Finance Reform*, 94 COLUM. L. REV. 1369, 1369 (1994). Alternative formulations of reasons to regulate campaign contributions and expenditures include: to insure competitiveness; to foster debate; to instill public confidence; and to free candidates from excessive pressures to raise funds. See Jamin Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160 (1994); Vincent Blasi, *Free Speech and the Widening Gyre of Fund Raising: Why Campaign Spending Limits May Not Violate the First Amendment After All*, 94 COLUM. L. REV. 1281 (1994).

33. 424 U.S. 1 (1976); see *infra* text accompanying notes 48-50.

34. *Id.* at 49. However, the distinction between these two types of distorting effects of money in politics may not always be so easy to maintain. See, e.g., Strauss, *supra* note 32, at 1370 (arguing that concern about corruption in campaign finance in fact is a derivative concern about inequality).



limits movements.<sup>35</sup> It therefore is worth noting that, despite a common popular perception that both the power and corruption of special interests have risen substantially in recent decades,<sup>36</sup> neither the term limits movement nor the campaign finance reform movement is at all new to American politics. Rather, the campaign finance reform movement traces its origins at least to the time of Lincoln,<sup>37</sup> and the term limits issue has been present in some form in the United States from the time of the founding, with precedents in antiquity.<sup>38</sup> Nevertheless, as sketched briefly in the following two sections, both issues independently garnered new-found popular support in the waning years of the twentieth century.

### *B. The Campaign Finance Reform Movement*

By the mid 1990s, a number of campaign finance reform efforts were underway at the state level, even while national campaign finance reform efforts were essentially at a standstill.<sup>39</sup> A fuller appreciation of the popular appeal of—and aspirations for—the 1990s term limits movement depends, in part, on an understanding of these various recent campaign finance reform efforts, which were heavily influenced by the Supreme Court's 1976 decision in *Buckley v. Valeo*.<sup>40</sup>

Comprehensive efforts to regulate campaign spending only began to mature in the 1960s.<sup>41</sup> These efforts were driven largely by the rapid escalation in candidates' media

35. See, e.g., David S. Broder, *Pox Populi: Why the New "Reform" Really Serves the Elites*, WASH. POST, Apr. 25, 1993, at C1.

36. See ANTHONY GIERZYNSKI, MONEY RULES 2-6 (2000).

37. According to some accounts, in an 1864 letter, President Lincoln wrote of his fear that, notwithstanding a successful conclusion of the Civil War, another crisis threatened the Republic in the form of monied interests' efforts to control government. The letter reportedly read that "[a]s a result of the war, corporations have been enthroned and an era of corruption in high places will follow." See ARCHER H. SHAW, THE LINCOLN ENCYCLOPEDIA 40 (1950). The Abraham Lincoln Association disputes the authenticity of this letter, however. See Thomas F. Schwartz, *Lincoln Never Said That*, 1 FOR THE PEOPLE 5-6 (1999), available at <http://www.alincolnassoc.com/newsletters/1-1.pdf>. In any event, the first federal law regulating campaign financing followed shortly thereafter in the form of an 1867 prohibition on soliciting political contributions from certain naval employees, followed in turn by the 1883 Civil Service Reform Act, which made it a crime for any federal employee to solicit campaign contributions from any other employee. See CONGRESSIONAL QUARTERLY, DOLLAR POLITICS 3 (3d ed. 1982).

Concerns about the impact of money in politics preceded the country's founding, however. In 1757, George Washington was charged with distributing 160 gallons of alcoholic beverages among the 391 voters in the district in which he was running for the Virginia House of Burgesses. See *id.*

38. See Mark P. Petracca, *A History of Rotation in Office*, in LEGISLATIVE TERM LIMITS: PUBLIC CHOICE PERSPECTIVES 247 (Bernard Grofman ed., 1996); Petracca, *supra* note 17, at 19; Corwin, *supra* note 9, at 583-87.

39. See Malcolm E. Jewell & William E. Cassie, *Can the Legislative Campaign Finance System Be Reformed?*, in CAMPAIGN FINANCE IN STATE LEGISLATIVE ELECTIONS 209 (Joel A. Thompson & Gary F. Moncrief eds., 1998); MICHAEL J. MALBIN & THOMAS L. GAIS, THE DAY AFTER REFORM 4-5 (1998).

40. 424 U.S. 1 (1976). Notwithstanding the Supreme Court's recent approval of the constitutionality of most of the 2002 Bipartisan Campaign Finance Reform Act, see *McConnell v. FEC*, 124 S. Ct. 619 (2003), the *Buckley* decision continues to remain the defining feature of the contemporary campaign finance landscape.

41. Although the Tillman Act of 1907 and the Smith-Connally Act of 1943 had banned

expenditures that accompanied the advent of televised campaign advertising, the weakening of political party influence, and the arrival of the candidate-centered campaigns that now dominate American politics.<sup>42</sup> At the federal level, the result was the heralded yet fairly weak Federal Election Campaign Act of 1971, which limited certain expenditures and contributions, and called for limited financial disclosures from candidates.<sup>43</sup> Almost immediately thereafter, the Watergate crisis and its accompanying campaign financing scandals<sup>44</sup> led to a complete reworking of the 1971 statute, in the form of the 1974 amendments to the Federal Election Campaign Act.<sup>45</sup>

Also prompted by both Watergate and the rapidly rising costs of political campaigns at the state and local levels, between 1972 and 1974 forty-nine states passed some form of campaign finance measure, some with contribution and expenditure limits, and many with meaningful disclosure requirements.<sup>46</sup> The primary result of these measures was not any significant alteration of state campaign practices, however, but merely heightened public awareness of "the predominant role of lobbies and special-interest groups in campaign funding, especially of legislative races."<sup>47</sup>

Then, in *Buckley v. Valeo*, the Supreme Court dramatically altered the campaign finance landscape by striking down on First Amendment grounds the provisions in the 1974 federal election law that limited the amounts that candidates (or their supporters independently) could spend on political campaigns, while upholding the federal law's

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political contributions to federal candidates from corporate and union treasuries, respectively, these and other earlier twentieth-century federal reform efforts, such as the Corrupt Practices Act of 1925 and the Hatch Act Amendments of 1940, were easily circumvented and lacked any meaningful enforcement efforts. See GIERZYNSKI, *supra* note 36, at 41-43; CONGRESSIONAL QUARTERLY, *supra* note 37, at 6-7. As early as the 1890s and 1900s, some states had experimented with stronger campaign finance reform measures, including expenditure limitations and public funding, but by 1910 most of these early measures had either been repealed or declared unconstitutional by state courts. See CENTER FOR RESPONSIVE POLITICS, A BRIEF HISTORY OF MONEY IN POLITICS: CAMPAIGN FINANCE—AND CAMPAIGN FINANCE REFORM—IN THE UNITED STATES 14-15 (1995). Between 1910 and 1970, states occasionally attempted some weaker types of campaign finance reforms, such as banning campaign contributions from government employees, prohibiting corporate or union contributions to candidates, and limiting the size of individual contributions to candidates. See DONALD A. GROSS & ROBERT K. GOIDEL, THE STATES OF CAMPAIGN FINANCE REFORM 3-4 (2003).

42. See SORAUF, *supra* note 31, at 2-5; CONGRESSIONAL QUARTERLY, *supra* note 37, at 7-8.

43. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C. 431-55).

44. The revelation of these scandals was in no small part a result of the disclosure requirements of the 1971 Act. See CONGRESSIONAL QUARTERLY, *supra* note 37, at 10-12.

45. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974). These amendments not only limited to \$1000 the amount that one individual could contribute to a single candidate per election, but also limited the amount that candidates for federal office could spend on their campaigns, both from their own personal funds as well as from contributed funds. The amendments also limited contributions to and expenditures by party committees; established a system for public funding of presidential elections; required more extensive financial disclosures by candidate committees; and created the Federal Election Commission to implement and enforce the provisions.

46. See CENTER FOR RESPONSIVE POLITICS, *supra* note 41, at 15.

47. David S. Broder, *Epilogue: Assessing Campaign Reform: Lessons for the Future*, in CAMPAIGN MONEY: REFORM AND REALITY IN THE STATES 307, 313 (Herbert E. Alexander ed. 1976); see also CONGRESSIONAL QUARTERLY, *supra* note 37, at 10 (describing failure of 1971 FECA disclosure requirements to meaningfully alter contribution patterns).

limits on the amounts that supporters could contribute to candidates.<sup>48</sup> The resulting regulatory framework, in which candidates seek to raise as much money as possible to fund unlimited campaign spending, but must do so only with contributions limited in amount, has frequently been described as bizarre, even perverse,<sup>49</sup> and has been blamed for creating “pervasive dependence on special-interest contributions.”<sup>50</sup> In the decades following *Buckley*, very little changed in the federal law regulating campaign finance until enactment of the 2002 Bipartisan Campaign Finance Reform Act (“BCRA”).<sup>51</sup>

A similar situation existed at the state level, given that the First Amendment rationale underlying the *Buckley* decision was equally applicable to both federal and state campaign finance laws. However, in *Buckley*’s shadow, a number of states in the 1980s and 1990s continued to explore a variety of alternative campaign finance regulations, such as restricting fundraising activities during legislative sessions, limiting the portion of contributions that a candidate could raise outside the candidate’s electoral district, providing full public funding in some races, or tying the amount of public funds given to one candidate to the amount of independent expenditures made on behalf of the candidate’s opponent.<sup>52</sup> In addition, the number of states with contribution limits or disclosure requirements continued to grow. As of 1980, twenty-two states had imposed a ceiling on the amount an individual could contribute to a given candidate, and most states had adopted laws requiring candidates to file reports disclosing all contributions over a specified minimum.<sup>53</sup> By 1997, thirty-eight states had imposed contribution ceilings,<sup>54</sup> while many state campaign finance laws had grown increasingly complex in an effort to respond to the expanding variety of political committees, campaign activities, and independent expenditures now spreading

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48. 424 U.S. 1, 58-59 (1976). At the time, the law prohibited individual donors from contributing more than \$1,000 per election to a given candidate. *See id.*

49. *See* *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 407-08 (2000) (Kennedy, J., dissenting); Elizabeth Garrett, *The William J. Brennan Lecture in Constitutional Law: The Future of Campaign Finance Reform Laws in the Courts and in Congress*, 27 OKLA. CITY U. L. REV. 665, 666 (2002); Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1706 (1999).

50. COMMON CAUSE, *In the States: Money in Politics*, at <http://www.commoncause.org/states/money.htm>. Similarly, the Center for Responsive Politics took the view that the resulting system “only served to sanitize, rationalize, and legitimize the same old system of privately-financed federal elections dominated by wealthy individuals and corporate contributors.” CENTER FOR RESPONSIVE POLITICS, *supra* note 41, at 12.

51. Bipartisan Campaign Finance Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). In part, the BCRA was an effort to respond to the fact that candidates, parties, and other political interest groups had become increasingly sophisticated at raising and spending astronomical sums, particularly through the use of “soft money,” issue advertising, and independent expenditures. *See* GIERZYNSKI, *supra* note 36, at 45-46. At the same time, the general public had become increasingly disillusioned by the apparent influence of special interests, as represented by such events as the “Keating Five” scandal, etc. By 1996, the resulting system of financing federal elections was called by many “a system in crisis.” *See, e.g., id.* at 2, 4 (“To all appearances it looked as though the system of financing elections—at least at the national level—had gone completely haywire in 1996.”).

52. *See* GIERZYNSKI, *supra* note 36, at 46; CENTER FOR RESPONSIVE POLITICS, *supra* note 41, at 15-16.

53. *See* MALBIN & GAIS, *supra* note 39, at 13, 16.

54. *See id.* at 16, 19-20.

to political campaigns at the state and local levels.<sup>55</sup>

Nevertheless, many observers, and the general public, remained quite discouraged about campaign financing practices at the state level.<sup>56</sup> Plaintiffs successfully challenged a number of the more innovative state reforms in court as violating the standards enunciated in *Buckley*,<sup>57</sup> and several subsequent U.S. Supreme Court decisions through the mid-1990s also continued to frustrate reformers.<sup>58</sup> As a result, in 1995, the Center for Responsive Politics could describe the situation as “still far from promising,”<sup>59</sup> despite what some experts described as the “greatest resurgence” in efforts at state and local campaign finance reform since the Watergate era.<sup>60</sup> The term limits movement arose in the midst of this environment.

### C. The Advent of Legislative Term Limits

Although isolated movements to impose term limits had surfaced in a few states in the 1980s,<sup>61</sup> 1990 fairly marks the beginning of the contemporary term limits movement. In that year, high-profile successes of ballot propositions in Oklahoma, California, and Colorado placed the idea of legislative term limits squarely on the national agenda. By 1995, twenty-one other states had followed suit.<sup>62</sup> These proposals attracted widespread popular support in part because of the disappointing results of

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55. *See id.* at 21-22.

56. Some have called campaign finance regulation “an example of institutional failure.” *See* Garrett, *supra* note 49, at 665. Garrett justifiably blames this failure in large part on the reluctance of legislators to pass reforms that would threaten their incumbency. *See id.* at 665 & n.2. Of course, one salutary effect of legislative term limits, where they exist, ought to be a significant reduction of this barrier to meaningful campaign finance reform.

57. *See* GIERZYNSKI, *supra* note 36, at 47-48.

58. For instance, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), held that states could not regulate spending on referenda campaigns, *FEC v. National Conservative Action Committee*, 470 U.S. 480 (1985), invalidated prohibitions on PAC independent expenditures on behalf of candidates accepting public funding, and *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996), invalidated the regulation of political parties' independent expenditures. Meanwhile, lower federal court decisions invalidated not only spending limits on local races, *see* *Kruse v. City of Cincinnati*, 142 F.3d 907 (6th Cir.), *cert. denied*, 525 U.S. 1001 (1998), but also contribution limits deemed too low to withstand First Amendment scrutiny, *see* *Russell v. Burris*, 146 F.3d 563 (8th Cir.), *cert. denied*, 525 U.S. 1001 (1998).

59. CENTER FOR RESPONSIVE POLITICS, *supra* note 41, at 17.

60. Frederick M. Hermann & Ronald D. Michaelson, *Financing State and Local Elections: Recent Developments*, in 30 THE BOOK OF THE STATES 227 (Council of State Governments ed., 1994).

61. For example, in 1980-81 and again in 1988, Taxpayers United for Term Limits unsuccessfully circulated petitions to get a term limits proposal on the ballot in Michigan. *See* DORON & HARRIS, *supra* note 17, at 115-16. In 1985, U.S. Congressman Bill McCollum of Florida and other House Republicans founded the Committee on Limiting Terms. A similar group, Americans to Limit Congressional Terms, appeared on the scene in 1989. Previously, term limits had taken effect in several cities as well. *See id.* (describing term limits measures adopted in Philadelphia in 1951, El Paso in 1977, San Francisco and Wichita in 1988, and Dallas, San Antonio, and Phoenix in 1989).

62. Eighteen of these states adopted term limits on members of their state legislatures, *see infra* notes 83-85, while three additional states adopted term limits only on their members of Congress, *see infra* note 63.

campaign finance reform efforts. Congress was undeniably the principal target, but almost every state that adopted congressional term limits also limited the terms of their state legislators, with three exceptions.<sup>63</sup>

Oklahoma's state legislative term limit measure, adopted in September 1990 as a constitutional initiative,<sup>64</sup> prohibited a person from serving more than twelve years in the Oklahoma state senate, state house, or the two combined.<sup>65</sup> Shortly thereafter, in the November 1990 election, California and Colorado adopted their own constitutional initiatives.<sup>66</sup> The text of California's ballot proposition explicitly declared that incumbents had "unfair . . . advantages" that created "a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers."<sup>67</sup>

Proponents of term limits proclaimed that forcing representatives from office at regular intervals would make campaigns more competitive and interesting, bringing in fresh ideas and providing a more attractive selection of candidates.<sup>68</sup> In turn, more meaningful campaigns would enhance our civic dialogues and also lead to the election of a more diverse group of representatives. The resulting broader dispersion of legislative power among citizen legislators then would enable the development of "better" or more responsive and creative legislative solutions.<sup>69</sup>

From this perspective, term limit proponents could fashion a response to the argument that term limits are superfluous because ordinary elections already provide voters the ability to refuse to reelect politicians with whom they are not satisfied in favor of selecting more attentive and attuned representatives. Absent term limits, this

63. Alaska, New Hampshire, and North Dakota adopted only congressional term limits. See ALASKA STAT. § 15.30 (Michie 2002); N.H. REV. STAT. ANN. § 653:3-4 (1996); N.D. CENT. CODE § 16.1-01-13.1 (1997).

64. In Oklahoma, a bipartisan coalition of term-limit proponents took advantage of a climate of embarrassment surrounding the state legislature to place the issue before the electorate at the primary run-off election held in September 1990. See Gary W. Copeland, *Term Limitations and Political Careers in Oklahoma: In, Out, Up, or Down*, in *LIMITING LEGISLATIVE TERMS* 139, 140-42 (Gerald Benjamin & Michael J. Malbin eds., 1992). Proponents persuaded Oklahoma Governor Henry Bellmon to place the initiative on the September ballot in part so that Oklahoma would beat out Colorado and California as the first state to limit legislative terms. See John David Rausch, Jr. & Gary W. Copeland, *Term Limits in Oklahoma, California, and Colorado in 1990*, in *LEGISLATIVE TERM LIMITS: PUBLIC CHOICE PERSPECTIVES* 199, 201 (Bernard Grofman ed., 1996).

65. See Copeland, *supra* note 64, at 141.

66. California's measure capped state Assembly service at six years and state senate service at eight years, while Colorado's measure capped house and senate service at eight years each. California's cap, like Oklahoma's, was a lifetime limit, while Colorado's was only a prohibition on more than eight years of consecutive service, permitting individuals to serve again after a four-year break. See CAREY ET AL., *supra* note 10, at 4 tbl.1.1.

67. Prop. 140. This proposition became part of the California Constitution in 1990. CAL. CONST. art. IV, § 1.5.

68. See, e.g., DORON & HARRIS, *supra* note 17, at 132 ("[T]he new representatives will belong to groups that so far were not able to gain equal representation."); Fund, *supra* note 17, at 235 ("Term limits will encourage different people to run for office" and will increase competition.); William Kristol, *Term Limitations: Breaking Up the Iron Triangle*, 16 HARV. J.L. & PUB. POL'Y 95, 97 (1993).

69. See Corwin, *supra* note 9, at 603. Meanwhile, supporters also argued that term limits would keep representatives closer to the people, once they were elected, and reduce representatives' alignment with special interests. See Cohen & Spitzer, *supra* note 9, at 480-81; Fund, *supra* note 17, at 236.

response went, politically ambitious "career politicians" will continue to dominate races for legislative seats,<sup>70</sup> especially in professionalized legislatures.<sup>71</sup> In that circumstance, the electorate's power to defeat one ambitious incumbent merely to replace her with another does not provide a meaningful reform option to those who desire not just different politicians but a different type of politician. Term limits thus promised to reinvigorate the class of citizen-lawmakers by depriving professional lawmakers (at least partially) of their ambition.<sup>72</sup>

Not surprisingly, however, predictions about the actual ability of term limits to reform our legislative processes varied significantly.<sup>73</sup> Some opponents were skeptical about the prospects for meaningful enhancement of diversity in electoral competition, believing that term limited legislatures would continue to attract only a narrow elitist group of citizens to political service.<sup>74</sup> Indeed, they queried whether term limits would further narrow this group, discouraging from elected office those for whom the idea of abandoning their present occupation for a transitory stint in public service was an unaffordable luxury.<sup>75</sup> Others feared that absent more fundamental changes in other aspects of our political system, the campaign processes by which we elect legislators would continue to reward the same kinds of candidates, despite the presence of term limits.<sup>76</sup> As one observer put it, "We will still have media-dominated campaigns, weak party organizations, and candidates who are forced to rely on their own skills in selling their personal attributes to the electorate."<sup>77</sup>

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70. See Cleta D. Mitchell, *Limiting Congressional Terms: A Return to Fundamental Democracy*, 7 J.L. & POL. 733, 739 (1991).

71. The greater the level of professionalization within the legislature, the more attractive it typically will be to ambitious politicians. See Joel A. Thompson & Gary F. Moncrief, *Exploring the "Lost World" of Campaign Finance*, in CAMPAIGN FINANCE IN STATE LEGISLATIVE ELECTIONS 10 (Joel A. Thompson & Gary F. Moncrief eds., 1998).

72. Another, more common, response is that election processes unduly favor career politicians, who as a result, become insufficiently accountable. In the words of term-limits advocate George F. Will, "Term limits regulate competition in order to intensify it . . ." George F. Will, *Term Limits: Antitrust in Politics*, WASH. POST, Nov. 3, 1991, at C7.

73. For a representative sampling of pros and cons, see the materials collected in Appendix A to LIMITING LEGISLATIVE TERMS, *supra* note 27, at 223 app. This discrepancy of views not only existed between proponents and opponents of term limits, but also was particularly acute between many professional observers, on one hand, and the majority of the general public, on the other. As Bruce Cain and Mark Levin recently expressed in reviewing many of these predictions, "[a]side from perhaps campaign finance reform, no other reform has produced as wide a discrepancy between public and professional political science opinion as has term limits." Cain & Levin, *supra* note 21, at 166. In contrast to the strong majority of the public, who have supported term limits almost everywhere they have had the chance to vote on them, the political science community has generally been pessimistic about the potential for term limits to improve our legislative processes. See *id.*; DORON & HARRIS, *supra* note 17, at xxi-xxiii; Elhauge, *supra* note 5, at 84-85 & n.5. Term limits have not been without some support among the academic community, however. See Petracca, *supra* note 17, at 42-43; Elhauge et al., *supra* note 20.

74. See Broder, *supra* note 35. For a thoughtful and systematic argument that congressional term limits would do little to alter the career ambitions of members of Congress, see Garrett, *supra* note 9.

75. See Garrett, *supra* note 9.

76. Or, as one politician put it, "They will have the same suit of clothes with a different face." *Most Legislators Saying "No" to Term Limits*, AKRON BEACON J., Nov. 5, 1991, at C3.

77. Linda L. Fowler, *A Comment on Competition and Careers*, in LIMITING LEGISLATIVE

Opponents also argued that even if term limits resulted in the election of fresh faces more broadly representative of and in touch with constituents, any such modern-day Cincinnatus was not likely to be effective in today's political environment. For instance, many feared that term-limited legislators in fact might be less responsive to their constituents, especially in their final term (throughout the entirety of which they would be lame-ducks).<sup>78</sup> Some also argued that, under term limits, representatives might be less responsive to their constituents in earlier terms as well because of heavy pressures to advance a short-term agenda over a long-term one.<sup>79</sup> Other term-limit opponents predicted that the loss of institutional expertise among elected representatives flowing from the influx of many citizen legislators would lead to the redistribution of power to staff, executive branch officials, and lobbyists, who are much less accountable participants in the legislative process.<sup>80</sup>

Nevertheless, term limits proposals generally attracted wide popular support, typically over the opposition of state legislators themselves. The Colorado and Oklahoma provisions of 1990 passed by 71 percent and 67 percent, respectively.<sup>81</sup> Meanwhile, although California's 1990 proposition was approved by only 52 percent of the voters, this proposition was the more severe of two term-limit provisions simultaneously before the California voters.<sup>82</sup>

Two years later, ballot initiatives imposing some form of term limits on state legislators passed in twelve more states, receiving an average level of support in excess of 66 percent.<sup>83</sup> In part, these successes were the result of a nationwide campaign coordinated by the group U.S. Term Limits, especially over the summer and fall of 1992.<sup>84</sup> Maine came on board in the 1993 election, followed by Idaho, Massachusetts, Nevada, and Utah in 1994, and Louisiana in 1995.<sup>85</sup>

The popular initiative provided the vehicle for the adoption of legislative term limits in every state but Utah, where the state legislature enacted a statutory term limit

TERMS 181, 181-82 (Gerald Benjamin & Michael J. Malbin eds., 1992).

78. Indeed, some opined that term-limited legislators might begin to lose focus on their legislative work even in their penultimate terms or earlier, as they started looking ahead to their next job, angling for a soft landing post-term. See Cohen & Spitzer, *supra* note 9, at 482.

79. See *id.* at 492-95.

80. See *id.* at 482 (contending that term limits "waste talent and experience").

81. See DORON & HARRIS, *supra* note 17, at 76.

82. See Charles M. Price, *The Guillotine Comes to California: Term-Limit Politics in the Golden State*, in LIMITING LEGISLATIVE TERMS 117, 119-21 (Gerald Benjamin & Michael J. Malbin eds., 1992).

83. These twelve states (and their percentage of voters supporting term limits) were Arizona (74%), Arkansas (60%), Florida (77%), Michigan (59%), Missouri (75%), Montana (67%), Nebraska (68%), Ohio (68%), Oregon (70%), South Dakota (64%), Washington (52%), and Wyoming (77%). See DORON & HARRIS, *supra* note 17, at 82 tbl.4.2.

84. U.S. Term Limits, the most prominent national group supporting legislative term limits, was organized in April 1992 as a reincarnated version of Citizens for Congressional Reform. In 1993, it also took over the group Americans to Limit Congressional Terms. See Alan E. Peterson, *Term Limits: The Law Review Article, Not the Movie*, 31 CREIGHTON L. REV. 767, 780 (1998).

85. See DORON & HARRIS, *supra* note 17, at 82 tbl.4.2. Citizens in Mississippi and North Dakota rejected term limits measures. See National Conference of State Legislatures ("NCSL"), *Frequently Asked Questions about Term Limits*, available at <http://www.ncsl.org/programs/legman/about/TLFAQ.htm>. An earlier attempt failed in Washington, before a subsequent provision there passed. See John D. Rausch, Jr., *Understanding the Term Limits Movement*, in THE TEST OF TIME 225, 228 (Rick Farmer et al. eds., 2003).

to stave off an initiative effort,<sup>86</sup> and Louisiana, which lacks the initiative process.<sup>87</sup> Most of the popular initiatives were constitutional amendments, with the exceptions of five states—Idaho, Maine, Massachusetts, Nebraska, and Washington—where the initiative process was used to enact a statutory term limits measure. In three of these states—Massachusetts, Nebraska, and Washington—courts quickly threw out the statutory measures as unconstitutional,<sup>88</sup> although Nebraska has subsequently readopted a term limits provision by constitutional amendment.<sup>89</sup> More recently, the Oregon Supreme Court invalidated its term limits measure on the technicality that, although itself a constitutional amendment, the measure had been adopted in violation of the state constitution's single subject rule.<sup>90</sup> In 2002 and 2003, the state legislatures in Idaho and Utah repealed their statutory measures,<sup>91</sup> leaving sixteen states today with legislative term limits.

Several important substantive differences exist among the sixteen extant state legislative term-limits measures adopted between 1990 and 1995. In particular, although a few states set their term limits as low as six years, the typical provision precluded legislators from serving more than eight years, while several states adopted twelve-year limits.<sup>92</sup> Meanwhile, some states imposed a lifetime ban on serving in the state legislature once an individual had filled the specified number of terms, while other states only prohibited an individual from serving more than a certain number of consecutive terms.<sup>93</sup> In most states with consecutive-years limits, the term-limits period applied independently to each house of the legislature, permitting legislators to remain in office indefinitely if they moved back and forth between chambers, while Oklahoma's lifetime limit applied to combined service in either house.<sup>94</sup>

Notwithstanding these variations, the popular appeal of all term limits measures was in important respects a response to disappointments with efforts to regulate campaign financing. For instance, Clela Mitchell, a former member of the Oklahoma House of Representatives and term-limits activist,<sup>95</sup> claimed that term limits would

86. See Term Limits Act, 1994 Utah Laws 264 (codified at UTAH CODE ANN. § 20A-10-201 (repealed 2003)).

87. See 1995 La. Acts 1326 (legislative measure placing constitutional amendment on term limits before general electorate); NCSL, *supra* note 85.

88. See *League of Women Voters v. Sec'y of the Commonwealth*, 681 N.E.2d 842, 847 (Mass. 1997); *Duggan v. Beerman*, 544 N.W.2d 68, 82 (Neb. 1996); *Gerberding v. Munro*, 949 P.2d 1366, 1377 (Wash. 1998).

89. See NEB. CONST. art. III, § 12.

90. OR. CONST. art. II, § 19 (invalidated by *Lehman v. Bradbury*, 37 P.3d 989 (Or. 2002)).

91. See Idaho H.B. 425 (2002); Michael Janofsky, *Idaho Legislature Repeals Term Limit Law, Undoing Voter-Approved Measure*, N.Y. TIMES, Feb. 2, 2002, at A11; Utah S.B. 240 (2003); Bob Bernick Jr., *Term Limits Get the Boot*, DESERET NEWS, Mar. 6, 2003, at A26.

92. See CAREY ET AL., *supra* note 10, at 4-5 tbl. I.1. The shorter periods tend to apply to more professionalized legislatures. Some of the longer limits, in fact, were longer than the average time members had been staying in office anyway. See DORON & HARRIS, *supra* note 17, at 76, 81; Cindy Simon Rosenthal, *How Long is Long Enough?*, STATE LEGISLATURES, Oct. 1990, at 27, 27.

93. See CAREY ET AL., *supra* note 10, at 4 tbl. I.1.

94. See *id.*

95. Mitchell helped spearhead the Oklahoma term limits initiative before going on to serve as an advocate on behalf of term limits in other states and a board member of Americans to Limit Congressional Terms. In the month following the Oklahoma success, Mitchell published an Op-Ed supporting term limits in the Wall Street Journal, see Clela D. Mitchell, *Insider Tales*



“neutralize the power of special interests to control the nation’s agenda with their purchasing power.”<sup>96</sup> Similarly, a 1991 newspaper account described polls showing that “the public’s growing belief that government is for ‘sale’ to campaign contributors is fueling support for term limitation laws.”<sup>97</sup>

Campaign contribution limits in the absence of campaign expenditure limits, as constrained by the holding of *Buckley v. Valeo*, are generally seen as favoring incumbents.<sup>98</sup> These and other advantages of incumbency only become more pronounced as campaigns become more sophisticated and expensive.<sup>99</sup> Understandably, the notion that incumbents were becoming increasingly secure was antithetic to ideals of representative democracy: “[I]f incumbents are almost always reelected because they can raise much more money than challengers, accountability may be more myth than reality.”<sup>100</sup>

In this context, term limits were seized upon as a silver bullet to rescue the ideal of representative democracy from the clutches of special interests. As George F. Will, one of the best-known advocates of congressional term limits, put it: “In fact, term limitation is a campaign-finance reform” because it will force PACs to redistribute their funds to “numerous competitive races for open seats.”<sup>101</sup> In short, term limits served as a sort of “poor man’s campaign finance reform.”<sup>102</sup>

*of an Honorable Ex-Legislator*, WALL ST. J., Oct. 11, 1990, at A14, and in 1992 filed a Florida court brief on behalf of the Term Limits Legal Institute, see LIMITING LEGISLATIVE TERMS, *supra* note 27, at 251-61 app. (collecting excerpts from Florida court proceedings).

96. Cleta Deatherage Mitchell, *Limit Terms? Yes!*, EXTENSIONS 3, 5 (Spring 1991).

97. Tim Miller, *Lots of Smoke, Little Fire on Campaign Finance Front*, DAYTON DAILY NEWS, Apr. 28, 1991, at 3B.

98. See Fred Wertheimer & Susan Weiss Manes, *Campaign Finance Reform: A Key to Restoring the Health of Our Democracy*, 94 COLUM. L. REV. 1126, 1127, 1131-33 (1994). Much political science literature is also of this view. See Kermit Daniel & John R. Lott, Jr., *Term Limits and Electoral Competitiveness: Evidence from California’s State Legislative Races*, 90 PUBLIC CHOICE 165, 171 (1997). Of course, incumbents already enjoy almost insurmountable advantages, in the forms of access to funds, access to media, widespread name recognition, the power of seniority, the ability to perform casework, and frequent public appearances (and especially in Congress, such additional advantages as franking privileges, extensive staff assistance, frequent travel opportunities, multiple public offices, and access to recording studios). See Cohen & Spitzer, *supra* note 9, at 479-80; Corwin, *supra* note 9, at 575-76; Jonathan E. Kaplan, *How Do You Lose a House Seat?*, THE HILL, June 17, 2003, at 6.

99. By some accounts, overall campaign spending for congressional seats has increased ten-fold since 1976, or more than three-fold after accounting for inflation. Compare SORAUF, *supra* note 31, at 158 (stating that 1976 congressional election spending was \$99 million), with *FEC Reports on Congressional Financial Activity for 2000*, available at <http://www.fec.gov/press/051501congfinact/051501congfinact.html> (showing 1999-2000 congressional spending of just over one billion dollars). Although the increase has been less striking in states, with significant state-to-state variations, the public perception has remained that campaign spending even in state legislative races also has been constantly and rapidly increasing. See Moncrief, *supra* note 24, at 38-39. Of course, in addition to inflation, another factor responsible for increasing campaign costs is the growing population, as candidates must reach larger and larger groups of potential voters. See *id.* Yet even accounting for population growth, campaign costs have been rising rapidly. See *id.*

100. Jewell & Cassie, *supra* note 39, at 210.

101. George F. Will, *Sort of a Tantrum*, CLEVELAND PLAIN DEALER, Nov. 12, 1992, at 7B; see Patrick Basham, *Assessing the Term Limits Experiment: California and Beyond*, 413 POLICY ANALYSIS 16 (Aug. 2001).

102. I am indebted to my colleague Ned Foley for this expression.

The success of the term limits movement did not displace the debate over campaign finance reform, however. In fact, the campaign finance reform and term limits movements remained essentially independent efforts, despite their related justifications. In part, this may have reflected the fact that some twenty-nine states did not adopt state legislative term limits. In addition, the Supreme Court's rapid invalidation of congressional term limits in 1995<sup>103</sup> quickly eliminated term limits' reform potential at the federal level. But undoubtedly a major reason that the two movements remained quite distinct was because of strong objections to term limits among staunch supporters of campaign finance reform.<sup>104</sup> These objections resulted not only from philosophical opposition to term limits, but also from competing negative visions of the actual impact of term limits. The next section reviews more specifically several contrasting predictions about the ability of term limits to soften the influence of special interests on politics and campaigning.

#### *D. Conflicting Predictions About Campaign Costs for Term-Limited Seats*

Most observers agreed that term limits would increase competition for legislative seats.<sup>105</sup> Indeed, that was one of the central purposes of term limits. But not all agreed on the impact that this competition would have on the costs and financing of legislative campaigns. Although competition typically can be expected to increase both campaign costs and the scramble for financial support,<sup>106</sup> many term limits advocates shared the hope that term limits would "remove the grip that vested interests have over the legislature and remove the huge political slush funds at the disposal of senate and assembly leaders."<sup>107</sup>

Specifically, some proponents argued that campaign costs would go down under term limits as a result of both the decreased value of each legislative seat, and the increased supply of open seats.<sup>108</sup> To support this prediction, they employed a rent-

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103. See *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995).

104. Campaign finance reform has typically generated its widest following among liberals, some of whom objected to term limits because of a contrary view of good government and others of whom saw term limits as a conservative power grab. Cf. Daniel Friedman & Donald Wittman, *Term Limits as Political Redistribution*, in *LEGISLATIVE TERM LIMITS: PUBLIC CHOICE PERSPECTIVES* 229, 236 (Bernard Grofman ed., 1996) (explaining that Republicans favor term limits more than Democrats); David J. Olson, *Term Limits Fail in Washington: The 1991 Battleground*, in *LIMITING LEGISLATIVE TERMS* 65, 76 (Gerald Benjamin & Michael J. Malbin eds., 1992) (describing League of Women Voters, Common Cause, and environmental groups as opposed to term limits on "good government" basis, and including organized labor and Democratic party among term limit opponents). Accordingly, some commentators suggested that campaign finance reform was a preferable response to perceived weaknesses in representative democracy. See Corwin, *supra* note 9, at 600-07; Friedman & Wittman, *supra*.

105. See *supra* notes 68-72 and accompanying text. But see Fowler, *supra* note 77, at 182-83 (predicting that term limits would not increase competition but give political gatekeepers even more control over candidate selection).

106. See Moncrief, *supra* note 24, at 45-46.

107. *The California Ballot Pamphlet: The Pros and Cons of Proposition 140*, in *LIMITING LEGISLATIVE TERMS* 276 (Gerald Benjamin & Michael J. Malbin eds., 1992).

108. See CAREY ET AL., *supra* note 10, at 19; Mitchell, *supra* note 96, at 4-5 (arguing that term limits would improve upon existing system of "expensive, PAC-funded" elections and free amateur politicians from need to become "expert[s] at raising money"); see also Elhauge et al., *supra* note 20, at 68-69 (predicting term limits will reduce assets needed to challenge

seeking model to predict that seats in a term-limited legislature would have less value to potential occupants, and that candidates—and their supporters—therefore would not be willing to invest as much to capture or retain them, even if facing more competition.<sup>109</sup> Alternatively, scarcity theory might also suggest that open seats would have more value when there are fewer of them, at least to interest groups that have the ability to target races selectively, and so that as the annual supply of open seats increases under term limits, any one seat will on average become less attractive.<sup>110</sup>

One frequently cited study of campaign expenses for the California legislature for the ten elections between 1976 and 1994 provided early reinforcement for those who claimed that term limits would reduce campaign expenditures. Of course, because California's term limits provision did not become effective until 1996, this study predated any direct impact of term limits on campaign financing. Instead, the authors sought to test their hypothesis that the *anticipatory* effects of term limits from the time of their enactment in 1990 would already “effectively act as a tax on campaign expenditures because the politicians’ specific investments would be lost when the term limit becomes binding . . . .”<sup>111</sup> This study concluded that the presence of term limits reduced overall campaign costs, finding that “campaign expenditures for the three general elections from 1984 to 1988 averaged \$309,144 [in 1982 dollars], or 44 percent higher than the \$215,019 spent on the three general elections [1990, 1992, and 1994] that took place after the term limits initiative passed.”<sup>112</sup>

On the other hand, for some prognosticators, the likelihood of increased competition for seats in term-limited legislatures led to predictions that campaign expenses would rise once term limits took effect, particularly in primary elections for “open” seats (those seats for which no incumbent was running).<sup>113</sup> In these contests, candidates may need to build an image from scratch, and often may face this task without yet having the support of their party. This can be an expensive undertaking. If

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incumbents).

109. See, e.g., Patrick Basham, *Term Limits Lessons for Campaign Reform*, Cato Institute, available at <http://www.cato.org/dailys/08-31-01.html>, at 2 (Aug. 31, 2001) (“Term Limits act as a natural campaign finance reform.”); CAREY ET AL., *supra* note 10, at 36 (describing term limits proponents’ claims that “term limits will diminish campaign spending by reducing the value of incumbency both to officeholders and to contributors”); Daniel & Lott, *supra* note 98, at 165, 167 (making similar argument); Elhauge, *supra* note 5, at 169 & n.309 (“The shorter expected tenure means they had incentives to spend less in either defending a seat or challenging an incumbent. As term limits kick in fully, spending should decrease further because with less senior incumbents the brand name advantage needed to be overcome with campaign advertising will decline.”).

110. Individual candidates of course may not care how many total open seats there are, but only whether the seat in their particular district is open.

111. Daniel & Lott, *supra* note 98, at 167-68.

112. *Id.* at 174. Professors Carey, Niemi, & Powell have critiqued Daniel & Lott’s “dubious conclusions,” arguing that they attribute all their findings to the anticipatory effects of term limits in 1990, 1992, and 1994, without accounting for such other possible factors as nationwide anti-incumbency sentiment. See CAREY ET AL., *supra* note 10, at 36-37. “Daniel & Lott’s results are a product of their limited data and questionable specification of term-limit effects.” *Id.* at 37. (Carey, Niemi, & Powell also have tested other portions of the same Daniel & Lott study, specifically whether term limits also affect incumbents’ reelection probabilities, and did not find any term limits effect, contrary to Daniel & Lott.).

113. See Dalene Allebaugh & Neil Pinney, *The Real Cost of Term Limits: Comparative Study of Competition and Electoral Costs*, in *THE TEST OF TIME: COPING WITH LEGISLATIVE TERM LIMITS* 161, 161 (Rick Farmer et al. eds., 2003).

so, then term limits “may increase the importance of money in elections because of the reduced effect of incumbency: there will be more open-seat contests, for which money is more important . . . .”<sup>114</sup>

Furthermore, at least for some candidates, it simply may be easier to raise more money when competing for an open seat than it would be when challenging an incumbent. Many candidates may also be able to take advantage of having more time to anticipate and plan for their campaign,<sup>115</sup> grooming supporters and building fund raising capabilities, in light of their certain knowledge that a seat will be open by a particular date, with the result being a much deeper campaign war chest. Additionally, term-limits-era races for seats in a state legislature’s upper chamber may more often involve seasoned politicians seeking to move on from the lower house, bringing with them the ability to raise large amounts of campaign cash, if not also sizable cash reserves remaining from previous campaigns.

Thus, some predicted that term limits would do little to alter the influence of special interests on campaigns and elections.<sup>116</sup> In fact, some lobbyists explicitly anticipated playing a much greater role both in campaigns for open seats and in candidate recruitment efforts.<sup>117</sup> Obviously, to the extent that interest group representatives acted consistently with these intentions, the likely result would be increased special interest influence in state legislatures, unless other countervailing factors (such as the election of candidates who refused any PAC or bundled contributions) frustrated these interest group activities.

Of course, all of these concerns about, and aspirations for, legislative term limits were merely speculations, subject to the difficulties of anticipating the results of a complicated social system, as well as the inherent unpredictability of politics. Today, however, we no longer need merely guess about the impact of term limits, but can begin to assess their actual effects.

## II. THE ACTUAL IMPACT OF TERM LIMITS ON CAMPAIGN FINANCING AND MEMBER CHARACTERISTICS

Today, more than half of the states with legislative term limits have seen the limits

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114. Anthony Gierzynski, *A Framework for the Study of Campaign Finance*, in *CAMPAIGN FINANCE IN STATE LEGISLATIVE ELECTIONS* 18, 23 (Joel A. Thompson & Gary F. Moncrief eds., 1998); see *CAREY ET AL.*, *supra* note 10, at 36-39 (predicting higher costs).

115. See, e.g., Daniel & Lott, *supra* note 98, at 169 (“Making the date that incumbents must leave office by more certain (through term limits), may encourage challengers to enter into races before the seat actually becomes vacant.”); *MONCRIEF ET AL.*, *supra* note 19, at 26 (quoting state legislative candidate who supported term limits because “[p]eople like me can anticipate an open seat and prepare”).

116. See, e.g., Sherry Bebitch Jeffe, *How Prop. 140 Could Feed the Public’s Distrust of Government*, *L.A. TIMES*, Oct. 27, 1991, at M5 (warning that term limits may increase special interest influence in electing representatives); Dana Parsons, *Finance Reform is One Sure Way to Keep the Bums Out*, *L.A. TIMES*, Sept. 4, 1992, at B1 (arguing special interests will continue to dominate state legislative elections under term limits).

117. See Paul Jacobs, *Lobbyists Get a Larger Role in Legislature*, *L.A. TIMES*, Oct. 27, 1991, at A3. Of course, many others also predicted that beyond the campaign context, special interests would in general have more, not less, influence over term-limited legislators. See, e.g., Norman J. Ornstein, *Term Limits Would Just Make Things Worse*, *WASH. POST*, Oct. 21, 1991, at C7.

they adopted in the early 1990s force out the entire body of legislators elected in the pre-term limits era. Accordingly, opportunities exist to test a variety of predictions, including those summarized in Part I above. The first section of this Part presents two previous studies from California and Michigan, prefaced with first-hand observations that begin to assess predictions about the impact of term limits on the financing of campaigns for seats in term-limited legislatures.

The second section builds on these reports by presenting a preliminary study of the effect of term limits on the financing of legislative campaigns in Ohio. This study examines changes to the competitiveness of state legislative races, as well as to the patterns of expenditures and contributions in these races. The Ohio study reinforces the California and Michigan accounts, suggesting that existing campaign structures continue to favor politicians with strong financial support, with competition increasingly shifting to primary races. In addition, the Ohio study finds some interesting changes after term limits took effect in expenditures and contributions across political parties, and in the timing of contributions.

The third section of this Part then reviews a number of studies addressing whether a different type of legislator is capturing seats in term limited legislatures. These studies show little change in the characteristics of elected representatives, or in the composition of term-limited legislatures (other than a decrease in political experience). Of course, given the continued high cost of campaigning, this is not such a surprising result.<sup>118</sup> If this pattern continues over the longer haul, however, it would seem that term limits are not likely to infuse our political campaigns with the promised vitality, independence, and creativity upon which the term limits movement was heavily predicated.<sup>119</sup>

#### *A. Campaign Financing for Seats in Term-Limited Legislatures*

Whether the typical legislator elected under term limits fits the profile of a “citizen legislator,” or instead essentially conforms to the profile of a “professional” member, we might still see meaningful differences in the expenditures now required to capture seats in term-limited legislatures. This section first presents observations about the nature of campaign financing in a term-limited environment from individuals directly involved in seeking state legislative office. It then describes data from California and Michigan as a prelude to the next section’s more extensive study of Ohio legislative races. The data must be interpreted cautiously because of the many factors that may affect the costs of legislative elections. Accordingly, all the studies are better understood in conjunction with the perceptions and explanations of those directly involved in the campaigns.

##### 1. First-Person Reports of the Impact of Term Limits on Legislative Campaigns

Both academic researchers and the press have reported the first-hand accounts of a

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118. One related inquiry worthy of further study is whether term limits are encouraging the entry of a different type of *unsuccessful candidate*, who simply remains unable to crack the barriers created by those who control access to political money.

119. Some were predicting this result long before it began to occur. See, e.g., Fowler, *supra* note 77, at 181-85; David S. Brodcr, *The Mirage of Term Limits*, WASH. POST, June 13, 1990, at A23.

number of state legislators, candidates, lobbyists, and others of the impact of legislative term limits on a variety of subjects. With respect to the issue of whether campaigning has changed, these direct observers have described an increased scramble for campaign money, a longer campaign cycle for open seat elections, and a reduction in competition against incumbents, especially in an incumbent's later terms.<sup>120</sup>

With respect to the direct effects of term limits on campaign financing, a number of state legislators and other participants in state legislative elections have described their sense that in the term limits era, the demand for campaign funds has increased. For instance, Professors Carey, Niemi, and Powell reported that state legislators interviewed in both Maine and California perceived that "the demand for money increases as a result of term limits."<sup>121</sup> More recently, term limits were described as a factor that contributed to record campaign expenditures in the 2002 elections in Colorado and Michigan.<sup>122</sup>

An increase in the number of open seats may partially explain this. As one post-term limits legislative leader explained, campaigns for open seats are "among the most expensive legislative races to win."<sup>123</sup> But campaigns for open seats also may be contested even more vigorously now.<sup>124</sup> Indeed, after term limits had taken effect in California in 1996, the director of California Common Cause reported that for the first time "political candidates are holding fundraisers in Sacramento—which means that they're shaking down the special interests—even before they're elected."<sup>125</sup> Accordingly, some lobbyists and other professional political observers have expressed such sentiments as "[w]e are about to reach a point where the candidate pool will dramatically shrink because of the cost of campaigning."<sup>126</sup>

Another explanation for higher campaign expenses under term limits is that incumbents now feel pressure to begin preparing to run for a higher office much earlier, and therefore use their state legislative office as a platform to raise money for even more expensive races.<sup>127</sup> In turn, these large war chests may discourage challengers from taking on incumbents,<sup>128</sup> just as they have in non-term-limited

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120. Legislators as a class have a negative opinion towards term limits, however, creating a potential bias in their assessment of the impact of term limits on their campaigns. See PRINCETON SURVEY RESEARCH ASSOCIATES, INC., THE PEW CENTER ON THE STATES, STATE LEGISLATORS SURVEY: A REPORT ON THE FINDINGS 2, 8 (2003) available at <http://www.stateline.org/specialreport/Pew%20State%20Legislators%20%238288.pdf> (reporting 2003 survey showing 79% of state legislators had unfavorable view of term limits); National Conference of State Legislatures, *Survey Results: NCSL's Online Term Limits Poll*, at <http://www.ncsl.org/programs/legman/about/survsrslt.htm> (last updated July 18, 2003) (reporting 2000 survey showing 83% of state legislators had unfavorable view of term limits).

121. See CAREY ET AL., *supra* note 10, at 38.

122. See Burt Hubbard, *Election Funding Sets New Records*, ROCKY MOUNTAIN NEWS (Denver), Dec. 26, 2002, at A4; Tim Martin, *Campaigns Pricier After Term Limits, Study Finds*, LANSING STATE J., Oct. 27, 2002, at A9.

123. Larry Householder, *Term Limits and a Model for Governance*, SPECTRUM, Fall 2001, at 31.

124. See CAREY ET AL., *supra* note 10, at 36, 39.

125. Peter Schrag, *The Populist Road to Hell*, AM. PROSPECT, Winter 1996, at 24, 27.

126. William K. Weisenberg, *The Curse of Term Limits*, OHIO LAW., July/Aug. 2003, at 24, 34.

127. See CAREY ET AL., *supra* note 10, at 38; James M. Penning, *Michigan: The End is Near*, in THE TEST OF TIME 33, 42 (Rick Farmer et al. eds., 2003).

128. See Peter Luke & Ed Golder, *Term Limits Fail to Halt Flow of PAC Cash*, GRAND

elections.<sup>129</sup> But for other reasons as well, term limited incumbents may feel more secure. For instance, incumbent state legislators in Maine described a perceptible decrease in the willingness of challengers to take them on in later terms after the onset of term limits.<sup>130</sup> They explained that once incumbents are heading into their final term or two, “most people are willing to wait them out,” rather than trying to run against them.<sup>131</sup>

Party officials have also described a new campaign dynamic in which many more potential candidates for open seats are making their intentions known as early as eighteen months before the election, giving the party a whole new role in winnowing the field.<sup>132</sup> One county party organization described a screening process beginning in July of the off-year, designed to lead to a party endorsement by the December prior to the primary election, whereafter the party would be willing to spend party funds in support of that candidate’s primary election, if necessary.<sup>133</sup> Legislative caucus leaders also describe becoming more involved in candidate recruiting and primary election contests in response to term limits.<sup>134</sup>

To examine the validity of these informed but still anecdotal reports from the front lines, we next consider the findings of several more comprehensive analyses. These studies begin to offer a more systematic analysis of the relationships between term limits and campaign finance. As the first investigations of this phenomenon, however, they warrant at least two cautions. First, each state’s unique political culture and institutional structure make comparisons of absolute costs across states problematic.<sup>135</sup> Accordingly, analyses of term limits so far focus on changes within one or two states. Comparing experiences across states will require additional time, data collection, and controls for differences among states.

Second, it is important to note that the period of these studies was a period of rising campaign costs generally, independent of term limits. Much of this increase was the result of greater sophistication in the conduct of political campaigns, coupled with the spread of this sophistication to state and local races from its breeding ground in national and federal elections.<sup>136</sup> For instance, one recent study of campaign tactics in electoral districts with fewer than 250,000 residents found many of the most sophisticated types of campaign strategies and tools in wide use even in these smaller districts by the later 1990s.<sup>137</sup> These developments make it harder to test conclusively

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RAPIDS FREE PRESS, May 3, 1998, at A21 (quoting one incumbent’s belief that a large campaign treasury “will make somebody think twice if they try and run against you”).

129. See Robert E. Hogan, *Campaign War Chests and Challenger Emergence in State Legislative Elections*, 54 POL. RES. Q. 815, 815 (2001).

130. CAREY ET AL., *supra* note 10, at 37.

131. *Id.*

132. See Howard Wilkinson, *Term Limits Start a Candidate Flood*, CINCINNATI ENQUIRER, July 7, 1999, at 1A.

133. See *id.*

134. See Householder, *supra* note 123, at 31.

135. For instance, the extent to which a state’s legislature is professional or amateur will likely affect the amount expended by most candidates. The size of districts is another factor that directly affects expenses, and which varies widely from state to state. Aside from a multitude of other demographic factors, campaign finance laws in each state also vary widely and affect typical expenditures. Thus, many questions remain for further study, and the area is ripe for the application of multivariate analyses, in addition to the preliminary inquiries reported herein.

136. See J. CHERIE STRACHAN, *HIGH-TECH GRASS ROOTS: THE PROFESSIONALIZATION OF LOCAL ELECTIONS 2-6* (2003).

137. *Id.* at 24. In many cases, political candidates in more localized races have begun

for a connection between term limits and campaign costs. More conclusive tests will have to await the collection of data over more years.

## 2. Previous Studies in California and Michigan

At least two previous studies have found increases in campaign contributions and expenditures in the first election after state legislative term limits take effect. As part of an ongoing effort to track the role of money in politics, Common Cause of California reported large increases in campaign contributions to candidates for the California legislature in 1996, the year term limits first precluded incumbents from seeking reelection to the California legislature. In 1998, two Michigan researchers, in a study focusing on the impact of legislative term limits, similarly found significant increases in candidate expenditures in primary races for open seats in the Michigan House of Representatives.

**California 1996.** In an analysis of campaign contributions in races for the California state legislature in 1996, Common Cause of California described as “phenomenal” the amount of fundraising that occurred in the first election cycle after term limits took effect in California.<sup>138</sup> While the \$89 million raised by candidates in the previous election of 1993-94 had itself set a record, the post-term limits election season of 1995-96 saw a 37% increase over this prior record, to \$122 million.<sup>139</sup> On the senate side, the increase seems attributable in part to the number of term-limited assembly members who sought election to the state senate that year, bringing with them their seasoned fund-raising and campaigning abilities.<sup>140</sup> Indeed, Common Cause reported that an incumbent member of the California Assembly was running in every open race for a seat in the California Senate in 1996.<sup>141</sup> In the most expensive of these races, the candidates raised over four million dollars, twice the amount raised in the most expensive California Senate race in 1994.<sup>142</sup> Across all California Senate seats, the average amount raised increased 20% between the 1994 and 1996 elections.<sup>143</sup>

The increases were even larger in races for the California Assembly. There, open-seat candidates raised a total of \$24 million in 1996, in contrast with \$13 million in

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employing these much more sophisticated techniques not so much out of necessity as out of a sense that this is now how serious politicians are expected to campaign. *See id.* at 38-39.

138. *See* <http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/intro.html>, at 2.

139. *See* [http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/ex\\_summary.html#recipients](http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/ex_summary.html#recipients). Figures are rounded to the nearest million dollars.

140. *See* Max Vanzi & Cathleen Decker, *Candidates' Last-Minute Filings Show Frantic Shuffle Forced by Term Limits*, L.A. TIMES, Nov. 30, 1995, at A3 (reporting that eleven term-limited Assembly members filed to run for state senate); *cf.* CAREY ET AL., *supra* note 10, at 127 (explaining that term-limited members of lower house are more likely than non-term-limited counterparts to aspire to office in higher chamber, especially in more professionalized legislatures); Clucas, *supra* note 23, at 23.

141. *See* <http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/recipients2.html>.

142. *See* [http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/ex\\_summary.html](http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/ex_summary.html).

143. *See* <http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/recipients2.html>. The Common Cause study did not report the average increase for open senate seats, only for all senate seats, but did explain that open seats accounted for 82% of total senate fundraising in 1996. *See id.*



1994.<sup>144</sup> On a per-seat basis, the average amount raised for each open seat increased 44% between 1994 and 1996, from \$577,000 to \$831,000.<sup>145</sup> While in 1994 three California Assembly open seat races had exceeded \$1 million in fundraising, in 1996 six races exceeded this threshold, and three of these actually exceeded \$2 million.<sup>146</sup>

These figures alone cannot conclusively link term limits to increases in campaign contributions. Still, the figures challenge the earlier conclusions of Daniel and Lott, based on data through the 1994 election, that expenditures (rather than contributions) for races in the California legislature began falling with the adoption of the state's term limits measure in 1990, and would continue to fall after the term limits became effective in 1996.<sup>147</sup>

Just as important, the figures also suggest increased donor targeting of particular races, given the much greater increases in the amounts raised for the most expensive races. Indeed, Common Cause itself provided the following interpretation of the California data, based on a more detailed analysis of underlying contribution patterns:

The record amounts raised by open seat candidates during the 1995-1996 election cycle reinforces [sic] a trend initiated by term limits. In the pre-term limit years, contributors would focus their funds on legislative leaders, . . . who would then transfer to other candidates. While contributors still cater to legislative leaders, there has been a marked increase in the amount of contributions given directly to open seat candidates during the post-term limit years. With a constant supply of open seats, big contributors have had the opportunity to directly determine the makeup of the new legislature.<sup>148</sup>

The Common Cause study does not include any detailed data concerning campaign expenditures, in addition to contributions, nor does it make distinctions between the primary and general election periods.<sup>149</sup> The study is also limited in not adjusting for inflation, focusing on just one state and just one election cycle (except for the broadest comparisons with previous years in overall fundraising), and providing descriptive statistics without tests of statistical significance.

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144. See <http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/recipients.html>. The presence of thirty open seats (twenty-four forced open by term limits) in 1996, compared to twenty-two open seats in 1994, helps explain this almost two-fold increase, but the per-seat increase was also dramatic. See *id.*

145. See *id.*

146. See *id.*

147. See Daniel & Lott, *supra* note 98, at 174-76. Unfortunately, Daniel & Lott's study did not include data from the 1994 California primary election, see *id.* at 172, potentially a significant weakness to the extent that term limits may have their most noticeable impact on competition at the primary stage for open seats, especially in districts generally viewed as "safe" for a particular political party.

148. See <http://www.commoncause.org/states/california/archives/lastwaltz%2d1996fundraising/recipients.html>.

149. However, a separate Common Cause study of PAC contributions in the 1996 primary election reported that while in 1990 only 6% of contributions from the top ten PACs went to open seat candidates, in 1996 the figure had climbed to 61%, and concluded that "the grip [of special interests] has tightened" after term limits. See <http://www.commoncause.org/states/california/archives/primarystudy.htm> at 1 (last visited Jan. 22, 2004). Not reported in this study is whether the percentage increase in the number of open seats between 1990 and 1996 matches the percentage increase in PAC contributions to open seat candidates.

**Michigan 1998.** In a more focused study of the effect of term limits, two Michigan political scientists, Dalene Allebaugh and Neil Pinney, examined several aspects of electoral costs and competition by comparing data from the 1994 and 1998 primary elections for the Michigan House of Representatives.<sup>150</sup> This study has the clear advantage of segregating expenditures in primary election contests from expenditures in general election contests. It also adjusted for inflation and included Ohio (a comparable neighboring state where term limits had not yet taken effect in 1998) as a control state. However, like the California study, this study also described its results without reporting their statistical significance and reported its financial data only in terms of mean or average figures (which can be highly influenced by just a few outliers), rather than in terms of medians.

With respect to campaign costs, the Michigan study found that the average total district expenditures per open primary rose 53%, from just over \$43,000 in 1994 to almost \$66,000 in 1998 (in constant 1998 dollars), at the same time that average total district spending per incumbent primary rose only 27%, from about \$23,000 to slightly under \$30,000.<sup>151</sup> To control for the potential impact of rising campaign costs generally, Allebaugh and Pinney compared the Michigan results with data from Ohio that showed an increase in incumbent district spending and a decrease in open district spending.<sup>152</sup> The authors conclude that "the implementation of term limits in Michigan dramatically increases the typical campaign costs per district in open races with modest increases in incumbent races."<sup>153</sup>

Allebaugh and Pinney also examined the impact of term limits on voter participation, finding that while the number of primary voters declined in open races in Ohio, as well as in incumbent races in both Ohio and Michigan, term limits may have prevented a comparable decline in races for Michigan's open house seats.<sup>154</sup> However, the authors note that as a result of the essentially static level of voter participation, the cost per primary vote in Michigan's open races increased 62.2% (from \$4.58 to \$7.43) from 1994 to 1998.<sup>155</sup> In conjunction with other measures of the competitiveness of Michigan's post-term limits elections, they conclude that "the lack of increased competition could potentially be explained by the increase in electoral campaign costs and the associated average cost per vote. . . . [P]erhaps many candidates are simply priced out of the race."<sup>156</sup>

The Michigan study examined campaign expenditure data at the district level, however. In other words, rather than comparing individual candidate expenditures, the study aggregated all candidates within each district. As a result, it does not lend itself to evaluating the extent to which individual candidates may be more beholden to their contributors, or to identifying potential differences between types of candidates, such as primary winners and losers.

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150. See Allebaugh & Pinney, *supra* note 113, at 163.

151. *Id.* at 169.

152. It is difficult to compare Allebaugh & Pinney's use of Ohio as a control with the pilot Ohio study described in Part II.B herein because Allebaugh & Pinney studied the nonpresidential election years of 1994 and 1998 (when term limits took effect in the Michigan House), whereas the Ohio study examines the presidential election years of 1996 and 2000 (when term limits took effect in Ohio).

153. Allebaugh & Pinney, *supra* note 113, at 169.

154. See *id.* at 171.

155. See *id.*

156. *Id.* at 173.

*B. Ohio General Assembly Campaign Costs, 1996-2000*

To assess more extensively the predictions of term limits analysts and the perceptions of firsthand observers, we now consider data from races for both chambers of the Ohio General Assembly from both before and after the onset of term limits. Like the California study, these analyses focus on just one state and compare only two election cycles. The current study, however, includes more detailed information on individual candidates, in both primary and general elections. It also encompasses both chambers of the state legislature, uses constant dollars to measure effects, and reports medians as well as means. For some analyses, the database is sufficiently large to permit appropriate tests of statistical significance. The Ohio study thus offers important corroboration of the California and Michigan analyses, while adding to a growing body of state-by-state analyses.

**Method.** In exploring the impact of term limits in Ohio, this study considers campaign data from both the primary and general elections for all seats in the Ohio General Assembly on the ballot in 1996, 1998, and 2000.<sup>157</sup> The data include both campaign finance report information and election return information for all candidates for the General Assembly who filed campaign finance reports with the Ohio Secretary of State, as required under state law,<sup>158</sup> and who appear on the secretary of state's official election returns.<sup>159</sup> To account for inflation, all dollar figures were adjusted to constant 1996 values.<sup>160</sup> The data have been further coded for each candidate's party affiliation, as well as for each candidate's status as either an incumbent, a challenger, or a candidate seeking an open seat.<sup>161</sup> Significance tests, as well as most of the underlying analyses of the data, were conducted using the statistical software program SPSS.<sup>162</sup>

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157. Much of the underlying data can be obtained electronically from the office of the Ohio Secretary of State. See <http://serform.sos.state.oh.us/sos/campFin/index.html> (last visited Jan. 22, 2004).

158. OHIO REV. CODE ANN. § 3517.10 (Anderson 1996 & Supp. 2002).

159. Several candidates who filed preliminary reports apparently dropped out and did not appear on the ballot.

160. Specifically, 1998 dollar values have been divided by 1.0389, and 2000 dollar values have been divided by 1.0975, using adjustment factors calculated using the Bureau of Labor Statistics "Inflation Calculator." See <http://www.bls.gov/> (calculating that \$1000 in 1996 has the same buying power as \$1038.88 in 1998, and \$1097.51 in 2000).

161. The study treats a seat as "open" if at the time of the primary election the sitting incumbent was not seeking re-election. A candidate is classified as an incumbent as long as the candidate occupied the seat at the time of the primary election, even if by way of prior appointment to fill a vacancy. Accordingly, some legislators treated as incumbents may not have been elected to their legislative office. In those occasional circumstances in which, after the primary, an outgoing incumbent not seeking reelection stepped down early and was replaced by one of the declared candidates (who thereby became the de facto incumbent), the seat remained coded as "open" for purposes of the study.

162. Release 11.5.2 (2002). Standard t-tests of significance were used on the measures of competitiveness reported in Tables 1-3. For the expenditures and contributions reported in Tables 4-10, for which the distribution of the data was skewed to the right, rather than normal (not surprising for this type of financial data), the Wilcoxon (Mann-Whitney) rank sum test was used to test for significance. See FRED L. RAMSEY & DANIEL W. SCHAFFER, *THE STATISTICAL SLEUTH* 89-90 (2002); JAY L. DEVORE, *PROBABILITY & STATISTICS FOR ENGINEERING AND THE SCIENCES* 582-84 (1982). The rank sum test lumps all observations from two studied populations

Ohio's term limits first excluded incumbents from seeking reelection in 2000, so the analyses focus on differences that appear in that election cycle compared to the two previous elections.<sup>163</sup> The principal comparison is with the 1996 race, both because of the potentially confounding effects of comparing a presidential election year with a nonpresidential election year,<sup>164</sup> and because comparing 2000 with 1996 has the virtue of involving the same set of districts for the Ohio Senate, where terms last four years and only half of the senate seats are up for election every two years.

The study analyzes changes at both the individual candidate level and the district level, in contrast with the Michigan study's district-only analysis. Key inquiries are whether particular kinds of races, such as those for open seats or those involving incumbents, produce noticeable changes in campaign spending or contribution patterns. Like Michigan, but unlike many states,<sup>165</sup> Ohio collects and maintains campaign finance report data separately for primary and general election periods,<sup>166</sup> making it possible to consider impacts at the primary election stage separately from the general election stage. Changes in campaign spending receive greater attention in part because contributions data were not reported consistently between 1996 and 2000, necessitating some imperfect adjustments.<sup>167</sup>

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(or samples) together, ranks them in ascending value, sums the ranks of the observations drawn from the first population (or sample), sums the ranks of the observations drawn from the second population (or sample), and compares these rank sums to determine the likelihood that the distribution of the observations among the two populations may have occurred by chance. See RAMSEY & SCHAFER, *supra*. This likelihood, or probability, is reported as the "p" value in the tables. In addition, because of the skewed nature of the financial data, the text discussion usually focuses on comparisons between medians, rather than means, although means are also reported. See *id.* at 70-71; see also ARTHUR ARON & ELAINE N. ARON, STATISTICS FOR THE BEHAVIORAL AND SOCIAL SCIENCES: A BRIEF COURSE 27 (1997) (explaining the difference between mean and median). Because of the pilot nature of the study and the small size of the candidate populations examined, the study does not subject the data to multivariate analyses. Spreadsheets and full statistical analyses of the data are available from the author on request.

163. Of course, to the extent that term limits do affect campaign costs, some anticipatory effects may also have appeared in elections before 2000, but such anticipatory effects are less likely to influence the costs in races for open seats unless those seats have become open by reason of term limits, which could not occur in Ohio until 2000.

164. Contribution and expenditure patterns for state legislative races may be affected by other races on the ticket, especially presidential or gubernatorial contests, both of which may sap potential contributions while at the same time increasing the effort required for legislative candidates to get voters' attention. See GIERZYNSKI, *supra* note 36, at 30-31.

165. See Moncrief, *supra* note 24, at 41-42.

166. Ohio actually requires candidates to submit two primary and two general election reports, one due twelve days before each election (covering all expenditures and receipts during the period up to twenty days before the election), and one due thirty-eight days after each election (covering the period lasting until thirty-one days after the election). In deriving the results to follow, data from pre-primary and post-primary reports have been aggregated, as have been data from the pre-general and post-general reports. This is not a perfect grouping, but it is sufficient for purposes of this study. Candidates who filed some but not all reports are treated as filing zeros in the missing reports. Candidates who filed no reports for any period have been dropped from the analysis. (Candidates are not required to file a report for a period in which they have nothing to report, or to file pre-primary or pre-general reports if they have neither received nor expended an amount equal to or greater than \$1000.)

167. Specifically, in 1996 Ohio law did not require a candidate's contributions report to reflect the candidate's own personal funds expended on campaign activities, but a 1997 amendment required these amounts to be included in the 1998 and 2000 reports relied on for

**Limitations.** Before exploring the study's results, three limitations deserve brief mention. The first is that the study lacks a control in the form of analogous data for the same period from a comparable state legislature without term limits. Comparisons with non-term-limited states would add value and are worthy of future analysis. Such comparisons will take longer to achieve because of significant state-to-state variations in data collection methods and in the nature of legislative campaigns.<sup>168</sup> Meanwhile, the previous California and Michigan studies provide a somewhat broader context in which to view the Ohio results.

Second, the study draws data from only one election cycle after the onset of Ohio's legislative term limits provision. Data from the 2002 election are not included because final campaign finance reports and other data for this election were not yet available when the study commenced. In addition, although including 2002 data among the post-term limits observations would be meaningful, it also would introduce the potentially confounding effect of the legislative redistricting that had by then occurred in Ohio in response to the 2000 decennial U.S. census. Furthermore, the study's working hypothesis was that the most interesting comparisons, all other things equal, would be between the elections immediately before and immediately after the onset of term limits (1998 and 2000 in Ohio). As previously described, however, all other things are not equal, because of the four-year cycles for both presidential as well as Ohio Senate elections. Therefore, in important ways 1996 provides a better comparison with 2000.<sup>169</sup> Thus, the study considers data from the three election cycles of 1996, 1998, and 2000.

Finally, errors and omissions in the candidates' campaign finance reports could distort the results of the study. Like most states, Ohio has little means to assure the accuracy of the information submitted each election by hundreds of candidates and their campaign committees about thousands of contributors and expenses. Moreover, variations undoubtedly exist in the degree to which the report filers understand their campaign finance disclosure obligations. Nevertheless, provided that error rates do not change markedly from year to year, and that the bulk of the reports are accurate and complete, we ought still to be able to draw meaningful conclusions from the available data.

**Results.** Although the study's principal results concern campaign expenditures and contributions, two measures of competition are worth noting first. One is the number of candidates running for each seat (Table 1), while the other is the margin of victory (Tables 2 and 3). After describing these two measures, the study turns to a consideration of changes in the campaign expenditures of individual candidates for the Ohio House or Ohio Senate (Tables 4, 5, and 6). The study then reports changes in campaign expenditures on a per district basis (Table 7), and also looks at campaign costs per vote (Table 8). Next, the study segregates by political party the changes in individual candidate expenditures, as well as contributions (Tables 9 and 10). Finally,

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this study. See 1997 Ohio Laws 7608-68 (codified as amended in scattered sections of OHIO REV. CODE ANN. §§ 3517, 3599). In an effort to account for this change, the study compares only those contributions not reported in the category "candidates and candidate committees" (as the contributions data was coded by Ohio Citizen Action), a category which includes both contributions from a candidate's own funds as well as transfers from other candidates' funds.

168. As described above, the nature of campaigning for any particular state's legislature is almost *sui generis*. See *supra* note 135 and accompanying text.

169. Including data from prior to the 1996 election cycle would also introduce the additional complication that Ohio's campaign finance law underwent significant amendment in 1995. See OHIO REV. CODE ANN. § 3517 (Anderson 1996 & Supp. 2002).

the study looks at changes in the timing of contributions to candidates (Chart 1).

### 1. Increased Competition

To begin to evaluate the extent to which term limits may have altered the competitiveness of legislative elections, the first three tables consider changes in both the number of candidates running for office and the margins of victory.

Table 1				
Primary Candidates Per Seat				
Ohio General Assembly	1996	1998	2000	p('96-'00)
Total Seats	115	117	116	
Total Primary Candidates	253	291	342	
Overall Candidates per Seat	2.20	2.49	2.95	.000
Open Seats	10	16	50	
Open Primary Candidates	30	56	191	
Candidates per Open Seat	3.00	3.50	3.82	.113
Incumbent Seats	105	101	66	
Incumbent Primary Candidates	223	235	151	
Candidates per Incumbent Seat	2.12	2.33	2.29	.237
Ohio House	1996	1998	2000	p('96-'00)
Total Seats	99	99	99	
Total Primary Candidates	213	243	300	
Overall Candidates per Seat	2.15	2.45	3.03	.000
Open seats	6	11	43	
Open Primary Candidates	21	41	170	
Candidates per Open Seat	3.50	3.73	3.95	.478
Incumbent Seats	93	88	56	
Incumbent Primary Candidates	192	202	130	
Candidates per Incumbent Seat	2.06	2.30	2.32	.067
Ohio Senate	1996	1998	2000	p('96-'00)
Total Seats	16	18	17	
Total Primary Candidates	40	48	42	
Overall Candidates per seat	2.50	2.67	2.47	.946
Open Seats	4	5	7	
Open Primary Candidates	9	15	21	
Candidates per Open Seat	2.25	3.0	3.0	.403
Incumbent Seats	12	13	10	
Incumbent Primary Candidates	31	33	21	
Candidates per Incumbent Seat	2.58	2.54	2.10	.350

One measure of whether term limits may have affected campaigning and electoral competition is whether the number of candidates running for each seat has increased. As summarized in Table 1, between 1996 and 2000 an additional 0.75 candidates per seat were drawn to enter races for the Ohio General Assembly (2.20 candidates per district in 1996, versus 2.95 in 2000).<sup>170</sup> This statistically significant increase appears primarily attributable to a comparable (and also statistically significant) increase in the number of candidates competing for seats in the Ohio House of Representatives, as essentially no change occurred between 1996 and 2000 in the number of candidates running for the Ohio Senate.<sup>171</sup>

170. These increases are larger if candidates who filed no campaign finance reports are

Also apparent from the data in Table 1 is that, with the exception of senate races in 1996, the number of candidates running in open seat races is consistently greater than the number of candidates running in incumbent races. As a result, the raw increase in the number of open seats in both chambers (from 10 seats in 1996 to 50 seats in 2000), itself a dramatic reflection of the onset of term limits, partially accounts for the overall increase in candidates per seat. But another factor contributing to the overall increase in candidates per seat between 1996 and 2000 is that the number of candidates per open seat also rose from 3.0 to 3.82. This change is not statistically significant, perhaps in part because of the restricted population, but the change is even larger than the statistically significant increase for all seats.

An additional result that approaches statistical significance is that in the Ohio House the number of primary candidates competing for seats held by incumbents (including candidates in opposite party primaries) increased by 0.26 candidates per seat between 1996 and 2000. Almost all of this increase had occurred by 1998, however, before term limits took effect. Nevertheless, it is possible that additional candidates may have been drawn to compete in these races as an anticipatory effect of term limits, in order to build political experience, name recognition, and organizational support, in preparation for the certain (and not very distant) day when the seat would be open.<sup>172</sup>

A somewhat larger increase, albeit one lacking in statistical significance, in the number of primary candidates per open house seat appears to be another factor contributing to the overall increase in house candidates per seat. In 1996, twenty-one candidates competed for six open house seats (out of ninety-nine districts). In 2000, 170 candidates competed in the primaries for forty-three open seats. Again, the raw increase in the number of open seats explains most of the increase in the absolute number of candidates. On a per seat basis, the average open district had only 0.45 more candidates competing for it in 2000 than competed for it in 1996 (3.95 versus 3.50 candidates per district).

As previously indicated, on the senate side essentially no change occurred in the overall number of candidates per seat. It is interesting to note, however, that the number of candidates per incumbent seat declined, at the same time that the open seat figure rose by 0.75 candidates. But the open seat increase was complete by 1998, and as the p-values in Table 1 reflect, neither trend was sufficiently pronounced to be

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included, as these essentially nonviable candidates were more common post-term limits. The exclusion of these candidates from the data in this study is not meant to belittle the importance, symbolic or otherwise, of having these additional candidates in the field. Still, at least some amount of reported spending seems a fair requisite for any legitimate candidate today, and it is the financing of these candidates' campaigns that is the focus of this study.

171. Following the usual social science convention, I designate relationships with a p level less than 0.05 as "statistically significant." Relationships with a p level less than 0.10 are referred to as "approaching significance." See ARON & ARON, *supra* note 162, at 104; see also Deborah Jones Merritt, *Constructing Identity in Law and Social Science*, 11 J. CONTEMP. LEGAL ISSUES 731, 736 n.3 (2001). Although theoretical predictions and previous studies of term limits might support directional hypotheses, this study uses two-tailed significance tests for all relationships. This somewhat conservative measure is appropriate given the fledgling nature of empirical study in this area and the complex interplay of factors. See, e.g., ARON & ARON, *supra* note 162, at 99-104.

172. Accordingly, a potential further inquiry related to this possibility would be to study whether the number of candidates running correlates to the time left before the incumbent is termed out.

statistically significant in a population of this limited size.

Nevertheless, it is clear that a statistically significant increase in the total number of candidates per seat has accompanied the onset of term limits in Ohio. This increase appears to be primarily the result of a greater number of open seats, coupled with a modest increase in the number of candidates running for house incumbent seats, and somewhat larger but not statistically significant increases in the number of candidates per open seat in both the house and senate. In every category, the increases had begun by 1998, raising the question of whether anticipatory effects of term limits were already altering the nature of political competition, or whether some factor independent of term limits may be at least partially responsible. Further study, perhaps across many states with and without term limits, and over longer periods of time, may more clearly reflect whether term limits produce meaningful increases in the number of candidates per primary seat. Certainly in Ohio the immediate impact of term limits on the number of candidates per seat was not dramatic, beyond the impact attributable to the sheer increase in the number of open seats.

	Primary Election				General Election			
	1996	1998	2000	p('96-'00)	1996	1998	2000	p('96-'00)
All Seats	35% (n=26)	32% (n=32)	19% (n=56)	.001	36% (n=90)	33% (n=84)	30% (n=89)	.029
Incumbent Seats	40% (n=20)	34% (n=22)	21% (n=14)	.009	37% (n=84)	32% (n=73)	33% (n=49)	.299
Open Seats	17% (n=6)	27% (n=10)	19% (n=42)	.781	21% (n=6)	36% (n=11)	25% (n=40)	.600

A different measure of competitiveness is the margin of victory. Using this measure, both primary and general elections for seats in the Ohio House of Representatives became increasingly close or competitive overall between 1996 and 2000, as shown in Table 2. The most substantial tightening of the average margin of victory occurred in primary races in the 2000 election. The margin of victory in the 56 primaries that year was only 19%, a significant decline from the mean margin of 35% in 1996. This decline was due in part to an increase in the number of open seat primaries, which one might expect to show smaller margins of victory than those for incumbents.<sup>173</sup> The number of open primary elections for seats in the Ohio House increased fourfold between 1998 and 2000, and those contests retained relatively low margins of victory.

Notably, however, a significant decline in victory margins in races involving incumbents also contributed to the overall decline. The mean margin of victory in incumbent primaries declined from 40% in 1996 to 21% in 2000, a statistically significant decrease. In 2000, the average primary race involving an incumbent did not produce a victory margin much greater than that in an open primary. This increased competitiveness of primaries in incumbent-controlled districts might be associated with Ohio's adoption of term limits, although further study is needed to confirm such a link.<sup>174</sup>

173. See David Breaux & Malcolm Jewell, *Winning Big: The Incumbency Advantage in State Legislative Elections*, in *CHANGING PATTERNS IN STATE LEGISLATIVE CAREERS* 87, 97-98 (Gary F. Moncrief & Joel A. Thompson eds., 1992).

174. Comparison with states that did not adopt term limits, for example, would be



The mean margin of victory in the general election also showed a statistically significant decline for house races, from 36% in 1996 to 30% in 2000. As with primary elections, this may reflect both an increase in the number of open seats and some tightening of incumbent races. The tightening of incumbent races, however, was not nearly as dramatic as in the primaries. Indeed, despite a larger population of races, the decline was not statistically significant. The principal effect in the general election seems due to the bare increase in the number of open seats.<sup>175</sup>

	Primary Election			General Election		
	1996	2000	p	1996	2000	p
All Seats	34% (n=6)	21% (n=5)	.128	28% (n=16)	33% (n=15)	.269
Incumbent Seats	35% (n=5)	15% (n=1)	*	30% (n=12)	33% (n=9)	.572
Open Seats	28% (n=1)	23% (n=4)	*	22% (n=4)	34% (n=6)	.336

\* The significance here is not calculated given the very small number of observations.

Races for the Ohio Senate (Table 3) showed both similarities and differences with the house, although the much smaller number of observations makes it difficult to draw any firm conclusions.<sup>176</sup> In primary contests, mean margins of victory appear to have declined, as in the house, although the difference is not statistically significant for this population size. Patterns for both incumbent and open primary races match those in the house (an increase in the number of open seats, and a decline in victory margins for races for incumbent seats), but the very small number of cases precludes any statistical analysis.

In the general election, margins of victory for senate seats increased in all categories between 1996 and 2000. Although the results are not statistically significant, they present an intriguing contrast to the house data, where the mean margin of victory

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illuminating. It would also be worth probing the intermediate decline in 1998. Does this reflect an anticipatory effect of term limits or is it a sign that other trends independently were tightening races?

Even if a declining margin of victory for incumbent primaries is associated with term limits, this may signal a change in the nature of the incumbents rather than a change in the way particular races are conducted. Term limits remove from the pool the most senior incumbents, who are both most likely to enjoy large margins of victory in any primary, and most likely to discourage opposite party candidates from entering their own party's primary race for the seat. The remaining, more junior incumbents, may always have tolerated smaller margins of victory. The competitiveness of a primary race for a one- or two-term incumbent, in other words, may not have changed after term limits. Those races may simply be more visible in the "incumbent" category after the elimination of more senior incumbents.

175. The margin of victory in open seats increased nominally between 1996 and 2000, but the difference was not significant and may reflect variation unrelated to term limits. Even with this increase, the victory margin for open seats was lower than for incumbent seats, bringing down the overall margin.

176. In 1996, only one Ohio Senate primary election for an open seat was contested, compared to four in 2000. Similarly, while in 1996 five Ohio Senate primary elections for seats held by incumbents were contested (four involving the incumbents themselves and one an opposite party primary), by 2000 only one primary race (an opposite party race) fit this category. It is inappropriate to draw any conclusions from these single-observation categories.

declined significantly for seats overall. A consistent trend in the opposite direction in the senate suggests a difference that is worth exploring. It is possible that the open senate seats in 2000 attracted popular incumbents from the house, who had been term-limited in that chamber. This could explain the increasing margin of victory in contests for open seats.

In sum, while the raw number of open seats resulting from Ohio's term limit measure produced a large increase in the overall number of candidates running for office in 2000, the number of viable<sup>177</sup> candidates per open seat did not increase significantly. The mean margin of victory in both house and senate primaries has declined, however, suggesting increased competition after term limits. Notably, in the house these margins declined significantly even in races for seats held by incumbents.<sup>178</sup> Results for the general election were more mixed, with a significant decline in the mean margin of victory for seats overall in the house, but a less marked decrease in margins of victory for incumbents in that chamber, and constant (albeit nonsignificant) *increases* in victory margins for the senate. These results appear inconsistent with claims that term limits would discourage challengers from taking on incumbents,<sup>179</sup> but consistent with expectations that primary elections would take on increased importance.<sup>180</sup>

## 2. Increased Primary Expenditures

Aside from the preceding measures of changes in competition, the Ohio data reveal several interesting changes in campaign financing, particularly in connection with primary elections. These data are presented first at the individual candidate level, then aggregated at the district level. To provide a context for these data, and in particular to have a sense of the general increases in campaign costs occurring during this period, Table 4 begins by presenting summary information about a few general trends in Ohio campaign expenditures between 1996 and 2000.<sup>181</sup>

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177. As previously noted, candidates who filed no campaign finance reports were not considered viable. *See supra* note 170.

178. The decline occurred both in opposite party primaries, as well as in the incumbent's intraparty primary. Specifically, the average margin of primary victory dropped from 44% among the thirteen incumbents challenged in their own primary in 1996 to 32% among the six incumbents challenged in their 2000 primary.

179. *See supra* notes 128-30 and accompanying text. The possibility remains that term limits may substantially reduce challenges to incumbents in later terms, however, as the study data do not distinguish between challenges to first-term incumbents and challenges to later-term incumbents.

180. *See supra* note 113 and accompanying text.

181. As explained previously, *see supra* notes 157-69 and accompanying text, analyses in this section focus primarily on medians and use nonparametric tests of significance to account for the skewed distribution of the data. Like many sets of financial data, campaign expenditures and contributions show a strong rightward skew. In this circumstance, analyses that focus on the "middle," or median, values are more helpful than those focusing on the arithmetic mean.

	1996	2000	% change	p
Median Primary Expenditures	\$1,927	\$3,463	80%	.024
Mean Primary Expenditures	\$6,886	\$13,412		
	(n=249)	(n=342)		
Median General Election Expenditures	\$20,611	\$23,460	14%	.174
Mean General Election Expenditures	\$34,458	\$44,886		
	(n=214)	(n=240)		
Median Total Campaign Expenditures	\$23,279	\$28,005	20%	.092
Mean Total Campaign Expenditures	\$40,639	\$55,889		
(among candidates in general election)	(n=214)	(n=240)		
Median Total Campaign Expenditures	\$18,283	\$19,994	9%	.820
Mean Total Campaign Expenditures	\$36,339	\$44,958		
(among all candidates)	(n=252)	(n=342)		

As Table 4 reflects, median candidate primary expenditures in races for the Ohio legislature rose 80% between 1996 and 2000, increasing from \$1927 to \$3463, after adjusting for inflation.<sup>182</sup> This change is statistically significant using the Wilcoxon (Mann-Whitney) rank sum test.<sup>183</sup> In contrast, median candidate expenditures in the general election rose only 14%, from \$20,611 to \$23,460, and total campaign expenditures for candidates who competed in the general election rose only 20%. These changes did not achieve statistical significance, although the latter result approaches significance. Increases in general election spending, therefore, were much more modest than increases in primary spending, and may even reflect random variation.

The sizeable change in primary election expenditures, when general election spending remained constant or increased slightly, suggests that a real change occurred in primary contests—a change that occurred as term limits took effect. Rising costs of advertising, mailing, or campaign workers, which would affect all elections, cannot explain the difference. Of course, the change in primary expenditures may simply have coincided with term limits, and might not be linked to them. The change, for example, might reflect an increasing professionalization of primary campaigns, or an increased focus on those campaigns as districting techniques have made general elections increasingly safe for the dominant party in each district. The pattern, however, suggests a possible impact of term limits, consistent with predictions that term limits would render primaries more important. In the discussion to follow, these primary expenditure increases are further broken down by chamber (house versus senate) and by type of seat (open versus incumbent).

182. In adjusting for inflation, all figures herein are presented in 1996 dollars.

183. See *supra* note 162.

<b>All Races</b>	<b>1996</b>	<b>2000</b>	<b>% Change</b>	<b>p</b>
Median Primary Expenditures	\$1,793	\$2,757	54%	.014
Mean Primary Expenditures	\$5,975 (n=213)	\$11,643 (n=300)		
Median Expenditures in Open Primary	\$4,539	\$4,290	-5%	.489
Mean Expenditures in Open Primary	\$18,943 (n=21)	\$13,498 (n=170)		
Median Expenditures in Incumbent Primary	\$1,665	\$1,935	16%	.101
Mean Expenditures in Incumbent Primary	\$4,556 (n=192)	\$9,217 (n=130)		
Median Primary Expenditures <i>BY INCUMBENTS</i>	\$3,468	\$7,256	109%	.015
Mean Primary Expenditures <i>BY INCUMBENTS</i>	\$7,098 (n=93)	\$16,189 (n=57)		
Median Primary Exp. <i>BY CHALLENGERS</i>	\$257	\$698	172%	.346
Mean Primary Exp. <i>BY CHALLENGERS</i>	\$2,169 (n=99)	\$3,772 (n=73)		
<b>Contested Races (winner received &lt; 100% of vote)</b>	<b>1996</b>	<b>2000</b>	<b>% Change</b>	<b>p</b>
Median Primary Expenditures	\$4,156	\$7,143	72%	.076
Mean Primary Expenditures	\$12,292 (n=53)	\$19,312 (n=143)		
Median Expenditures in Open Primary	\$9,180	\$6,733	-27%	.714
Mean Expenditures in Open Primary	\$25,725 (n=15)	\$19,246 (n=113)		
Median Expenditures in Incumbent Primary	\$2,828	\$9,444	234%	.057
Mean Expenditures in Incumbent Primary	\$6,989 (n=38)	\$19,562 (n=30)		
Median Primary Expenditures <i>BY INCUMBENTS</i>	\$4,551	\$15,048	231%	.034
Mean Primary Expenditures <i>BY INCUMBENTS</i>	\$8,987 (n=14)	\$44,473 (n=8)		
Median Primary Exp. <i>BY CHALLENGERS</i>	\$2,459	\$5,424	121%	.262
Mean Primary Exp. <i>BY CHALLENGERS</i>	\$5,824 (n=24)	\$10,503 (n=22)		

Table 5 displays data for selected categories of candidates on the house side. Consistent with the statistically significant increase in median primary expenditures among all candidates for the Ohio General Assembly reported in Table 4, median primary expenditures among house candidates also experienced a statistically significant 54% increase between 1996 and 2000. In contested primaries, the increase in median expenditures was somewhat greater (72%), although in this smaller population this result only approaches significance. Not surprisingly, one factor in the overall increase in house primary expenditures was that the number of contested primaries (generally much more expensive than uncontested races) more than doubled, rising from 26 in 1996 to 56 in 2000.<sup>184</sup> Meanwhile, the number of candidates in these races almost tripled, rising from 53 to 143. But this increase in the frequency of contested races and number of candidates therein only partially explains the overall increase in house primary expenditures.

184. See *supra* tbl.2. Where Table 2 reports the margins of victory in contested races on a *per race* basis, Table 5 reports expenditures on a *per candidate* basis. The per candidate data for contested races in Table 5 is drawn from the same races presented in Table 2, however. (Similarly, the per candidate data for contested races in Table 6 is drawn from the same races presented in Table 3.)

Another contributing factor was a 109% increase, also statistically significant, in median primary expenditures by house incumbents. This increase was far greater (231%), and again statistically significant, among incumbents in contested races. These increases are consistent with the significantly tighter margins of victory in primary elections for house incumbent seats, described in Table 2 above. Meanwhile, the data in Table 5 also reflect that challengers remain heavily outspent by incumbents.

Also contributing to the overall increase in median primary expenditures on the house side was the increase in the number of open primaries. Although the median expenditure within this category actually dropped slightly (but not significantly), this type of race nevertheless remained much more expensive than incumbent races, thus pulling up the overall median as the number of candidates in open primaries rose from 21 in 1996 to 170 in 2000.

All Races	1996	2000	% Change	p
Median Primary Expenditures	\$3,817	\$4,645	22%	.865
Mean Primary Expenditures	\$12,280 (n=36)	\$26,047 (n=42)		
Median Expenditures in Open Primary	\$3,770	\$6,396	70%	.308
Mean Expenditures in Open Primary	\$8,388 (n=9)	\$46,815 (n=21)		
Median Expenditures in Incumbent Primary	\$3,863	\$4,433	15%	.412
Mean Expenditures in Incumbent Primary	\$13,577 (n=27)	\$5,279 (n=21)		
Median Primary Expenditures <i>BY INCUMBENTS</i>	\$17,944	\$7,427	-59%	.147
Mean Primary Expenditures <i>BY INCUMBENTS</i>	\$25,278 (n=12)	\$8,116 (n=10)		
Median Primary Exp. <i>BY CHALLENGERS</i>	\$1,530	\$423	-72%	.483
Mean Primary Exp. <i>BY CHALLENGERS</i>	\$4,216 (n=15)	\$2,700 (n=11)		
<b>Contested Races (winner received &lt; 100% of vote)</b>	<b>1996</b>	<b>2000</b>	<b>% Change</b>	<b>p</b>
Median Primary Expenditures	\$20,645	\$19,401	-6%	1.00
Mean Primary Expenditures	\$27,661 (n=11)	\$60,374 (n=14)		
Median Expenditures in Open Primary	\$15,520	\$36,039	132%	*
Mean Expenditures in Open Primary	\$15,520 (n=2)	\$81,857 (n=10)		
Median Expenditures in Incumbent Primary	\$21,969	\$5,902	-73%	.123
Mean Expenditures in Incumbent Primary	\$30,359 (n=9)	\$6,665 (n=4)		
Median Primary Expenditures <i>BY INCUMBENTS</i>	\$56,326	NA	NA	*
Mean Primary Expenditures <i>BY INCUMBENTS</i>	\$56,049	NA	NA	
Median Primary Exp. <i>BY CHALLENGERS</i>	\$7,230	\$5,902	-18%	.624
Mean Primary Exp. <i>BY CHALLENGERS</i>	\$9,807 (n=5)	\$6,665 (n=4)		
* The significance here is not calculated given the very small number of observations.				

The picture on the senate side (Table 6) is somewhat different, although the number of cases is small, and none of the changes is statistically significant when observed at the individual candidate level. Nevertheless, the 70% increase in median open primary expenditures bears some consideration, particularly in contrast with the decline in primary spending by senate incumbents, and in connection with the district-level results reported in Table 7 below. The downward trend in expenditures by senate incumbents also is suggestive in light of the significant upward trend in house incumbent primaries.

The larger differences in *mean* expenditures, particularly in open senate primaries, also merit brief comment. Between 1996 and 2000 the mean in open primary expenditures increased five-fold, compared to a much more modest increase in the median, suggesting that some targeted open races may have been particularly hard-fought or attracted especially heavy support. Indeed, the most expensive primary race for an open senate seat cost just over \$20,000 in 1996, but that figure climbed to more than \$324,000 in 2000.

	1996	1998*	2000	p('96-'00)
Senate Open Median Exp.	\$12,990	[\$30,377]	\$58,880	.023
Senate Open Mean Exp.	\$18,872 (n=4)	[\$85,255] (n=5)	\$140,444 (n=7)	
Senate Incumbent Median Exp.	\$22,489	[\$18,416]	\$8,222	.210
Senate Incumbent Mean Exp.	\$30,548 (n=12)	[\$37,831] (n=13)	\$11,086 (n=10)	
House Open Median Exp.	\$27,309	\$23,070	\$29,637	.784
House Open Mean Exp.	\$66,302 (n=6)	\$41,316 (n=11)	\$53,364 (n=43)	
House Incumbent Median Exp.	\$4,620	\$7,533	\$9,886	.022
House Incumbent Mean Exp.	\$9,407 (n=93)	\$11,855 (n=88)	\$21,396 (n=56)	

\*For the Senate only, 1998 data involve an entirely different group of districts than 1996 and 2000 data involve.

To provide a more direct comparison with Allebaugh and Pinney's 1998 Michigan study, we can also analyze the Ohio data by district. The results, summarized in Table 7, show that on a per district basis as well, the 2000 election in Ohio saw interesting changes in both house and senate primary races. Open senate districts experienced the most dramatic change, with median expenditures rising 353%, from \$12,990 to \$58,880. Incumbent races in the house also saw a large increase, with median expenditures rising 114%, from \$4620 to \$9886. Both of these changes were statistically significant, as well as consistent with trends in individual candidate spending in these races observed in Tables 5 and 6 above. But where Allebaugh and Pinney reported a 53% increase in *mean* open primary expenditures per district for the Michigan House between 1994 and 1998,<sup>185</sup> the comparable data from the Ohio House between 1996 and 2000 show a decrease, from \$66,302 to \$53,364. The median, a more reliable measure given the skewed financial data, increased modestly from \$27,309 to \$29,637. This change was not statistically significant, however.

One reason that the Ohio study may not have found any significant change in expenditures for open house seats, where other studies have reported sizable increases, is that the 1996 expenditures for these races may have been aberrationally high. Indeed, one interesting feature of the data in Tables 5, 6, and 7 is that, although we might predict costs for Ohio House races to be substantially lower than costs for Ohio senate races (assuming a low ratio of fixed to variable costs in political campaigns, and given that Ohio's house districts are one-third the size of senate districts), expenditures for open house seats in 1996 in fact were substantially greater than expenditures for open senate seats that year. This in itself is surprising, and suggests some additional factor may have been at play in 1996 Ohio House open seat races.

One possible factor is that the Ohio Democratic Party had just lost control of the

185. See Allebaugh & Pinney, *supra* note 113, at 169 tbl.11.4.

chamber in the preceding election, and was fighting hard in 1996 to regain the lost ground, while the Republican Party was seeking to cement its hold. To the extent that general election contests for open seats were a key battleground in this effort, both Republican and Democratic candidates may also have focused more intensely on certain primary races, to enhance their profile and prepare their campaigns. In this environment, expenditure figures for these races may not provide the best baseline for comparing with the 2000 election.<sup>186</sup> Data from 1998 therefore are also included in Table 7 for comparison.

	House			Senate		
	1996	2000	p	1996	2000	p
Median – All Races	\$0.30	\$0.59	.007	\$0.22	\$0.27	.736
Mean – All Races	\$1.27	\$2.11		\$0.71	\$1.23	
	(n=211)	(n=295)		(n=36)	(n=41)	
Median – Open Seats	\$1.26	\$0.89	.387	\$0.25	\$0.55	.377
Mean – Open Seats	\$3.88	\$2.66		\$0.58	\$2.03	
	(n=21)	(n=168)		(n=9)	(n=21)	
Median – Incumbents	\$0.46	\$0.61	.128	\$0.65	\$0.20	.177
Mean – Incumbents	\$0.86	\$1.91		\$1.25	\$0.23	
	(n=93)	(n=56)		(n=12)	(n=9)	
Median – Challengers	\$0.08	\$0.18	.428	\$0.15	\$0.13	.979
Mean – Challengers	\$1.09	\$0.97		\$0.36	\$0.51	
	(n=97)	(n=71)		(n=15)	(n=11)	

The Ohio data also permit comparison with Allebaugh and Pinney's reported increases in average expenditure per vote in Michigan. As shown in Table 8, Ohio candidates overall also spent more per vote after term limits, although not in all races. Only one increase is statistically significant, however: the almost 100% increase in median expenditures per vote across all house races. This increase is even more dramatic than Allebaugh and Pinney's reported 62% increase in *average* (rather than median) cost per open primary vote in the Michigan House.<sup>187</sup> At the same time, expenditures per vote in races involving senate incumbents (including their challengers) and in house open primaries declined, although these results lack statistical significance (and may also have been influenced by the peculiar circumstances in the Ohio House in 1996 described above).

186. Another possible influence on 1996 house open races, with a particularly dramatic effect on the mean but a noticeable impact on the median as well, is the presence of one extremely expensive primary campaign among Democratic candidates. Larry Friedman, an unsuccessful Democratic primary candidate for Ohio House District 11, reported \$192,682 in expenditures (apparently all his own money, as he reported \$0 in contributions) during the 1996 primary. To overcome this outlay, his victorious opponent spent \$49,700, more than twice the average amount of \$23,844 expended to win a competitive open house primary that year, before going on to spend the much smaller sum of \$28,000 to win the general election. If this race is excluded as an anomalous outlier, expenditures for house open seats show a more substantial increase between 1996 and 2000, but the change remains not statistically significant.

187. See Allebaugh & Pinney, *supra* note 113, at 171-72 tbl.11.6.

## 3. Partisan Variations in Expenditures and Contributions

<b>House Candidates</b>	<b>1996</b>	<b>2000</b>	<b>% change</b>	<b>p</b>
Median Republican Primary Expenditures	\$7,390	\$11,230	52%	.489
Mean Republican Primary Expenditures (n=11)	\$11,368	\$23,841 (n=81)	110%	
Median Democrat Primary Expenditures	\$2,855	\$2,268	-21%	.464
Mean Democrat Primary Expenditures (n=9)	\$30,307	\$4,824 (n=75)	-84%	
<b>Senate Candidates</b>	<b>1996</b>	<b>2000</b>	<b>% change</b>	<b>p</b>
Median Republican Primary Expenditures	\$3,346	\$34,122	920%	.027
Mean Republican Primary Expenditures (n=5)	\$7,213	\$77,375 (n=10)	973%	
Median Democrat Primary Expenditures	\$10,519	\$6,396	-39%	.571
Mean Democrat Primary Expenditures (n=4)	\$9,856	\$29,908 (n=7)	203%	

Interesting results also emerge when we analyze expenditures and contributions separately by political party. As previously reflected in Table 6, median expenditures in open senate primaries for candidates of all parties rose 70% between 1996 and 2000. Yet as shown in Table 9, the increase in median expenditures in open Republican primaries for a senate seat was much more dramatic, climbing from \$3346 to \$34,122. This increase among Republican candidates in open senate primaries was statistically significant, even though the increase among candidates of all parties in Table 6 was not. The median expenditure in an open Democratic senate primary decreased, although the decrease was far from statistically significant.

Party differences in the possible impact of term limits were not as extreme in the house. As in the senate, median expenditures rose for Republicans and declined for Democrats after term limits, although these much more modest changes in the overall pattern of expenditures in the house were not statistically significant for candidates of either party. In contrast with the senate, Republican primary candidates generally outspent Democratic primary candidates both before and after term limits. Furthermore, in the 2000 election the difference between Republican and Democratic house primary expenditures was highly significant ( $p = .000$ ), showing that the Republicans had established a clear advantage in the first election after term limits.

<b>House Candidates</b>	<b>1996</b>	<b>2000</b>	<b>% change</b>	<b>p</b>
Median Republican Primary Period Contrib.	\$0	\$7,412	N/A	.000
Mean Republican Primary Period Contrib. (n=11)	\$1,605	\$15,951 (n=81)	894%	
Median Democrat Primary Period Contrib.	\$0	\$3,084	N/A	.158
Mean Democrat Primary Period Contrib. (n=9)	\$6,482	\$5,045 (n=75)	-22%	
Median Primary Period Contrib. (all cand.)	\$0	\$4,068	N/A	.001
Mean Primary Period Contrib. (all cand.) (n=21)	\$3,619	\$9,843 (n=170)	172%	



Senate Candidates	1996	2000	% change	p
Median Republican Primary Period Contrib.	\$3,875	\$31,983	725%	.270
Mean Republican Primary Period Contrib.	\$13,974	\$43,646	212%	
	(n=5)	(n=10)		
Median Democrat Primary Period Contrib.	\$26,154	\$17,550	-33%	1.0
Mean Democrat Primary Period Contrib.	\$22,702	\$22,834	0.6%	
	(n=4)	(n=7)		
Median Primary Period Contrib. (all cand.)	\$11,965	\$10,953	-8%	1.0
Mean Primary Period Contrib. (all cand.)	\$17,853	\$28,395	59%	
	(n=9)	(n=21)		

Not surprisingly, large expenditure variations by party are matched by large variations in contributions by party, as shown in Table 10, although in this instance the statistically significant results are on the house side, rather than in the senate.<sup>188</sup> For instance, the median contributions received during the primary election by Republican candidates for open Ohio House seats rose from \$0 to \$7412 between 1996 and 2000, while the mean increased from \$1605 to \$15,951. The increase among Democratic candidates was much smaller and not statistically significant.<sup>189</sup> As a result, Republicans enjoyed a more than two-to-one primary fundraising advantage in 2000. On the senate side, the median primary contribution to Republican candidates for open seats rose from \$3875 to \$31,983, while the mean more than tripled from \$13,974 to \$43,646. Among Democratic Senate candidates, the median dropped from \$26,154 to \$17,550, although the mean remained essentially unchanged, resulting in an almost two-to-one Republican fundraising advantage.<sup>190</sup>

#### 4. Early Money

One additional feature of the Ohio data, reflected in Chart 1 below, is a dramatic

188. These data exclude contributions in the category of contributions from “candidates and campaign committees,” as coded by Ohio Citizen Action. This exclusion is meant to make comparisons of the data across years more meaningful, given that only after 1997 were candidates required to include in their contributions reports personal funds spent on their campaign. *See supra* note 167. An unfortunate side effect of this exclusion is that it also excludes transfers from other candidate committees. Nevertheless, it permits the comparison across years of contributions to candidates from a variety of other sources, including individual donors, PACs, labor unions, unincorporated businesses, and party funds.

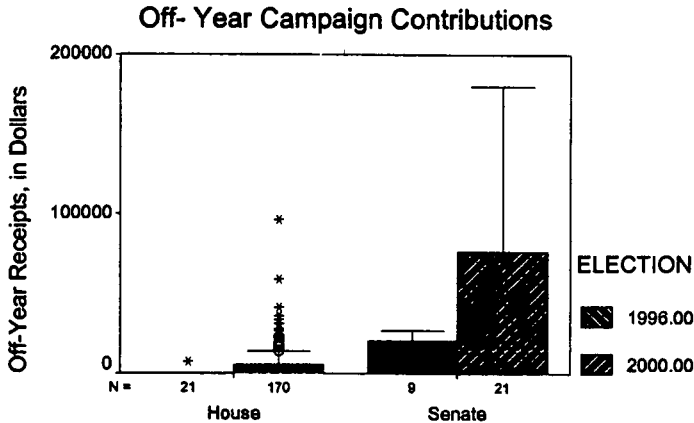
This change in the reporting requirements may explain the large number (sixty-four) of house candidates who reported no contributions in 1996 (as evidenced by the zero medians in all three house 1996 categories in Table 10). In other words, a number of 1996 house candidates appear to have financed their primary races from their own funds (or from contributions below the reporting requirement threshold). Furthermore, these sixty-four candidates do not appear to have invested too heavily, as all but seven reported spending less than \$5000 on their primary campaign, and all but three less than \$10,000. In fact, among the thirty most expensive primary campaigns for either the Ohio House or Senate in either 1996, 1998, or 2000 (in which expenditures ranged from almost \$59,000 to more than \$324,000), every candidate but one, *see supra* note 186, reported receiving contributions of at least 65% of their total campaign spending from sources other than “candidates and candidate committees.”

189. General election contributions for both Republicans and Democrats running for the house dropped by over 40%, further suggesting the increased importance of the primary elections.

190. General election contributions increased by roughly the same amount for Republican senate candidates, while falling 25% for Democrats.

increase in the number and amount of contributions received in the earliest stages of legislative campaigns.<sup>191</sup>

Chart 1  
Ohio General Assembly Open Seat Candidates



In this boxplot, the shaded boxes represent the interquartile range (the twenty-fifth to seventy-fifth percentiles) of the data, while the T-whiskers extend above the boxes 1.5 times the length of the interquartile range (or to the highest data point, if less than 1.5 times). The median, represented by the white line visible in the middle of the box on the right, is not apparent in the other three plots because it is zero. The asterisks above the whiskers are more extreme values beyond 1.5 box lengths above the interquartile range.

As the boxplot reflects, total contributions disclosed for 1995, the off-year reporting period prior to the 1996 election year, were almost nonexistent among candidates for open seats in the Ohio House, and relatively small in the Ohio Senate as well. Specifically, only one house candidate, out of twenty-one, reported any contributions at all in this pre-primary period. Meanwhile, the mean senate contribution of \$7884 in this period (the median, as noted above, was zero) reflected only three candidates out of nine running for open seats who reported any contributions in 1995. But in the 2000 race, approximately half of the 170 candidates for open house seats reported contributions in their 1999 annual report, with a mean total contribution of \$5472 (and a median of zero and a maximum of over \$96,000). On the senate side, the mean was \$43,378 (with a median of \$14,312, and a maximum of over \$180,000), reflecting fourteen out of twenty-one open seat candidates who reported off-year contributions.

These data are evidence of fairly dramatic developments in the financing of open seat primaries. The norm now appears to be to raise a substantial amount of funds well

191. These data also exclude contributions in the category of contributions from "candidates and campaign committees," as coded by Ohio Citizen Action. See *supra* note 167.

before the primary season begins. And although senate candidates typically raise much greater amounts than their house counterparts, the number of outliers on the house side shows that even many house candidates in the era of term limits have apparently tapped into some large sources of funds.

\* \* \*

In short, term limits in Ohio were accompanied by a number of noteworthy, and statistically significant, changes in political campaigns. Foremost among these are increases in primary expenditures, particularly in expenditures for house incumbent seats and senate open seats. On the house side, these increases have resulted in a statistically significant doubling of the expenditures per primary vote. At the district level, expenditures for house incumbent seats also have doubled, while expenditures for senate open seats have increased fourfold. Republican expenditures for open senate seats are up tenfold. Meanwhile, Republican candidates for open house seats have experienced a dramatic increase in contributions, and typical open seat candidates have begun building their campaign coffers much earlier. As a result, candidates seem to continue to be as dependent as ever on finding and cultivating a network of financial support.

Declining margins of victory reinforce the sense that the real competition for many legislative seats increasingly occurs at the primary stage. This is a development that may be precipitated at least in part by the presence of a large number of legislative seats deemed "safe" for the dominant party of the district.<sup>192</sup> Whether term limits can offer voters much additional "choice" in a context in which there are diminishing real contests among the principal political parties is an important question. A separate but related question of candidate choice to which we now turn involves who the new representatives under legislative term limits are.

### *C. Cincinnatus: A Contemporary Myth?*

As noted earlier, an ostensible purpose of term limits was to populate legislatures with a wider and more representative variety of individuals, popularly thought of as "citizen legislators."<sup>193</sup> However, the continued escalation in campaign costs just described could easily thwart this goal by discouraging the candidacies of viable newcomers whom term limits otherwise might inspire to follow in the footsteps of Cincinnatus.<sup>194</sup> The extent to which term limits are delivering on their justification of restoring a more amateur politics therefore deserves attention.

A few studies have begun to analyze the personnel changes occurring in term-limited legislatures. Although also still preliminary, these studies so far do not show much change in the demographics of individuals elected. For instance, in one of the first careful studies, Professors Carey, Niemi, and Powell found "no systematic differences in the backgrounds of the legislators from term-limit and non-term-limit

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192. The number of "safe" seats is primarily a result of legislative redistricting efforts. To the extent that a seat is relatively safe for a particular party, it will be more attractive to candidates from that party and thereby draw more primary level competition.

193. See *supra* notes 30, 67-72 and accompanying text.

194. See *supra* notes 74-77 and accompanying text.

states.”<sup>195</sup> They derived their conclusions from a 1995 survey of state legislators and a series of interviews in 1997 with legislators from California and Maine, where term limits had already taken effect. The one demographic feature they found meriting “special attention” was gender, with respect to which they found inconclusive but suggestive evidence that term limits may have modestly helped women to “shore up the gains” they had already made in the 1980s and early 1990s.<sup>196</sup> Otherwise, they found no notable demographic changes, and “marginal, if not negligible” changes in the ideological placement of legislators as well.<sup>197</sup>

In contrast, a few observers have claimed that term limits have produced larger changes in legislative composition. However, their focus is typically on two factors: (1) a decrease in the number of legislators who self-identify their occupation as “legislator,” and (2) an increase in the number of legislators with business backgrounds.<sup>198</sup> But the first trend, rather than reflecting any true change in the background, ideology, or approach to politics of any term-limited legislators, instead may reflect nothing more than these legislators’ decisions not to claim politics as a career in the face of the very climate—hostile to career politicians!—that produced term limits. As for the second trend, it seems an open proposition whether an increase in the number of legislators who claim ties to business means the legislature is becoming more broadly representative or diverse (although some proponents of term limits certainly may be pleased to have more legislators who are sensitive to the concerns of the private sector). Rather, this second trend is consistent with other claims that the greatest compositional effect of term limits is not to make legislatures more diverse or representative, but to make them more ideologically conservative.<sup>199</sup>

Subsequent studies of the demographic effects have reached results generally consistent with those of Professors Carey, Niemi, and Powell, except with less positive stories about the effect of term limits on the representation of women. In a study of the 1998 election, Susan Carroll and Krista Jenkins found an actual decrease in the number of seats held by women after term limits.<sup>200</sup> A 2001 report from the Center for American Women and Politics at Rutgers University similarly found that in both 1998 and 2000 the number of women forced out of state house offices by term limits was greater than the number of women elected to house seats opened up by term limits.<sup>201</sup>

195. CAREY ET AL., *supra* note 10, at 24.

196. *Id.* at 24, 27. For a 1992 prediction that term limits would not result in any meaningful demographic changes among legislators, with the possible exception of selective benefits for women in some states, see Fowler, *supra* note 77, at 182.

197. CAREY ET AL., *supra* note 10, at 24, 34. The study did find “spotty” results suggesting that term limits may have “mitigated the trend towards social conservatism among legislators first elected in the 1992 and 1994 election cycles.” *Id.* at 39.

198. *See, e.g.*, Basham, *supra* note 101, at 11 (reporting Mark A. Petracca’s data that the percentage of self-described “legislators” among California Assembly freshmen dropped from 36% in 1986 to 3.4% in 1995, while the number of business people in the legislature tripled).

199. *See* MORRIS P. FIORINA, *DIVIDED GOVERNMENT* 57 (1996); Scott R. Meinke & Edward B. Hasecke, *Term Limits, Professionalization, and Partisan Control in U.S. State Legislatures*, 65 J. POL. 898, 899 (2003).

200. Susan J. Carroll & Krista Jenkins, *Do Term Limits Help Women Get Elected?*, 82 SOC. SCI. Q. 197, 198-99 (2001); *see also* Robert A. Bernstein & Anita Chadha, *The Effects of Term Limits on Representation: Why So Few Women?*, in *THE TEST OF TIME* 147, 147-48 (Rick Farmer et al. eds., 2003).

201. HAWKESWORTH & KLEEMAN, *supra* note 10, at 8. Interestingly, these declines were offset by women’s victories in races against incumbents or for seats left open for reasons other

The same report found that women candidates made gains in term-limited state senate seats in 1998,<sup>202</sup> but overall found no such gains in 2000.<sup>203</sup>

In Ohio, the effects of term limits on the representation of women were essentially a wash. Term limits forced two women out of the state senate in 2000, while only one woman was elected to a senate seat vacated because of term limits.<sup>204</sup> On the house side, term limits forced twelve women out of office, while fourteen women were elected to seats opened by term limits.<sup>205</sup>

Media accounts and anecdotal reports also tend to support the conclusion that term limits have not introduced a new breed of citizen legislator. For instance, shortly after Michigan's 1998 election, a newspaper reported that the group of newly elected state representatives produced by the first round of term limits did not constitute the promised "return to citizen lawmakers," but instead was comprised of experienced politicians, legislative aides, and spouses of term-limited incumbents.<sup>206</sup> In turn, many of the Michigan representatives forced out by term limits in 1998 chose, unsurprisingly, to run for higher office, rather than return to their plows.<sup>207</sup> Likewise, seven term-limited Ohio representatives chose to run for state senate,<sup>208</sup> and anecdotal accounts suggest that many others sought other political offices.<sup>209</sup> One Ohio legislator lamented that term limits not only "force women and minorities out of office" while doing nothing to recruit, encourage, and assist new women and minorities to run for office, but also might in the long run decrease the pool of women prepared to seek

than the operation of a term-limit provision. *See id.* at 9.

202. The Hawkesworth & Kleeman study does not report the backgrounds of these women. In particular, one plausible explanation is that many of them had been serving in the lower house of their state legislature, and had decided to run for state senate because term limits forced them out of their house seat.

203. *See id.* at 9-10. More specifically, in 2000 two states saw more women elected to term-limited senate seats than were forced out, while four states saw more women forced out of senate seats by term limits than were elected to open seats, and four states saw no change. *See id.* at 10.

204. *See id.* at 9-10. Priscilla Mead, the one woman elected to an open Ohio Senate seat, had previously served in the Ohio House until term limits forced her out. She resigned her senate seat within the first year after taking office, explaining that "[t]his is an ideal place for somebody who relishes caucus politics and savors the campaigns as they have come to be." Lee Leonard, *To All New Legislators: Leave Your Individual Thinking Caps at Home*, COLUMBUS DISPATCH, Jan. 6, 2003, at 7A.

205. *See* HAWKESWORTH & KLEEMAN, *supra* note 10, at 8. Although women thus made a small gain in the Ohio House, three of these representatives took the seats of their term-limited husbands. *See* Andrew Welsh-Huggins, *Legislature Seats Sought by Spouses*, AP ONLINE, Feb. 27, 2001, at 2001 WL 13677392.

206. Gary Heinlein, *State House Rookies Boast Experience*, DETROIT NEWS, Nov. 16, 1998, at 1A.

207. *See Limits Put Heat on Senate*, THE GRAND RAPIDS PRESS, July 29, 1998, at X5, 1998 WL 12607268 ("This year's most spirited Senate primaries are the result of term-limited House members challenging people within their own party.").

208. *See infra* notes 226-28 and accompanying text.

209. *See, e.g., Finan Says Term Limits Bring Unexpected Problems*, THE HANNAH REP. (Hannah News Serv., Columbus, OH), July 27, 1999, at 1 (reporting Ohio Senate President's concern that before completing their final terms, term-limited legislators are accepting executive appointments or begin "looking at becoming county commissioner, a judge or mayor"); Leonard, *supra* note 204, at 7A (reporting frustrated state Senator's description of colleagues as "fixated on their next opportunity, whether it's running for Congress, returning to the House or becoming a county official").

higher office.<sup>210</sup>

The National Conference of State Legislatures<sup>211</sup> has also conducted an online survey concerning term limits. As of shortly after the 2000 election, 150 respondents, presumably mostly state legislators or staffers, had responded. Although not a controlled sample and obviously subject to selection bias (for instance, 83% of respondents indicated that they did not support term limits), 51% of respondents said term limits had produced no change in the diversity of their legislature, and an additional 22% said their legislature was less diverse under term limits.<sup>212</sup>

In sum, term limits do not yet appear to have produced much of their anticipated reconstitution of the composition of state legislatures. So far, few “ordinary citizens” have been drawn away from their plows. While supporters can plausibly argue that it is too soon to determine what long-term reconstitution may yet occur, it is not too soon to wonder why no signs of a trend have appeared. It is therefore important to consider whether at least one factor in this dynamic may be the continuing upward spiral in the expense of seeking elected office, even in races under term limits.

### III. IMPLICATIONS FOR THE SELECTION OF TERM-LIMITED STATE LEGISLATORS

The preceding empirical data concerning changes in state legislative elections accompanying the onset of term limits give rise to at least three categories of further observations. First, several potential effects of term limits on the financing of political campaigns merit more extended discussion. Next, these effects provide a new lens with which to view the existing structures of legislative elections, and suggest some possible reforms both in the area of campaign finance and in term limits themselves. Finally, it is apparent that important questions remain for ongoing study, especially as more states with legislative term limits begin to feel their direct effects, and those states whose term limits have already kicked in continue to gain additional experience.<sup>213</sup>

#### *A. Reflections on the Increases in Campaign Costs Under Term Limits*

One implication of the data described in Part II is that term limits apparently have

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210. McLin, *supra* note 10, at 539, 544-45.

211. The National Conference of State Legislatures is the pre-eminent organization providing information, publications, research, conferences, seminars, and other services to the nation's state legislatures, their members, and their staff. GUIDE TO THE NATIONAL CONFERENCE OF STATE LEGISLATURES, at <http://www.ncsl.org/public/guide.htm> (last updated Aug. 9, 2002).

212. See SURVEY RESULTS: NCSL'S ONLINE TERM LIMITS POLL, at <http://www.ncsl.org/programs/legman/about/survrslt.htm> (last updated July 18, 2003).

213. At the outset, it is important to warn against overgeneralizing from the California, Michigan, and Ohio data. State-to-state variations in legislative characteristics, such as the professionalization of a state's legislature, the legislature's party balance, the length of the state's term-limit period, or whether the term limit is a lifetime ban or a consecutive-years ban, among other factors, may affect the impact of term limits on political campaigns. Each of the three states studied in this Article has a highly professionalized legislature, as well as a term-limit period of no more than eight years (and six years in the case of the lower houses of the California and Michigan legislatures). See CAREY ET AL., *supra* note 10, at 4 tbl.1.1, 147-48. The experiences of these states may be substantially different from the experiences of Nebraska, Nevada, or Wyoming, for instance, where the legislatures are less professionalized, the term limits period is as long as twelve years (Nevada and Wyoming), or the legislature is unicameral (Nebraska). See *id.*

done little to stop—and in some types of races may be contributing to—the continuing growth in campaign spending, at least in states with professionalized legislatures.<sup>214</sup> In particular, the Ohio data show an 80% increase in median expenditures per candidate in primary elections for the General Assembly overall and a corresponding 54% increase in primary races for the Ohio House, both statistically significant.<sup>215</sup> Among candidates in contested house primary races the increase is 110%, a result that approaches statistical significance. A similar but not statistically significant trend exists among candidates for open senate seats.<sup>216</sup>

The fact that these increases are per candidate (rather than per district, as in the Michigan study) should be troubling if the purpose of term limits is to produce more citizen legislators. Per district increases might merely reflect the presence of a greater number of primary candidates, which would provide voters more choice. Per candidate increases, however, mean that it now costs more to run for office, a reality that is likely to discourage many citizen legislators.

Of course, increased campaign expenditures might not necessarily be antithetical to the goal of fostering citizen legislators, if the expenditures reflected heightened public interest and in turn produced greater citizen participation. However, as shown in Table 8 above, the increased expenditures do not appear to be generating corresponding increases in voter turnout. Rather, many candidates are now spending more per vote than before, even as much as two times more in the case of house seats overall, or open senate seats.<sup>217</sup>

Furthermore, the contributions data clearly reveal a related development: the rapid increase in the number and amount of pre-election year contributions reported by nonincumbent candidates, as shown above in Chart 1. This notable post-term limits phenomenon is only partially explained by the increased numbers of house members moving to open senate seats, with their preexisting campaign committees. The presence of a similar explosion in pre-election year contributions to candidates for house races also confirms the anecdotal reports that other types of open seat candidates also are forming increasingly early allegiances with supporters and contributors.<sup>218</sup> The result may be an even greater advantage for those open seat candidates who can quickly tap into the existing political fundraising infrastructures, candidates who once again may not fit the profile of a citizen legislator.<sup>219</sup>

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214. As previously suggested, the more professional legislatures tend both to have shorter term limits, *see supra* note 92, and to produce more of the traits deemed undesirable by term-limits advocates, *see supra* notes 19-27, 71 and accompanying text.

215. *See supra* tbls.4-5. General election expenditures showed a much smaller, and not statistically significant, increase. *See supra* tbl.4.

216. *See supra* tbl.6. Meanwhile, a statistically significant increase in *district-level* senate open primary expenditures did occur. *See supra* tbl.7.

217. At the same time, average votes per candidate did increase slightly in the senate, from 60,179 in 1996 to 65,206 in 2000, while they declined in the House, from 21,864 to 20,219.

218. *See supra* notes 132-34 and accompanying text.

219. On this front, one silver lining in the Ohio data is that PAC contributors do not appear to have increased their proportionate influence on legislative elections. On the contrary, while the dollar values of total PAC contributions to candidates for open seats in the Ohio House of Representatives and Senate increased substantially between 1996 and 2000, and dramatically so for Republican candidates, the proportion of PAC contributions to total contributions remained relatively unchanged for senate Republican candidates (33% in 1996 and 35% in 2000), and actually declined for house Republicans, for house and senate Democrats, and for candidates

Another interesting and statistically significant feature of the Ohio data is that house incumbents now are spending more than twice as much on their primary campaigns after term limits.<sup>220</sup> One explanation could be that, by foreclosing service beyond a fourth term, term limits have altered the makeup of the house incumbent population and produced a less entrenched or secure incumbency. "Younger" incumbents as a group may in fact simply be more vulnerable than their pre-term limits cohort. Or, some house incumbents now may feel more vulnerable because more challengers are emerging in an effort to build name recognition for the election when the incumbent is termed out.<sup>221</sup> Another possibility is that because term limits may create more opportunities for house incumbents to rise into leadership positions, first-, second-, or third-term members may place a greater value on retaining their seats than they would have before term limits. Alternatively, because they know that their house days are numbered, incumbents may already have their eye on a larger prize, and may be developing and testing the strength of their campaign apparatus. In any case, expenditures by challengers of incumbents also have increased.<sup>222</sup>

It therefore seems unlikely that house incumbents are any less distracted from their primary representative responsibilities by the pressures of fund raising. Even incumbents who feel safe may continue aggressively to raise funds, whether to transfer to other candidates, to build and refine their fundraising strength with an eye towards higher office, or simply for their own war chest.<sup>223</sup> Rising expenditures by incumbents seem to be the antithesis of what term limits sought to accomplish.

Also worthy of note is the scale of the increase in primary expenditures for Ohio senate open seats. Although no statistically significant results emerged at the individual candidate level (which may simply reflect the small number of candidates observed in this analysis), at the district level a statistically significant increase of over 350% occurred, as median open primary expenditures rose from \$12,990 to \$58,880.<sup>224</sup> Furthermore, this increase in senate open races occurred even though not as many candidates were competing for each of these seats as were competing for each house open seat.<sup>225</sup>

Upon analysis, one sensible explanation for the large increase on the senate side is that a heavy proportion of these candidates are former house members seeking to move up. Many of these house members are moving because term limits have forced them out of the house, while some are moving because term limits have forced out the

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overall in both houses.

220. See *supra* tbls.5, 7.

221. In the house, the proportion of contested primary races for seats held by an incumbent in fact has increased slightly, from twenty contested races out of 169 primary elections in 1996, to fifteen contests out of 100 primaries in 2000. In both years, large proportions (fourteen of twenty in 1996 and nine of fifteen in 2000) of these contested primaries were opposite party primaries, pitting two challengers against each other for the right to take on the incumbent in the general election, while the remainder involved a direct primary challenge to the incumbent.

222. See *supra* tbl.5.

223. Many studies have suggested that the size of an incumbent's campaign account may discourage challengers from entering the race. See Hogan, *supra* note 129, at 816-17, 827.

224. See *supra* tbl.7.

225. See *supra* tbl.1. Moreover, senate open seats appear to have become "safer" for the incumbent party, given the much larger margins of victory in general elections for these seats in 2000. See *supra* tbl.3. That this safety did not draw more competition to the primary is indicative of the continuing high threshold of financial support required to be a viable candidate.



previous senate incumbent and the house member believes now is the best opportunity to move. In fact, of Ohio's seven open senate seats in 2000, six were filled by former members of the Ohio House.<sup>226</sup> At one point, up to four additional house members had been contemplating vying for these open seats in primary matches against other house colleagues,<sup>227</sup> although in the end only one such contest occurred.<sup>228</sup>

Thus, although a key purpose of term limits was to get new blood into both chambers of the legislature, these forced legislative retirements instead seem to be complicating the difficulties that nontraditional politicians face in getting into the state senate.<sup>229</sup> While the dynamic obviously may be different in states with lifetime term limits,<sup>230</sup> (or in a state like Oklahoma, where the term limits restriction applies to combined time in both chambers), states with a prohibition on a certain number of consecutive years in a particular chamber<sup>231</sup> appear to have strengthened the role of the lower chamber as a supplier of candidates for the upper chamber.<sup>232</sup> As a result,

226. See Lee Leonard, *Republicans Gain One Seat In House*, COLUMBUS DISPATCH, Nov. 8, 2000, at D1. Similarly, five term-limited members of the California Assembly captured one of California's ten open senate seats in 1996. *Compare Final California Election Returns California Senate*, L.A. TIMES, Nov. 7, 1996, at A24 (reporting winners of 1996 California Senate races, and noting those races with an incumbent running) with California Secretary of State, *Candidates for State Senate*, available at <http://vote96.ss.ca.gov/Vote96/html/cand/senate.htm> (last visited March 21, 2004) (reporting occupations of Senate candidates, including seven winners formerly from the California Assembly, two of whom had not yet served the maximum two terms under term limits); see also Angela Dire, *Colorado on Term Limits*, STATE LEGISLATURES, July-Aug. 1998, at 32, 32 (describing attempted migration of term-limited Colorado legislators from state house to state senate (and vice versa) as "perpetuat[ing] exactly what proponents of term limits wanted to prevent: powerful career politicians").

Of course, the lower house has always served as a stepping stone to higher office. For instance, in the four open seat races for the Ohio Senate in 1996, two former members of the Ohio House were elected. But term limits are likely to strengthen this trend by forcing more house members to find an alternative to their house service sooner. Meanwhile, some term-limited senators have opted to continue their political careers in the house. See *infra* note 232.

227. See Sandy Theis, *State Rep. Amstutz Seeks State Sen. Drake's Seat*, CLEVELAND PLAIN DEALER, Sept. 14, 1999, at 5B.

228. Rep. Jim Buchy, a nine-term member of the house precluded from seeking reelection, lost the 2000 Republican primary for the Senate 12th District to Rep. Jim Jordan, a three-term member of the house, in what was the most expensive primary election in Ohio history. See Lee Leonard, *Capital Notes: Senate Campaign Sets Spending Mark*, COLUMBUS DISPATCH, Apr. 18, 2000, at B5. Buchy spent almost \$400,000, and Jordan spent just over \$300,000. See *id.*

229. One potential silver lining to the increased presence of former house members in senate races may be the potential to at least partially mitigate the predicted adverse effects of term limits on institutional memory and the relative power of lobbyists and the executive branch. Thus, as experienced legislators from a state's lower chamber take their accumulated wisdom to the upper chamber, the notion of bicameralism may be acquiring a new kind of value. See Cain & Levin, *supra* note 21, at 182.

230. See *infra* notes 312-13 and accompanying text.

231. In addition to Ohio, these states include Arizona, Colorado, Florida, Louisiana, Maine, and South Dakota. See CAREY ET AL., *supra* note 10, at 4 tbl.1.1.

232. Furthermore, to a much lesser extent term limits in these states may also have given rise to a conduit flowing in the opposite direction. In Ohio, for instance, three state senators forced out of office in 2000 successfully ran for seats in the state house. See Leonard, *supra* note 226, at D1. In addition, four term-limited state representatives saw their spouses take their house seats. See Welsh-Huggins, *supra* note 205.

campaigns for open seats in the upper chamber are witnessing greater pressure from experienced lower house members, who typically bring with them not only a stable of political supporters, an established network of fundraisers, and an understanding of how to bring in donations, but also a sizeable balance in their campaign treasury from their previous house campaign committees.

On the other hand, not every trend showed an increase in expenditures after term limits. In particular, median primary expenditures by Ohio Senate incumbents and by candidates for open seats in the Ohio House have both gone down in the first election after term limits.<sup>233</sup> Although neither result is statistically significant, both merit brief comment.

Given the ready access to campaign contributions that incumbents typically enjoy,<sup>234</sup> the decline in senate incumbent spending suggests that few of these office holders felt seriously threatened. Indeed, none of the ten senate incumbents running in 2000 faced a primary challenger, while four of twelve senate incumbents faced a primary challenger in 1996.<sup>235</sup> Thus, with the arrival of term limits may have come a reduction both in competition and in campaign spending in primary races involving senate incumbents (although the reduction in expenditures is more than offset by increases in primary spending among senate open seat candidates).<sup>236</sup> On the one hand, this may mean fewer opportunities for influence peddling. On the other hand, it may mean that most state senators are effectively elected for eight years, with a corresponding decline in their electoral accountability when they are up for reelection.

Meanwhile, the decline in house open primary expenditures suggests the possibility that more citizen legislators have in fact been drawn to these races. Upon closer examination, however, this seems not the best explanation. First, the 1996 house election may not provide a good baseline, given that party control of the chamber was at stake and may have inflated expenditures that year.<sup>237</sup> Second, per candidate expenditures in the 2000 house election may have been held down by the raw number of seats suddenly opened by the onset of term limits that year, which may have diluted each candidate's ability to raise funds, and also may have caused parties and contributors to focus instead on the senate, or on just a few key house races. As the impact of term limits is distributed more uniformly across elections, it is unlikely that any single house election will again see as many open seat races as occurred in 2000.<sup>238</sup>

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233. See *supra* tbls.5, 6.

234. See GIERZYNSKI, *supra* note 36, at 30. However, another factor in the drop in incumbent primary expenditures in the 2000 senate race may have been a sharp reduction in the supply of campaign funds, as average primary period receipts by senate incumbents dropped from over \$51,000 in 1996 to under \$20,000 in 2000, perhaps because potential contributors instead focused their attention and support on the much more competitive open senate races that year.

235. See *supra* note 176.

236. One explanation might be that the parties themselves now exercise greater control over accession to the senate and recognize that desirable candidates might be discouraged from seeking a senate seat if intraparty challenges in their sole opportunity for reelection were commonplace. On the house side, where incumbents may have as many as three reelection opportunities instead of one, parties may not be as willing to grant them the same sort of free ride every time. In addition, primary races may continue to serve as something of a proving ground for house incumbents, who generally are less seasoned than their senate counterparts.

237. See *supra* text accompanying note 186.

238. As a result, it is possible that in the 2000 election more "citizen legislators" were able

Third, and in light of the preceding, the rise in senate open primary expenditures (statistically significant at the district level and consistent, albeit not statistically significant, at the individual candidate level)<sup>239</sup> may tell a more accurate story about changes in open seat races. Furthermore, the Michigan and California studies corroborate what happened in the Ohio Senate, rather than the House. Specifically, in the first elections for vacancies created by their term limits measures, California saw a 44% increase in average contributions per open Assembly seat,<sup>240</sup> and Michigan witnessed a 53% increase in average expenditures per open house primary.<sup>241</sup> Taken together, these data and the reports of candidates and other participants suggest not only that the typical costs to capture an open seat remain high, but also that at least in some states and chambers term limits may be driving these costs higher, and further raising the demand for financial contributions.

Furthermore, the trend towards increasingly expensive open primaries appears to have a heavy partisan tilt. Indeed, in Ohio the spending increases are overwhelmingly attributable to Republican candidates.<sup>242</sup> Of course, one explanation for this trend could be that the Republican Party has simply become much better than the Democratic Party at soliciting political contributions. Another possibility, however, is that in a term-limited era, campaign support gravitates more heavily to the party in power. In 2000, the Ohio legislature was solidly under Republican control.<sup>243</sup> Campaign supporters in such an environment face greatly diminished prospects that supporting a Democratic candidate will pay off in the long run, either as a result of a change in party control years down the road, or as a minority party legislator nonetheless acquires clout over time. Contributors under term limits therefore have a correspondingly diminished need to hedge their bets for the future by supporting minority candidates. Instead, they may feel an increased need to identify and back a winner early.<sup>244</sup> One implication may be a decrease in competition in the general election, where candidates from opposing parties are more likely to provide voters meaningful choices concerning political ideas. The increasing margins of victory in both house and senate general election open seat contests, although not statistically significant,<sup>245</sup> lend some support to this possibility.<sup>246</sup>

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to compete for seats in the Ohio House. It would remain to be seen, however, whether similar opportunities would occur once term limits are affecting elections uniformly.

239. See *supra* tbls.6-7.

240. See *supra* note 145 and accompanying text.

241. See *supra* note 151 and accompanying text.

242. See *supra* tbl.9.

243. In 1999-2000, Republicans controlled twenty-one of thirty-three Ohio Senate seats and fifty-nine of ninety-nine Ohio House seats (and all statewide elected offices, excluding Supreme Court seats, were held by Republicans). See *Gongwer Year-End Report for 2000, Signs of Change in 2000 Brought on By Term Limits, Slowing Economy*, Gongwer Ohio Report No. 248, Vol. 69, at 1, 11 (Dec. 29, 2000).

244. Of course, it also is possible that for other reasons not attributable to term limits, many institutional campaign contributors may be increasingly shortsighted and supportive primarily of the party in power. For instance, anecdotal accounts indicate that some party leaders are now insisting that contributors who wish to remain in that party's good graces not contribute to the opposing party. See Jim VandeHei, *GOP Monitoring Lobbyists' Politics*, WASH. POST, June 10, 2002, at A01.

245. See *supra* tbls.2-3.

246. Yet a third explanation for the partisan tilt might be that as the power of incumbency matters less and less under term limits, many campaign donors increasingly shift their allegiance from long-term relationships with friendly politicians of all stripes to open-seat candidates from

On a related note, the Republican Speaker of the Ohio House described his caucus's aggressive efforts to recruit and groom open seat candidates in the 2000 election.<sup>247</sup> This suggests a top-down approach to candidate selection, rather than the grass-roots, bottom-up model envisioned by term-limits supporters. Moreover, it seems likely that these favored candidates were selected by Republican leaders for their like-mindedness, party loyalty, and electability, more than for their characteristics as "citizen legislators."

In turn, the most successful candidate recruiters and fundraisers then will be best positioned to become (or determine) the leaders in term-limited legislatures.<sup>248</sup> More specifically, because term limits occasion much higher turnover among legislative leaders at the same time that they deprive members of time to learn the political skills of their colleagues, fundraising and recruiting efforts will become increasingly important means for leadership candidates to prove their worth and develop a loyal following among their caucus.<sup>249</sup> The resulting linkage between fundraising, on the one hand, and setting and managing the legislative agenda, on the other, is antithetical to one of the primary rationales for term limits, namely reducing the influence of special interests. As a result, we might not be surprised by studies finding that ambitious career politicians seem to continue to be drawn to term limited legislatures.<sup>250</sup>

All in all, those whose support for term limits grew out of a frustration that elected representatives had lost touch with their constituents and grown complacent with the security of their incumbency should have reason for some disappointment. Rather than producing more directly responsive and accountable legislators, term limits appear instead to be producing legislators who may be more beholden to financial contributors than their predecessors. The increasing costs of campaigning for legislative office create a substantial headwind for potential new or alternative types of candidates, including "citizen legislators," who wish to run for office.<sup>251</sup> Instead, term-limited seats continue to be most easily claimed by those who can amass large campaign coffers, and at an increasingly early stage.

The extent to which this is an indictment of term limits, however, may depend on one's perspective on the legislative process and the role of legislators. Under the "legislators as agents" model, embraced by Public Choice and some liberal interest group theorists, there may be nothing wrong with a legislative body being most

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the party perceived as most likely to protect their wealth.

247. See Householder, *supra* note 123, at 31 (describing GOP caucus role in recruiting and supporting house candidates); see also Leonard, *supra* note 204, at 7A (quoting state senator's frustration with pressure to raise funds for the party caucus).

248. See Rick Farmer, *Lemonade from Lemons: Responding to Term Limits Via Party Caucuses*, SPECTRUM, Fall 2001, at 36.

249. See Leonard, *supra* note 204, at 7A (reporting one legislator's conclusion that "to become a committee chair, you have to raise money for the caucus").

250. See CAREY ET AL., *supra* note 10, at 61. Of course, these individuals now must satisfy their political ambition by moving to other offices, perhaps sooner than they otherwise would have. Cain & Levin note that those who hoped term limits would thwart political ambition may have been overly focused on the effect of static ambition (serving continuously in the same office), while slighting the potential impact of progressive ambition (transferring political skills to other offices). See Cain & Levin, *supra* note 21, at 176; see also Garrett, *supra* note 9. In fact, according to some observers, term-limited legislators are more ambitious than their predecessors. See Daniel M. Weintraub, *The Trouble with Term Limits*, STATE LEGISLATURES, July-Aug. 2002, at 40, 41.

251. See MONCRIEF ET AL., *supra* note 19, at 8.

responsive to those interest groups with the greatest clout.<sup>252</sup> But under a Burkean model, in which legislators are to act as trustees for their constituents, well-funded special interests wielding disproportionate influence contaminate the legislative process.<sup>253</sup> Most arguments in favor of term-limits seemed to build upon a Burkean model rather than a Public Choice model.<sup>254</sup>

In contrast, while non-term-limited legislators may have been perceived as somewhat aloof and disconnected from their constituents because of the relative safety of their seats,<sup>255</sup> they nonetheless may have been less influenced in their legislative judgment by the pressures of fundraising than many term-limited legislators. Moreover, some degree of electoral independence, in which representatives exercise their accumulated wisdom on behalf of the public interest even contrary to the popular passions of their constituents, is a respected component of representative democracy.<sup>256</sup> Undeniably, this independence is itself ripe for exploitation, and frustration that special interests were effectively exploiting it was a key motivator for term limits.<sup>257</sup> But in depriving constituents of the ability to decide at the voting booth whether their state legislators continue to have their best interests at heart, term limits may be further estranging representatives from the average voter and increasing candidates' dependence upon aggressive fundraising and special interests.<sup>258</sup>

### *B. Possible Refinements to State Legislative Campaign Processes*

Term limits' apparent inability to reduce the impact of fundraising in legislative elections, together with the opportunities this circumstance creates for special interests, sheds some light on other aspects of state political campaigns. In particular, many recent changes in state campaign finance laws may have done little to improve the prospects for citizen legislators, and in some cases may exacerbate the difficulty of broadening our democratic processes. That this difficulty persists even in states with legislative term limits offers yet another reason to question the system created by *Buckley v. Valeo*. However, two types of possible campaign reform within the *Buckley* framework—public funding and private seed money—retain some potential to improve campaigns for term-limited legislatures. In addition, the effects of term limits on

252. See GIERZYNSKI, *supra* note 36, at 13; DAVID B. TRUMAN, *THE GOVERNMENTAL PROCESS: POLITICAL INTERESTS AND PUBLIC OPINION* (1951).

253. See MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1971); ELMER E. SCHATTSCHNEIDER, *THE SEMISOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA* (1960).

254. See, e.g., WILL, *supra* note 30, at 99-101; CAREY ET AL., *supra* note 10, at 42.

255. See Basham, *supra* note 101, at 5-6.

256. This is what Hannah Pitkin has called the "trusteeship" model of democracy. See Hannah Pitkin, *The Concept of Representation*, in *REPRESENTATION* (1967). However, it traces its pedigree at least to the ideas of James Madison and Edmund Burke. See THE FEDERALIST NO. 10 (James Madison); Edmund Burke, *Speech to the Electors at Bristol*, Nov. 3, 1774, in *THE FOUNDER'S CONSTITUTION* (Phillip B. Kurland & Ralph Lerner eds., 1987); see also Symposium, *The Republican Civic Tradition*, 97 *YALE L.J.* 1493-1723 (1988).

257. See *supra* notes 28-30 and accompanying text.

258. Professors Carey, Niemi, and Powell find some empirical support for the position that term-limited legislators are less responsive to their constituents. See CAREY ET AL., *supra* note 10, at 58. At the same time, they describe one possible interpretation of this in terms of a "Burkean detachment from narrow district concerns," which may facilitate greater attention to the needs of the entire state. *Id.* at 62-63.

campaign financing provide reasons to adjust or eliminate term limits themselves.

### 1. Problems with Existing Campaign Finance Regulations

Since 1993, when the movement to adopt legislative term limits had essentially peaked, eleven states with term limits have enacted significant new campaign finance reform measures.<sup>259</sup> Typically, these measures changed the state's contribution limits, enhanced its disclosure requirements, or regulated the circumstances in which candidates could receive contributions.<sup>260</sup> These reforms were generally proposed, considered, and adopted independently from term limits, however, and their impacts were not specifically coordinated with the anticipated effects of term limits on political campaigns.<sup>261</sup>

Now that we have data about term limits' actual effects on legislative campaigns, we can consider whether certain campaign finance reform efforts are better suited for a term-limited environment. We can also explore whether some campaign finance reforms in fact compound the reasons that term limits seem neither to enhance candidate diversity nor to promote greater independence from campaign contributors. In particular, contribution limits may work at cross purposes with term limits, despite the fact that both are reform measures with a primary aim of reducing special interest influence on government, and regardless of whether contribution limits may otherwise be desirable.

For instance, as many analysts of campaign finance reform have argued, political contribution limits may effectively operate as incumbent protection measures.<sup>262</sup> Because established politicians generally are better positioned than their opponents to raise funds from a variety of donors, contribution limits add to the difficulties facing challengers. Of course, in one respect term limits were intended to address exactly this problem, by precluding incumbents from seeking reelection after the specified number of terms. Yet term limits also may discourage challengers from taking on sitting legislators during the intervening elections, before an incumbent is compelled to step down, precisely because potential challengers know that they will have a much better chance if they simply wait an election or two.<sup>263</sup> This is what seems to have happened in the Ohio Senate, although the results are not statistically significant. Contribution limits may only exacerbate this adverse effect on challenger emergence in intermediate

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259. See Kenneth R. Mayer, *Campaign Finance Reform in the States: A Report to the Governor's Blue Ribbon Commission on Campaign Finance Reform*, tbl.1 (1997), at <http://www.polisci.wisc.edu/~kmayer/commission.pdf>.

260. See *id.*; MALBIN & GAIS, *supra* note 39, at 15-23. It also bears noting that state contributions limits tend to be fairly large, as a proportion of median per candidate expenditures. For instance, in Ohio an individual or a PAC may donate up to \$2500 to a candidate in the primary election, and another \$2500 in the general election. See OHIO REV. CODE § 3517.102. In 2000, median primary expenditures per candidate for the Ohio General Assembly were \$3463. See *supra* tbl.4. The contribution limits therefore tend to have the most impact on the targeted, hard-fought, and very expensive races that skew the mean expenditure figures well above the median figures.

261. This is neither surprising nor blameworthy, given the inconsistent predictions about how term limits would affect legislative races generally, and campaign financing in particular. See *supra* notes 68-77, 105-17, and accompanying text.

262. See *supra* note 98.

263. See Fowler, *supra* note 77, at 184; *supra* note 130 and accompanying text.

elections by supplying one more reason for potential candidates simply to wait until the seat becomes open.

Furthermore, even where some incumbents appear to be facing stronger challenges under term limits, as seems to have happened in the Ohio House, contributions limits may continue to favor the incumbents. In particular, Ohio House incumbents showed a statistically significant 109% increase in primary expenditures between 1996 and 2000, and although this increase was matched by a yet larger (although not statistically significant) percentage increase on the part of challengers, incumbents continued to outspend challengers by more than ten-to-one.<sup>264</sup> As a result, incumbents were able to remain in office at the same time that they became even more indebted to their financial contributors, while contribution limits thwarted challengers from achieving greater success.

Contribution limits may also have an adverse impact in races for open seats. Here, ceilings on contributions may play a role in term limits' apparent effect of favoring those newcomers able to generate substantial party and caucus support at (and even before) the primary election stage.<sup>265</sup> If the costs of running for an open seat rise under term limits, as they have in some chambers in some states,<sup>266</sup> then candidates unable to tap into a pre-existing network of traditional support will face even stiffer odds, unless they can finance the bulk of their campaign either from their own personal funds, or from one or two major donors. Contribution limits preclude the latter option, however, and neither independently wealthy candidates nor those already plugged into established political networks seem to be model examples of the citizen legislators that term limits proponents promised.

Moreover, if term limits are not enhancing competition for open seats in general elections, at least in some states or chambers,<sup>267</sup> then state legislatures may derive greater benefits from vigorous competition among candidates at the primary election stage. As more and more seats are deemed "safe" for one party or the other,<sup>268</sup> meaningful intra-party competition may take on increasing importance as a means of keeping parties accountable and introducing new perspectives into state politics. But once again, contribution limits dampen the degree to which individuals with new or alternative perspectives can freshen the debate or shift the agenda.<sup>269</sup>

Thus, political contribution limits may heighten term limits' inability to reinvigorate our politics. Of course, the almost intractable difficulty of fostering the candidacies of politicians who are independent of special interests is in significant part attributable to the fact that, since *Buckley*, states have been unable to limit the amount of money that candidates may spend on political races.<sup>270</sup> That even races for term-

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264. See *supra* tbl.5.

265. See *supra* notes 218-19 and accompanying text.

266. The Ohio House is the notable exception, although as suggested this may reflect idiosyncrasies unrelated to term limits or peculiar to their year of first effect. See *supra* notes 237-41 and accompanying text.

267. See *supra* notes 243-46 and accompanying text.

268. Redistricting (the redrawing of legislative district boundaries that typically occurs every decade in response to the federal census) has tended to generate more and more "safe" seats, as gerrymandering for partisan advantage becomes increasingly widespread and sophisticated. See Kaplan, *supra* note 98, at 6.

269. See MALBIN & GAIS, *supra* note 39, at 174 (summarizing research showing that raising seed money is particularly difficult for political newcomers).

270. See *supra* notes 48-49 and accompanying text.

limited legislatures continue to be plagued by a number of high-stakes, high-spending races provides an additional reason to wonder whether what is broken about our system is not the power of incumbency per se, but rather the sacrosanct treatment of political expenditures as pure speech under the *Buckley* decision.<sup>271</sup> If states could more effectively limit total spending in political campaigns, the dynamic would be completely different, particularly in open-seat races in term-limited states.<sup>272</sup>

Term limits took hold when there seemed little prospect for a rollback of the protections of political spending under *Buckley*.<sup>273</sup> Indeed, had states been able to impose greater controls or limits on candidates' political expenditures, it seems open to question whether the term limits movement would ever have materialized.<sup>274</sup> However, in the last several years the Supreme Court has seemed less enamored of its 1976 *Buckley* decision, culminating in late 2003 with the Court's approval of the Bipartisan Campaign Reform Act.<sup>275</sup> In addition, individual members of the Court have shown increasing discomfort with the *Buckley* notion that campaign spending is pure political speech.<sup>276</sup> In no small part this discomfort may be driven by ongoing concerns about the impact of wealthy contributors on campaigns for federal office, notwithstanding fairly low contribution limits and twenty-five years of efforts to refine federal campaign finance law. To these concerns the term limits experiment adds a new layer of understanding from the state level: not even kicking all legislators out after six or eight years has succeeded in bringing in fresh representatives who are free from the grip of special interests and untainted by the pressures to raise exorbitant sums of campaign cash. Coupled with a variety of existing doubts about the way in which the *Buckley* Court struck the balance between protecting speech and protecting the processes of democracy,<sup>277</sup> the failure of term limits to generate greater independence from well-funded special interests could provide an additional reason to seek to jettison the *Buckley* framework.

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271. In turn, the inability to limit candidate expenditures creates one of the most powerful advantages for an incumbent, the ability to outspend (by outfundraising) one's challenger.

272. Of course, in non-term-limited states as well, campaigns would likely be fairly different if political spending were treated as something other than pure speech protected by the First Amendment.

273. See *supra* notes 56-60 and accompanying text.

274. See *supra* notes 95-102 and accompanying text.

275. See *McConnell v. FEC*, 124 S. Ct. 619 (2003).

276. See, e.g., *FEC v. Beaumont*, 123 S. Ct. 2200 (2003) (upholding federal regulation of corporate political activity as applied to nonprofit advocacy corporation); *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (rejecting facial challenge to federal limits on political parties' expenditures coordinated with a candidate); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 398 (2000) (Stevens, J., concurring) ("Money is property; it is not speech."); Richard Briffault, *Nixon v. Shrink Missouri Government PAC: The Beginning of the End of the Buckley Era?*, 85 MINN. L. REV. 1729 (2001) (arguing that many members of the Court are searching for alternatives to the *Buckley* framework).

277. See, e.g., sources cited *supra* note 49; see also Edward B. Foley, *Equal-Dollars-Per-Voter: A Constitutional Principle of Campaign Finance*, 94 COLUM. L. REV. 1204, 1212 n.28 (1994) ("*Buckley* is even worse than *Lochner* [because it] makes the even greater mistake of preventing democratic processes from reforming themselves . . ."); Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390, 1397-99 (1994) (also comparing *Buckley* to *Lochner*); Gene R. Nichol, *Money, Equality and the Regulation of Campaign Finance*, 6 CONST. COMMENT. 319 (1989).



## 2. Two Alternative Campaign Finance Reforms

Until a change occurs at the national level in the constitutional limits of campaign finance laws, individual states retain several other options for responding to the impact of term limits. Taking at face value the justification that term limits were intended to help purify our politics, two campaign reforms have the greatest potential to salvage the term limits experiment. Direct public funding of candidates<sup>278</sup> is one option that could enhance the prospects that term limits will produce a more diverse group of elected officials with increased independence from monied special interests. Another option, perhaps counterintuitive, would be to revise the campaign contribution laws to permit even larger private contributions, but only as seed money in the early stages of a campaign.

In theory, the notion that the public would help bear the financial cost of fostering and sustaining a robust political dialogue among a variety of candidates is attractive simply as a matter of civic virtue, if not also as a means of both increasing electoral competition and reducing the influence of special interests.<sup>279</sup> At least five states have already implemented some form of public funding of their state legislative elections.<sup>280</sup> Although careful analysis in two of these states has not yet found evidence of closer races against incumbents,<sup>281</sup> the unanswered question is whether public funding in conjunction with term limits would significantly boost the initially modest effects of term limits on increased competition for open seats.<sup>282</sup> We would expect public funding coupled with term limits to allow more candidates to compete for seats in state legislatures. In particular, to the extent that term limits create opportunities that a number of potential candidates avoid pursuing because of the discouraging realities of financing a viable campaign, public funding would help overcome this entry barrier, especially for open seats.

In practice, however, successful public funding to enhance the impact of term limits faces several hurdles, given that to overcome the power of established fundraising machines, political newcomers most need public funding in the very early stages of a race. At that point, identifying qualified candidates would be more difficult, and the costs of public funding would be more expensive given the greater number of

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278. The term "public funding" is sometimes also used to describe a variety of other state-funded efforts intended to enhance political campaigns, such as preparing voter guides, distributing public money to political parties, or providing candidates with free air time. In this discussion, the term is used to refer only to the variety of ways in which states may provide campaign funds directly to candidates.

279. See Raskin & Bonifaz, *supra* note 32. Unfortunately, popular support for public funding has been dropping over time. See MALBIN & GAIS, *supra* note 39, at 65-70.

280. See MALBIN & GAIS, *supra* note 39, at 58 tbl.4-4 (identifying Hawaii, Minnesota, Nebraska, and Wisconsin as states that provide public funding for legislative races); *id.* at 162 (describing Maine's public funding program). A number of additional states also provide some form of public funding for their gubernatorial and other statewide races. See *id.* at 57 tbl.4-4.

281. See *id.* at 136-37 (describing study of Minnesota and Wisconsin).

282. See *supra* tbl.1 and accompanying text. Only two states—Maine and Nebraska—have both legislative term limits and a system of public funding for legislative elections. Compare MALBIN & GAIS, *supra* note 39, at 22-23, 56, 60 (discussing states with public funding), with *supra* note 1 (listing states with legislative term limits). Nebraska's term limits measure does not displace members of its state legislature until 2008, see *supra* note 89, however, and its unicameral legislature makes it ill-suited as a test for the remaining states. Maine thus provides the obvious future case study with respect to this issue.

candidates. Current public funding programs typically do not award funds to candidates until they have raised a specified amount of funds (in the form of many individual donations each of no more than a certain, relatively small, amount) on their own.<sup>283</sup> Such eligibility requirements make complete sense from the state's standpoint of not wanting, or being able to afford, to support the campaigns of just anyone who would like to experience politics. On the other hand, these requirements prevent public funding from functioning as seed money and assisting candidates when they most need the help, as previously described.<sup>284</sup>

In fact, one of the fundamental purposes of public funding programs today is not to help fund political campaigns or assist newcomers, but to create a constitutionally permissible basis to limit the amount of money that candidates can spend on their campaigns.<sup>285</sup> A candidate's voluntary agreement not to spend more than a set amount becomes the key criterion for receiving public money.<sup>286</sup> Some states have taken an even more creative approach. If all candidates in a race agree to spending limits, none will receive public funds, but if one candidate refuses to adhere to the spending limits, the state then will fund the opponents' campaigns in an amount equal to the expenditures of the candidate who exceeds the spending limits.<sup>287</sup> Of course, the primary point of programs like these is not to invest public money in the political process, but to use the threat of doing so to alter candidate behavior.<sup>288</sup>

In contrast, for public funding to make a meaningful difference in the willingness and ability of nontraditional candidates to compete for seats in term-limited legislatures, the state would need to invest a much larger amount into financing political campaigns. In today's economic climate, that presents a difficult hurdle.<sup>289</sup> In addition, public willingness to share the financial costs of our political dialogue has in fact been declining over time.<sup>290</sup> Moreover, even were a state prepared to make the investment required, it then would need to develop some criteria other than the candidate's demonstrated fundraising ability—perhaps petition signatures<sup>291</sup>—to determine eligibility for early public funding. The state also would need to determine a reasonable seed grant amount to give to eligible candidates, and decide whether and how to distribute additional funds beyond the seed grant. Resolving these

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283. See MALBIN & GAIS, *supra* note 39, at 56-59. Thereafter, in some programs eligible candidates receive matching funds equal to the amounts they have raised privately, while in other programs candidates receive a grant according to a formula. See *id.*

284. See *supra* notes 265-69 and accompanying text.

285. See GIERZYNSKI, *supra* note 36, at 44-45. In contrast, for a vigorous defense of public funding of campaigns on the theory that "the costs of running for office [should be] a public responsibility," see Raskin & Bonifaz, *supra* note 32, at 1166-67.

286. See MALBIN & GAIS, *supra* note 39, at 60.

287. See *id.* (describing Nebraska and Florida provisions).

288. See *id.* at 55.

289. Most states are in the midst of one of their worst fiscal crises. See Robert Tanner, *State Legislatures Set to Tackle Budgets*, AP ONLINE, Jan. 1, 2003, at 2003 WL 2922671; Princeton Survey Research Assocs., Inc., *The Pew Center on the States, State Legislators Survey: A Report on the Findings 3-6* (2003), at <http://www.stateline.org/specialreport/Pew%20State%20Legislators%20%238288.pdf> (reporting 2003 survey of state legislators predicting "major belt tightening" in many areas in next two years).

290. See MALBIN & GAIS, *supra* note 39, at 65-70.

291. This criterion also may be problematic as a barrier to entry for less traditional candidates, given that the point of seed money is to provide them the opportunity to build the support that ostensibly would already be evident by petition signatures.

implementation issues also would not be easy, even assuming states decided they were willing to make this type of significant additional public investment in our civic dialogue.

As an alternative, states instead might consider selectively eliminating contribution limits. Barring a wholesale revision of the *Buckley* framework, the fundamental question regarding the value of contribution limits remains whether they more than make up for their adverse effects by reducing the extent to which elected officials are, or appear to be, beholden to large campaign contributors, who seek to manipulate the political agenda for their narrow self-interests rather than the public good. This is an immense and difficult issue at the center of many of the ongoing debates about campaign finance reform. It also is beyond the scope of this Article. Rather, the prospect that limits on political contributions may compound certain adverse effects of legislative term limits instead prompts consideration here of the much narrower issue of the impact of contribution limits solely on the primary campaigns of new and less traditional candidates for term-limited legislatures.

To bring this specific issue into focus, consider the impact of removing contribution limits entirely, but only with respect to non-incumbent candidates, whether they are taking on an incumbent or competing against each other in open seats. If challengers of incumbents could raise campaign funds without limits, prospects likely would increase for genuine contests in incumbent races,<sup>292</sup> even in a term-limited environment in which challengers could choose simply to opt out until the next election.<sup>293</sup> Similarly, permitting open-seat candidates to campaign without contribution limits also would make it easier for independent or less traditional candidates to be heard, provided they had even just one deep pocket with which to start.<sup>294</sup> So long as their increased ability to reach the public did not drown out other voices, the result would be to increase the range of perspectives and ideas vying for public support, compared to the narrower spectrum of viewpoints that existing campaign processes typically generate from among those candidates who can successfully raise funds from many small donors.<sup>295</sup>

Permitting unlimited political contributions may at first seem antithetical to reducing the influence of wealthy special interests, and indeed is fraught with genuine

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292. The idea that challengers ought to have additional financial resources to compensate for the many advantages of incumbency is not a new one. For instance, a quarter century ago, long before term limits took hold, U.S. Senator Alan Cranston proposed the idea of giving additional funds to challengers as a way to promote more vigorous political competition and keep politics fresh. See *Limit a Lawmaker's Term in Congress? NO—"Compulsory retirement is a waste of talent and know-how"*, U.S. NEWS & WORLD REP., Nov. 14, 1978, at 71; see also SORAUF, *supra* note 31, at 177-79.

293. See *supra* note 263 and accompanying text.

294. For instance, the Center for American Women and Politics has described the need for more effective fund-raising mechanisms (among other forms of support) for potential women candidates if they are to overcome their hesitation to seize the opportunities created by term limits. See HAWKESWORTH & KLEEMAN, *supra* note 10, at 15-16, 19.

295. To some, of course, a candidate's ability to raise funds is taken as a meaningful proxy for the candidate's public support. In contrast, the argument here is that fundraising strength is a heavily distorted measure of public support, and that both campaign finance reform efforts and term limits share a similar view that a reinvigorated politics should invite more inclusive participation and debate among candidates who may not immediately appeal to typical sources of political money.

risks. Not only might candidates be more beholden to their patrons, but the infusion of new financing might also escalate campaign expenditures even further. Yet both of these risks could be at least partially controlled, to the extent that state legislative elections might well be improved by allowing unlimited contributions for certain categories of candidates, particularly contributions as seed money for those who do not begin a campaign with the support of established political elites.<sup>296</sup>

For instance, campaign finance laws could be restructured to allow candidates for state senate to raise up to perhaps the first \$30,000 from any single permissible patron or combination of patrons, and likewise to allow candidates for state representative to raise up to \$15,000 this way.<sup>297</sup> Alternatively, the size of any individual contribution could still be limited, but at a higher dollar amount up to the first \$15,000 or \$30,000 of seed money raised. By imposing a ceiling on the amount of unlimited contributions, the risk of drowning out other voices would be greatly reduced. Instead, the primary result of this seed money exception would simply be to allow additional candidates to be competitive in the earliest stages of a race. A ceiling also should minimize any escalation in overall campaign expenditures, because once the seed money is spent, candidates will continue to have to rely on a number of small donations. Accordingly, the seed money amount would need to be set carefully, so that it is high enough to allow candidates of substance to take the steps necessary to begin to generate electoral interest, but not so high as to free those candidates of the need to quickly and substantially broaden their base of financial support in order to win the election.<sup>298</sup>

In addition, a seed money exception could be limited to a several-month period in advance of the primary election. If coupled with rigorous requirements for early, prompt, and full disclosure of seed money donors, this time frame should provide the electorate a much greater opportunity to understand the source of the seed money and to consider the risks that the candidate will not be independent of the patron(s). A party choosing in its primary election a candidate unable to demonstrate sufficient independence from a substantial patron might face the risk of seeing those ties become an issue in the general election.

The Task Force on Campaign Finance Reform of the Citizens' Research Foundation<sup>299</sup> has previously made a similar proposal (with higher dollar values) for

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296. See MALBIN & GAIS, *supra* note 39, at 174-75.

297. These dollar values are simply illustrative. Appropriate amounts would vary widely from state to state, just as average campaign expenditures do, depending on both district size and the state's political history and traditions.

298. This ideal figure of course would vary from state to state, and even from election to election. Fortunately, the practical success of such a seed money system would not require identifying or employing the perfect ideal, but only reasonably approximating the resource needs of typical newcomers trying to break into the political field. As with efforts to determine where to set the dollar value of standard political contribution limits, states could experiment with particular figures, seeing how they work and revising them over time. Furthermore, setting this figure would not be any more difficult than deciding how much seed money to award individual candidates under a system of public funding.

299. The Citizens' Research Foundation is "the nation's oldest non-partisan, non-profit research center committed to public understanding of political finance." THE BROOKINGS INSTITUTION, FINANCING THE 2000 ELECTION ix (David B. Magleby ed., 2002), available at <http://www.brookings.edu/dybdocroot/gs/cf/Financing2000/fm.pdf>.

federal elections.<sup>300</sup> The Task Force's proposal would in theory permit all candidates to enjoy the higher initial contribution limits, but would count towards the seed money amount all funds carried over from previous races. By including carry-over funds, this proposal would effectively neutralize its benefit for typical incumbents, who retain sizable bank accounts from previous races. Political newcomers thus would be the principal beneficiaries of a system allowing unlimited contributions up to the seed money threshold.

As noted, one trade-off for this significant increase in the ability of new candidates to make an early impression and thereby begin to build a real following would be a greater risk that elected officials would be in the pocket of their initial patron(s).<sup>301</sup> Yet a substantial majority of those new candidates who would benefit from a seed money exception would not win even their primary elections. These candidates therefore would not be in a position to have their public duties unduly influenced by the support of their patrons. Nevertheless, the enhanced profiles of even these unsuccessful candidates, made possible through a seed money exception, should in themselves broaden and improve the political debate.

Of course, in a term-limited environment the greater number of open seats will increase the likelihood that newcomers helped by a seed money exception will win at least some legislative elections. For these winners, concern about their relationships with wealthy patrons, and the possibility that these patrons may receive special treatment, would remain a real issue. Early, prompt, and full disclosure therefore would be critical to the viability of this proposal. But as Malbin and Gais have observed, by structuring a seed money exception to benefit only newcomers, most of whom would ultimately still lose, "[t]he potential danger from high contributions therefore seems manageable, particularly if they are limited to the campaign's earliest days, when an opponent will have plenty of time to disclose and make a campaign issue of them."<sup>302</sup>

In short, selectively eliminating political contribution limits has real potential to overcome the significant entry barrier that existing campaign finance realities continue to pose even to candidates for seats in term-limited legislatures. In contrast to public funding, a "seed money" exception to campaign contribution limits has the distinct advantage of not requiring a significant investment of public funds.<sup>303</sup> Its trickiest implementation issue would be determining the appropriate ceiling on seed money contributions, just as a system of public funding would also require the similar determination of how much public money to distribute to candidates.<sup>304</sup> Furthermore, a private seed money system, unlike public funding, would not impose on states the difficult task of developing neutral eligibility requirements, independent of fundraising ability, to determine who will receive public support, nor would it require the state to administer and oversee a complicated program. Instead, its success would depend largely on having and enforcing an adequate system of public disclosure requirements

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300. See Citizens' Research Foundation, *New Realities, New Thinking: Report of the Task Force on Campaign Finance Reform* 12 (1997); see also MALBIN & GAIS, *supra* note 39, at 175-76.

301. See *supra* text accompanying notes 295-96.

302. MALBIN & GAIS, *supra* note 39, at 175.

303. Cf. *id.* (describing as "foolhardy" the idea that states would support public funding at the level required to provide adequate seed money for newcomers).

304. See *supra* text accompanying note 291.

concerning the sources and amounts of the seed money contributions. In exchange, a much wider variety of candidates would likely be drawn to the public service opportunities available in term-limited legislatures.

### 3. Potential Adjustments to Term Limits Measures

Revisions to state campaign finance regulations are not the only possible responses to the adverse effects of term limits on campaign costs. Another set of potential adjustments would involve refining the term limits measures themselves. For instance, term limits of longer duration might act as less of an accelerant on open seat campaign costs, while lifetime (rather than consecutive years) term limits might be more likely to broaden the political class. However, given that the extant legislative term limits measures in every state but one are provisions in state constitutions, the prospects for these sorts of fine-tuning by constitutional amendment seem remote.<sup>305</sup>

Nevertheless, in many states with six- or eight-year term limits (as in California, Michigan, and Ohio), a number of people already have called for the extension of these limits to at least twelve or sixteen years.<sup>306</sup> Although generally motivated by a desire to enhance the legislature's institutional memory and to defer the transaction costs of having the entire legislature turn over more often, longer term limits might also even out some of the adverse effects on campaign competition and costs described above. While it also is possible that merely extending the duration of the limits would not be enough to counteract these adverse effects, we can postulate some reasons why it might be worth exploring this kind of adjustment.

For instance, the longer the term limit period, the more likely challengers may be to take on incumbents, perhaps especially in the upper chamber, rather than waiting for their terms to expire.<sup>307</sup> Although this healthy increase in competition in incumbent races would also be likely to increase expenditures in these races, one corresponding result might be a reduction in spending for the generally more expensive contests for open seats. Furthermore, even though open seat races would occur less often, candidates might place less of a premium on them than under a shorter term limits measure, in part because these races would be less perceived as the only good opportunity to become a legislator.<sup>308</sup> If so, longer term limits might reduce the expense required in any given open race, and permit more candidates to be competitive. In addition, members allowed to serve a longer period in a state's lower

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305. Of the sixteen states presently having legislative term limits, only Maine has a statutory term limits measure that the legislature could change, as the legislatures in Idaho and Utah have already done. *See supra* note 91 and accompanying text.

306. *See* National Conference of State Legislatures, *Term Limits Legislation*, at <http://www.ncsl.org/programs/legman/about/legislation.htm> (last modified Oct. 21, 2002) (summarizing legislative proposals to modify state term limits provisions).

307. As previously described, many state senators up for their sole re-election may be getting something of a free ride under term limits that allow them to serve only two terms. *See supra* note 236.

308. On the other hand, longer term limits might simply give ambitious newcomers that much more time to prepare to capitalize on the anticipated opening of a seat, to groom supporters, and to amass a campaign fund. Accordingly, the operation of term limits measures of longer than eight years also merits careful study. To date, however, the effective dates have not yet arrived in any of the three states (Nebraska, Oklahoma, and Wyoming) with twelve-year term limits.

chamber might be more content to return to their plows when their terms expire, rather than dominate open races for the upper chamber, thus further softening the expenditure increases seen in races for open senate seats.<sup>309</sup>

Similarly, we might also see different effects, particularly on legislative composition,<sup>310</sup> depending on whether a state's term limits measure is a lifetime ban or a consecutive-years ban. As previously suggested, a consecutive-years measure may give rise to a partially closed political class in which many of the same individuals rotate from one office to another, perhaps even returning to their office of origin eventually.<sup>311</sup> By precluding this possibility, a lifetime term limit measure, especially if in the form of a lifetime limit on combined years of service in either chamber,<sup>312</sup> should generate more opportunities to bring in new members to both chambers and broaden the class of elected representatives. In addition, a lifetime limit might be more effective than a consecutive years limit at reducing the impact of political ambition on legislative candidates.<sup>313</sup> On the other hand, one clear and perhaps unwelcome trade-off for such a measure would be a much greater loss of institutional memory and experience.<sup>314</sup>

Another option, of course, would be to repeal term limits in their entirety. In most states, this also may not be a politically feasible option at present, given continuing public support for term limits. However, this option may become increasingly likely as experience with term limits grows. Indeed, not only may the public continue to be disappointed by the impact of term limits on campaigns, but they may also become increasingly frustrated by the actual performance of term-limited legislatures in accomplishing legislative work.<sup>315</sup> This is one of many interesting issues that merit future analysis, as it is still quite early to discern the extent to which term-limited legislatures may systematically have greater difficulty conducting the people's

309. See *supra* notes 224-28 and accompanying text. Preliminary data also suggest that term limits increase the likelihood that lower house members will pursue a seat in the upper chamber. See CAREY ET AL., *supra* note 10, at 102-07, 127. The trend is sharper among legislative leaders, who are five times more likely to seek a position in the other chamber than are legislative leaders in non-term-limited states. See Thomas H. Little et al., *State Legislative Leaders' Careers*, SPECTRUM, Winter 2001, at 1, 3.

310. Although the specific effects on campaign costs also may differ depending on whether term limits are for lifetime or consecutive years, the data from California and Michigan (which have lifetime limits) suggest that at least in the short-run lifetime measures also are associated with substantial increases in campaign costs. See *infra* Part II.A.2.

311. See *supra* note 94 and accompanying text.

312. Only Oklahoma presently has such a measure, limiting an individual to twelve years in either chamber of the state legislature. See *supra* notes 64-65 and accompanying text.

313. See *supra* note 250 and accompanying text. It is also possible, however, that even legislatures with lifetime term limits will remain highly attractive stepping stones for politicians with progressive ambitions, who will simply have to adjust the timetable for their political careers in light of term limits.

314. See *supra* note 229.

315. For example, some observers attribute California's recent repeated budget crises in part to its legislative term limits, which in conjunction with the restrictions of several ballot initiatives have produced "a state that is virtually ungovernable." John M. Broder & Dean E. Murphy, *A Recall Vote Seems Certain For California*, N.Y. TIMES, July 24, 2003, at A1; Howard Fineman & Karen Breslau, *State of Siege*, NEWSWEEK, July 28, 2003, at 26, 31 (describing California's term-limited legislature as composed of representatives "who often, quite literally, don't know what they are doing" and who cannot produce a budget).

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### *C. Additional Questions Deserving Further Study*

The available data concerning legislative term limits' impact on candidates and campaigns provides reason to believe that term limits do not take the place of meaningful campaign finance reform, either as a means of removing a barrier to entry on our political processes, or as a way to limit the political influence of well-financed special interests. Nevertheless, these implications are still tentative, and the extent to which term limits have systematically altered state legislative campaigns may not yet be settled. Over the long-term, the effects of term limits may well change as our political culture reacts and evolves. Accordingly, the impact of term limits merits sustained study. Furthermore, the tentative conclusions presented here give rise to additional questions.

One set of questions concerns the impact of term limits on legislatures with important characteristics different from those of California, Michigan, and Ohio. In particular, one question is whether term limits may have a more favorable impact on campaigns in states with less professionalized legislatures. In these typically smaller states, the barriers to entry, in the form of the ordinary costs of campaigning, may already be naturally lower.<sup>316</sup> Are term limits in these states bringing in more new candidates, without exacerbating campaign expenses? Similarly, how does having a unicameral legislature alter the effect of term limits on progressive political ambition?<sup>317</sup>

In addition, a number of interesting questions remain to be studied in the larger, more professionalized states. Do candidates for term-limited legislatures raise or spend their campaign funds any differently, such as in more grass-roots efforts, or with increased reliance on transfers of funds between candidates? How do variations in a state's campaign finance regulations alter the effect of term limits? What correlation is there between candidates' personal wealth and the strength of their candidacies under term limits? How do interest groups adjust or target their contribution strategies under term limits?<sup>318</sup> Do term limits increase or decrease the number of citizens who make political contributions or vote?<sup>319</sup> What is the impact of term limits on third party candidates? And, as suggested above, do longer term limits reduce any adverse effects on campaign costs, and how much difference does it make over the long run whether a state has a lifetime term limit measure, rather than only a consecutive-years limit?<sup>320</sup>

Campaign finance data from term-limited legislatures also could be analyzed using

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316. As a result, less professionalized legislatures may already draw a different cross-section of citizens to serve as elected representatives, before controlling for the effect of term limits. *See supra* notes 70-71 and accompanying text.

317. *See supra* note 250. Although Nebraska is the only state with a unicameral legislature, this feature in contrast with that of other legislatures can help shed light on the nature of progressive political ambition.

318. In particular, are their contributions spread among more candidates, as George Will predicted, *see supra* note 101 and accompanying text, or are they concentrated on key races and particular candidates?

319. One analysis has found that term limits had a "significant and substantial negative impact on voter turnout." *Professional Papers: Term Limits*, SPECTRUM, Fall 2001, at 39 (summarizing recent Allebaugh & Pinney study).

320. *See supra* notes 305-13 and accompanying text.



several additional controls. These might include the previous competitiveness of each district, as measured by margins of victory; the prior political experience of candidates for open seats; and whether an incumbent has voluntarily departed a term-limited seat before the full term expires. In analyzing incumbent races, the number of terms that the incumbent has served might also be a factor affecting expenditures.<sup>321</sup> Other potential controls could include changes in the partisanship of a legislature, or in its districts, with whatever perceived "safeness" may result for particular seats and parties.

Finally, it will be useful to track the impact of term limits on campaign funding over the longer term. After several states have experienced several cycles under term limits, we will be better positioned to compare trends in races for term-limited legislatures with broader trends in campaign finance and changes in the costs of campaigning. In addition to controlling for developments in campaign law (including redistricting) that are more likely to occur over time, a longer-term study should also try to control for changes in political attitudes and civic engagement generally.

### CONCLUSION

While a number of questions about the impact of term limits on legislative campaigns merit further study, the consistent trends across several states provide reason to draw some tentative conclusions. Previous studies have shown that state legislative term limits do not seem to have fostered the candidacies of a more diverse group of citizen lawmakers. This static nature of the field of candidates may in large part reflect the continuing financial demands of competing for elected office. This Article's study of legislative elections in Ohio adds greater detail to the results of earlier studies in California and Michigan that term limits seem to have done little to break the close connection between financial support and campaigning for public office, or to weaken the opportunities for special interests to influence elected officials. On the contrary, candidates spent significantly more, on average, in primary contests after term limits than before them, and reliance on early campaign contributions seems to have jumped substantially.

To some term limits supporters, these conclusions may matter little. For instance, some still may value term limits on the theory that they remove politicians who have progressively lost touch with their electoral roots, while others may value term limits for producing a state legislature less eager to see a role for government in responding to society's needs.<sup>322</sup> But in the rhetoric of many of their boosters, and certainly in the

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321. Incumbents may face more serious competition in their early terms, when the advantage of their incumbency is weaker, and the opportunity cost to challengers of waiting until the incumbents are termed out is greatest. See Cain & Levin, *supra* note 21, at 174-75; Cohen & Spitzer, *supra* note 9, at 492, 510. Although this could generally be true in the term-limited context as well, term limits alternatively might encourage candidates to challenge incumbents in their final re-election contests, as a way of staking out the territory in anticipation of the subsequent election when the seat is open. See DANIEL & LOTT, *supra* note 98, at 169.

322. Indeed, some skeptics all along have seen most public justifications of term limits as disguising a hidden motive, namely moving legislatures to the ideological right. See *supra* note 104. Although it would be an oversimplification to ascribe this view to all term limits supporters, the term limits movement had a clear undercurrent of driving from power those politicians (especially Democrats) who were inclined to rely more heavily on government powers and programs. See CAREY ET AL., *supra* note 10, at 19; Thomas B. Edsall, *Scandal-Fanning Won't Do It for the Republicans*, WASH. POST, May 1, 1994, at C3.

mind of much of the public who supported them, term limits were meant to help purify our politics and serve as an antidote to the power of special interests. To these people, term limits held out a hope of breaking the stranglehold that narrow interest group influence seemed to have on politics.

The power of special interests is a power inextricably linked to election processes and campaign fundraising practices. These processes and practices are the result of a complex interplay of statutory and constitutional principles, and of the legislative and judicial branches of government that produce and analyze these legal structures. In turn, these structures are subject to revision in light of reason and experience. The disappointing performance of term limits to date, in doing so little to purify legislative politics and reform a system viewed as broken, ought to prompt careful reconsideration of some of these structures, if not of term limits themselves. Yet even if public sentiment does not shift in favor of eliminating legislative term limits, it seems nonetheless fair to say that term limits are not delivering all that was promised, especially in diversifying our elected representatives and reducing the influence of campaign financing on state legislative processes.