TERM LIMITS FOR NEBRASKA STATE SENATORS: A CHALLENGE TO THE FUTURE EFFECTIVENESS OF THE NEBRASKA STATE LEGISLATURE

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INTRODUCTION

In 2000, Nebraska voters approved a constitutional amendment limiting Nebraska state senators to two consecutive four-year terms. Of the forty-nine state senators, twenty, including the speaker and nine committee chairmen, were not permitted to seek re-election in 2006. Another sixteen will be forced from office in 2008. The remaining state senators will be term limited by 2012. This Article examines the possible consequences of the term limits and argues that while they were well-intentioned, they will likely harm the effectiveness of the Nebraska State Legislature.

Part I provides an overview of the structure of the Nebraska State Legislature, the responsibilities of state senators, and the term limits

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1. Kevin O'Hanlon, Clock Ticking on Term Limits, LINCOLN J. STAR, Feb. 9, 2005, http://www.journalstar.com/articles/2005/02/09/local/doc420a90c88b940489646224.txt; see also Respondent's Initial Brief at 2, State v. Chambers, No. CI05-5297 (District Court of Lancaster County, Neb. Feb. 3, 2006) (noting "[t]he vote was 355,030 (56%) in favor of the measure and 280,985 (44%) against").

2. Staff, Stage Set for Term-Limits Fight, LINCOLN J. STAR, Nov. 25, 2005, at A1 (noting the state senators not allowed to run in 2006 because of term limits include David Landis, Chris Beutler, Dennis Byars, Jim Cudaback, Ed Schrock, Roger Wehrbein, Kermit Brashear, Pam Brown, Jim Jensen, Elaine Stuhr, Don Pederson, Nancy Thompson, Tom Baker, Pat Bourne, Matt Connealy, Marian Price, Pam Redfield, Adrian Smith, Bob Kremer, and Doug Cunningham); see also Nancy Hicks, Out With a Bang, LINCOLN J. STAR, Apr. 14, 2006, at A1 (finding these twenty senators have a combined "244 years of service").


5. Martha Stoddard, Legislators Explore Pay, Tenure a Variety of Early-Session Proposals Call for More of Each, OMAHA WORLD HERALD, Jan. 12, 2005, at A1; see also NEB. CONST. art. III, § 12 (containing nothing to prevent these senators from running again in their original districts in 2010).


constitutional amendment approved by the Nebraska voters during the 2000 election. Part II then examines the drawbacks and advantages of term limits. Part III outlines the legislative and legal efforts to repeal the term limits and the vocal opposition to these efforts. Finally, Part IV recommends that the Nebraska State Legislature and voters should increase the salary of state senators, extend the term limits from two to three terms, and enhance the public financing for serious candidates to prevent some of the detrimental effects of the term limits.

I. AN OVERVIEW OF THE NEBRASKA STATE LEGISLATURE AND THE RESPONSIBILITIES OF STATE SENATORS

The Nebraska State Legislature is unique in that it is the only state unicameral\(^8\) in the country.\(^9\) It is also “the only nonpartisan legislature in the nation.”\(^10\) However, “[p]arty affiliation . . . still is maintained, and legislators participate in party functions, but parties do not control the selection of the leadership or the day-to-day operations of the body.”\(^11\) Instead of a split between Democrats and Republicans, often there is a division “between rural and urban interests.”\(^12\) Also, coalitions are more likely to be “based on personality or ideology rather than party lines.”\(^13\) The party affiliations of the candidates are not on the ballots.\(^14\) Instead, “[t]he top two candidates in the primary election proceed to the general election. The candidate with the most votes in the general election is seated.”\(^15\)

In odd-numbered years, the legislative session lasts ninety days, and in even-numbered years, it lasts sixty days.\(^16\) There are forty-nine state senators, each representing approximately 35,000 people.\(^17\)

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8. A unicameral is a legislative body that consists of only one house.
9. Nebraska Legislature Online, Frequently Asked Questions, http://www.unicam.state.ne.us/faq/index.htm (last visited Oct. 16, 2005); see also Kim Robak, The Nebraska Unicameral and Its Last Benefits, 76 Neb. L. Rev. 791, 792 (1997) (discussing “the baffling nature of the nonpartisan Nebraska Unicameral, how it came to be, why and how it works, why it is superior to partisan bicameral legislatures, and why it will remain the sole nonpartisan unicameral in the nation”).
10. Robak, 76 Neb. L. Rev. at 815-16 (discussing how having one house instead of two is intended to encourage a more efficient and accountable legislature while also decreasing the ability of lobbyists to influence legislation in conference committees).
11. Id. at 804.
12. Id.
13. Id. at 812.
15. Robak, 76 Neb. L. Rev. at 810.
17. Id.
They are elected to four-year terms and are paid $12,000 per year. In addition to their salaries, state senators are reimbursed for their travel expenses to each session of the legislature and are "allowed one administrative assistant and one legislative aide." The chairs of the major committees also "hire one committee counsel and [a] committee clerk."

Prior to the 2006 elections, thirty-two of the senators were Republican and fifteen were Democrats. Seventeen of the senators were sixty-five or older and five were younger than forty. Not surprisingly, thirteen of the forty-nine state senators were farmers and ranchers. The average state senator who was forced out of office for the 2006 elections because of term limits was first elected or appointed in approximately 1993. However, this tenure is much longer than the average service of Nebraska state senators. In fact, "[o]n average, one-fourth of the membership turns over every two years," and "[t]he average senator in Nebraska spends only seven years in office."

Some of the tasks of a state senator include visiting with constituents, participating in floor debates and committee hearings, and developing legislation. The only requirements to be a state senator are

18. NEB. CONST. art. III, § 7 (providing that "all members shall be elected for a term of four years" and that "[e]ach member of the Legislature shall receive a salary not to exceed one thousand dollars per month during the term of his or her office"); see also Joel Gehringer, Senators Propose Pay Raise, DAILY NEBRASKAN, Feb. 18, 2005, at 1 (noting this is "one of the lowest legislative salaries in the nation").
20. E-mail from Nebraska State Senator Don Pederson, Chairman of the Appropriations Comm., to author (Apr. 20, 2006) (on file with author).
21. Id.
22. Leslie Reed, Lawmakers Feel Urgency, Futility Because of Term Limits, 20 of 49 State Senators Are Starting Their Final Legislative Session, OMAHA WORLD HERALD, Jan. 4, 2006, at B1.
23. Reed, OMAHA WORLD HERALD, Jan. 4, 2006, at B1
24. Id.
25. Leslie Reed & Martha Stoddard, Term-Limited 20 Offer Valedictories Senators Wax Reflective As They Ponder the End of Their Service to Nebraska, OMAHA WORLD HERALD, Apr. 2, 2006, at B3 (noting Tom Baker was first elected in 1998, Chris Beutler in 1978 (missed one term), Pat Bourne in 1998, Kermit Brashear in 1994, Pam Brown in 1994, Dennis Byars was first appointed in 1988 (missed one term), Matt Connealy was first elected in 1998, Jim Cudaback in 1990, Doug Cunningham in 2000, Jim Jensen in 1994, Bob Kremer in 1998, David Landis in 1978, Don Pederson was first appointed in 1996, Marian Price was first elected in 1998, Pam Redfield was first appointed in 1998, Ed Schrock was first appointed in 1990, Adrian Smith was first elected in 1998, Elaine Stuhr in 1994, Nancy Thompson was first appointed in 1997, and Roger Wehrbein was first elected in 1986).
27. Nebraska Legislature Online, About Nebraska Senators, supra note 16.
that one must be at least twenty-one years old and live in the district
the senator represents for at least one year before being elected.28

In 2000, Nebraska voters approved a constitutional amendment
limiting Nebraska state senators to two consecutive four-year terms.29
The text of the amendment provides as follows:

(1) No person shall be eligible to serve as a member of the
Legislature for four years next after the expiration of two con-
secutive terms regardless of the district represented.
(2) Service prior to January 1, 2001, as a member of the Leg-
islature shall not be counted for the purpose of calculating
consecutive terms in subsection (1) of this section.
(3) For the purpose of this section, service in office for more
than one half a term shall be deemed service for a term.30

Including Nebraska, fifteen states have term limits for their state
legislators.31 The following chart provides the number of years a state
legislator is allowed to serve in each of these states:

<table>
<thead>
<tr>
<th>State</th>
<th>House Limit</th>
<th>Senate Limit</th>
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<tbody>
<tr>
<td>Maine</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>California</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Colorado</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Arkansas</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Michigan</td>
<td>6</td>
<td>8</td>
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<tr>
<td>Florida</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Ohio</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>South Dakota</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Montana</td>
<td>8</td>
<td>8</td>
</tr>
</tbody>
</table>

2005/02/09/local/doc420a90c88b940489646224.txt. It is worth noting that Nebraska
voters also approved state constitutional amendments with provisions involving term
limits in 1992, 1994, and 1996, but all of these were ruled unconstitutional for reasons
described in Part III of this Article.
30. NEB. CONST. art. III, § 12.
details/story?contentId=106923 (noting “[l]egislative term limits are in effect in 13
states: Arkansas, Arizona, California, Colorado, Florida, Maine, Michigan, Missouri,
Montana, Nebraska, Ohio, Oklahoma, and South Dakota[,]” and “[t]erm limits become
effective in Louisiana next year and in Nevada in 2010”); National Conference of State
Legislatures, Legislative Term Limits: An Overview, http://www.ncsl.org/programs/leg-
man/About/Termlimit.htm (last visited Feb. 22, 2006) (noting also that fifteen states
have passed term limits); see also Andrea Stone, Term-Limit Pledges Get Left Behind,
USA TODAY, Apr. 13, 2006, at 5A (noting governors are term-limited in thirty-six
states).
At first glance of this chart, it might seem to indicate that Nebraska's limit on state senators serving only eight years is in line with that of most other states that have term limits. However, because Nebraska is the only unicameral, it is the only state where lawmakers who are forced out of one chamber because of term limits cannot "take their expertise to the other chamber." Instead, that expertise is lost once that state legislator is no longer eligible to run for the state senate. In contrast, a state house member in Arizona after eight years can serve in the state senate for eight years, and then after being term limited in the state senate, she can once again run for a seat in the

33. See Arizona Center for Public Policy, Shedding Light on Arizona Term Limits, POLICY BRIEF, Oct. 2004, at 1, available at http://www.thinkaz.org/documents/SheddingLightonArizonaTermLimits_002.pdf (making "observations about how legislative service has changed since term limits were instituted" in Arizona).

34. Lilliard E. Richardson Jr. et al., Assessing the Impact of Term Limits in Missouri, 37 ST. & LOC. GOV'T REV. 177, 178 (2005) (noting it "was a constitutional amendment [that imposed] lifetime limits and allow[ed] legislators to serve no more than eight years in each chamber").


state house, thereby perpetuating her service in the state legislature.40

Six other states, Arkansas, California, Michigan, Missouri, Montana, and Oklahoma, have a somewhat similar situation to Nebraska because the term limits in those states bar lawmakers from returning to the same chamber after they have served their limit.41 For example, in Oklahoma, “the term limits restriction applies to combined time in both chambers.”42 Thus, as is the case in Nebraska, once state legislators reach the limit of twelve years, they are unable to take their expertise to the other chamber.43 However, because state legislators can serve twelve years in either chamber, they can stay in office four years longer than the state senators in Nebraska.

In California, the state’s lifetime term limit provision prevents state legislators from switching back and forth, as they are term limited in each chamber.44 That being said, an individual could still serve fourteen years (six in the house and eight in the senate) before being forced out of office.45 While it is true that term-limited senators in Nebraska could run again for their seat once they have sat out for an election cycle, they are initially forced out of the state legislature much sooner than anywhere else in the country.

II. THE BENEFITS AND DISADVANTAGES OF TERM LIMITS

This section first outlines the benefits of term limits, such as replacing career politicians with citizen legislators who have fresh ideas. It then examines some of the disadvantages of term limits and the concerns of preventing individuals from voting for term-limited incumbents.

A. THE BENEFITS OF TERM LIMITS: FRESH IDEAS AND APPROACHES

Supporters of Nebraska’s term limits claim they are necessary because “entrenched legislators had lost touch with their constituents, had become beholden to a narrow group of special interests, and pursued careerism at the expense of the public good.”46 Term limits are

43. See id.
44. See Bruce E. Cain & Thad Kousser, Adapting to Term Limits: Recent Experiences and New Directions iii (2004).
45. See id.
46. Huefner, 79 Ind. L.J. at 431.
intended to avoid the side effects of having state legislatures run by “highly ambitious and self-serving” career politicians\textsuperscript{47} and to “eliminate the ‘good ol’ boy’ system” which is “rife with back-room deals and open to corruption.”\textsuperscript{48} Instead, term limits provide the opportunity for more ordinary citizens, who are more responsive to the needs of the common citizen, to run for public office.\textsuperscript{49}

Advocates of term limits contend that they are the only effective way to ensure a responsive legislature because incumbents are virtually guaranteed victory during re-election.\textsuperscript{50} That is, term limits are particularly needed in the current political environment where “[t]he technological and information tools now available, combined with more consistent and predictable partisan voting patterns, enhance the capacity of existing officeholders to entrench themselves through the self-interested design of democratic institutions.”\textsuperscript{51} Thus, term limits are needed to counter the pattern of legislative districts consisting of safe seats with very few competitive elections.\textsuperscript{52} Term limits put an end to this harmful trend by forcibly ensuring fresh faces with new ideas in the state legislature.\textsuperscript{53}

\textsuperscript{47} Id. at 432; see also Rebekah Herrick & Sue Thomas, Do Term Limits Make a Difference? Ambition and Motivations Among U.S. State Legislators, 33 AM. POL. RES. 726, 728 (2005) (finding that “as predicted by advocates, term-limited legislators are less likely than their counterparts to be motivated by personal goals and more likely to be motivated by issues”).


\textsuperscript{49} See George Will, Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy 201 (1992) (arguing term limits “would increase the likelihood that people who come to Congress would anticipate returning to careers in the private sector and therefore would, as they legislate, think about what it is like to live under the laws they make”); Dan Hohensee, Letter to the Editor, The Will of the People, Lincoln J. Star, Nov. 30, 2005, at B7 (arguing “[n]ew legislators would recharger the system, force lobbying organizations to present issues instead of issue presents, and most importantly, represent and reinvigorate the unheard voices of those of us who are busy making a living, paying our bills, and making decisions to better the future for our children and for society in general”).

\textsuperscript{50} Richard H. Pildes, Foreword: The Constitutionalization of Democratic Politics, 118 Harv. L. Rev. 28, 62 (2004) (noting that “[i]n 2002, after the latest census, reapportionment, and redistricting – the moment at which the past decade’s incumbents and districts should have been most destabilized – only four congressional incumbents lost general elections”).

\textsuperscript{51} Pildes, 118 Harv. L. Rev. at 56.

\textsuperscript{52} Id. at 64.

\textsuperscript{53} See Katie Backman, Term Limits a Hot Topic Elsewhere, Too, Daily Nebraskan, Feb. 21, 2006, at 1 (noting Colorado State Senator Shawn Mitchell has “said he supports term limits because a continuous cycle of new senators bring a fresh perspective to the body”); see also U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 837 (1995) (noting term “limits may provide for the infusion of fresh ideas and new perspectives, and may decrease the likelihood that representatives will lose touch with their constituents”); Patrick Basham, Defining Democracy Down Explaining the Campaign to Repeal Term Limits, Policy Analysis, at 14 (CATO Inst., No. 490, Sept. 30, 2003), available at www.cato.org/pubs/pas/pa490.pdf (arguing that without such limits, “the average chal-
Although it will take several elections to fully evaluate the effect of term limits on the competitiveness of elections in Nebraska, the early signs seem promising. Indeed, eighty-three candidates filed to run for twenty-four state senate seats in the 2006 primary.\(^5\) Most of these candidates were in the twenty open seats where no incumbents were running because of term limits.\(^5\) This is a fifty-one percent increase over the number of candidates who ran in the primary in 2004 and a sixty-six percent increase over the 2002 primary.\(^5\)

Term limits have also forced a great number of state legislators from office in other states.\(^5\) In 2006 alone, term limits required 268 state legislators to leave office, “including more than 125 floor leaders and committee chairs.”\(^5\) The following chart provides the total number of state legislators in the nation who were ineligible to run between the 1996 and 2004 elections:

<table>
<thead>
<tr>
<th>Total Number of Members Termed Out(^5)</th>
<th>1996</th>
<th>1998</th>
<th>2000</th>
<th>2002</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>52</td>
<td>204</td>
<td>380</td>
<td>322</td>
<td>257</td>
</tr>
</tbody>
</table>

While there were more candidates in Nebraska in the 2006 primary, this has not been a national trend.\(^6\) Several scholars have suggested the lack of increased competition levels after term limits have been implemented is because challengers are likely to wait until a

\(^5\) Robynn Tysver, \textit{Candidate List Grows as Term Limits Hit, OMAHA WORLD HERALD}, Mar. 2, 2006, at B1 (noting at least some of these candidates “said they would not have run if an incumbent were on the ballot”).


\(^5\) Id.


state senator is forced out of office rather than run against an entrenched incumbent.  

In addition to the uncertainty of the effect of term limits on the competitiveness of elections, “there is dramatic and compelling evidence that the costs of campaigning post term limits implementation has skyrocketed.” Although the correlation of the increase in campaign costs to term limits is tenuous at best, the rising campaign costs will still price some potential candidates out of running for office and possibly strike at the heart of the goal of term limit advocates of having citizen legislators.  

Furthermore, several studies have shown that there have been no demographic changes in state legislatures that have implemented term limits. In particular, Professors John M. Carey, Richard G. Niemi, and Lynda W. Powell conducted a survey of state legislators from all fifty states in 1995 and found that term limits “had remarkably little effect on the demographics and ideology of those elected to state legislatures.” A recent follow-up study by the same professors had remarkably similar results. Specifically, they “found that term limits have virtually no effect on the types of people elected to office — whether measured by a range of demographic characteristics or by ideological predisposition.”  

Other studies have reached similar conclusions about the lack of demographic changes in state legislatures that have implemented term limits. In particular, a study of four states with term limits...
published in 2005 concluded that "term limits do not appear to bring systematic changes in the demographic characteristics of legislators. There has likewise been no dramatic shift in the experiences that they bring into a house." During 69 Thus, although the number of state legislators that have been ineligible to run for re-election is quite high, it does not appear that term limits have resulted in the type of citizen legislator first envisioned by supporters of term limits. 70

Although there may not have been a change in the composition of the legislatures with term limits, both studies by Professors Carey, Niemi, and Powell did find behavioral changes. 71 In particular, state legislators in term-limited states are more likely to be less concerned with the interests of their particular district and more concerned with the interests of the state as a whole and their own conscience. 72 However, it is not clear that newly-elected legislators are doing a good thing when they weigh the benefits of legislation to the entire state more heavily than the benefits to their districts. For example, citizens in a district in rural western Nebraska might be best served by a state senator whose top priority is the needs of his constituents, even when those priorities come at the expense of the more urban areas of the state.

While not a benefit per se, proponents of Nebraska's term limits also argue that the wishes of voters should be respected. 73 That is,
Nebraska's voters have spoken and it is arrogant and selfish of state legislators to attempt to get the term limits repealed. Proponents of the term limits also argue that it is anti-democratic to have "activist" judges overrule an amendment approved by the electorate in Nebraska. Instead of relying on as few as four justices to overrule the will of the majority, those who wish to have the term limits overturned should "try to change the minds of Nebraskans by making a convincing argument as to why term limits are a bad idea." In contrast, opponents of term limits argue that term limits are anti-democratic because voters "can no longer vote for a particular person just because he or she has been in the Legislature for a certain period of time."

Finally, at least one candidate who ran for an open seat created by the term limits has argued that it is inappropriate for the state legislators challenging the law to waste taxpayers' dollars on the issue. Instead, legislators should respect the decision of voters in Nebraska to have term limits and spend their remaining time in office working on measures to help their constituents, rather than wasting the taxpayers' money and their own energy on self-serving efforts to repeal term limits.
B. DRAWBACKS OF TERM LIMITS: WITHDRAWING WISDOM AND EXPERIENCE FROM THE NEBRASKA STATE LEGISLATURE

The two main concerns of opponents of term limits are the effectiveness of the state legislature and constitutional concerns of not allowing people to vote for term-limited incumbents. To support their arguments regarding the first concern, opponents of term limits note that once the "last of the pre-2001 senators are term-limited out, everyone in the Legislature will be either a freshman or a lame duck."81 Opponents of term limits claim this will result in state senators during their first term "learning issues and process" and during their second and last term being "lame ducks no longer accountable to the people at the polls."82

The freshman-lameduck dilemma will cause the state legislature to lose some of its institutional memory.83 The relatively inexperienced state senators that will make up the legislature once the term limits take full effect will have to rely on legislative staffers,84 bureaucrats, and lobbyists to inform them of past experiences.85 This dependence might be particularly significant for issues that require a great deal of background information.

This reliance could result in "legislative rookies" being "outmaneuvered" by those with more experience.86 This could be particularly true considering that term-limited legislators are likely to strongly

82. Don Walton, Term Limits May Be on the Table Again, LINCOLN J. STAR, Feb. 10, 2005, at 1.
83. See Backman, DAILY NEBRASKAN, Feb. 21, 2006, at 1 (noting incumbent state senators have "been around the track a few times and know where the potholes are").
84. This is assuming they do not fire the old ones.
85. See Staff Editorial, Beyond Term Limits: A Few Alternatives, DAILY NEBRASKAN, Jan. 13, 2005, at 4 (noting "the next few sessions could leave too many representatives relying on their aides for the bulk of how-to information. More troubling, it could be a feeding frenzy for lobbyists, who will know Legislative ins and outs better than the senators themselves."); see also Richardson et al., 37 ST. & LOC. GOV'T REV. at 188 (finding that after term limits were implemented "[i]n Missouri, there is evidence of legislators relying more on the institutional knowledge of lobbyists and staff"); but see Michael Barnhart, A Study of Term Limitation And The Michigan House 69 (July 28, 1999) (unpublished Ph.D. dissertation, Wayne State University) (on file with author) (arguing that "[w]hen legislative competence is measured by activity and effectiveness, longevity clearly DOES NOT produce competence in the Michigan term-limited House").
86. O’Hanlon, LINCOLN J. STAR, Feb. 9, 2005, http://www.journalstar.com/articles/2005/02/09/local/doc420a90e88b9404896646224.txt; see also Christopher Z. Mooney, Lobbyists and Interest Groups, in INSTITUTIONAL CHANGE IN AMERICAN STATES: THE CASE OF TERM LIMITS (Karl T. Kurtz, Bruce Cain, & Richard G. Niemi eds., forthcoming 2007) (finding "that under state legislative term limits, there are more lobbyists, these lobbyists work harder, their ethical behavior is sometimes worse, and they wield more influence in the legislative process, but that this power is more evenly distributed").
consider the views of their predecessors who became lobbyists.\textsuperscript{87} Newly elected state legislators may be tempted to look to the advice of these experienced former legislators who will be advocating the policy interests they are paid to advance, which may be at odds with the best interests of the state.\textsuperscript{88}

Also, the loss of institutional memory not only will include memory of what has happened, but also the skills on how to move or stop legislation and potential problems to watch out for. That is, like any other job, legislators gain skills while they are in office that allow them to become increasingly efficient at researching and passing legislation.\textsuperscript{89} Having inexperienced state senators could cause the legislature to become ineffective in passing quality legislation, resulting in wasted taxpayer money. For example, a study found that term limits in California have resulted in legislative committees lacking “the experience to weed out bad bills and ensure that agencies are acting efficiently and in accordance with legislative intent.”\textsuperscript{90}

In contrast, proponents of term limits may argue that many newly elected state senators bring new staffers with them to office and point to a study that did not find a “shift toward greater staff influence in term-limited chambers.”\textsuperscript{91} In addition, lobbyists will lose influence because term-limited legislators will not be as interested in their campaign contributions.\textsuperscript{92} Furthermore, while legislators may gain useful skills over time, they also lose touch with the citizens whom they are supposed to be representing. Finally, other states have had a higher turnover rate than what will be experienced in Nebraska,\textsuperscript{93} yet the doom and gloom scenarios outlined by opponents of term limits simply have not occurred.\textsuperscript{94}

\begin{itemize}
\item \textsuperscript{87} Needed Experience, Nebraska is Setting up Rookie Senators to Deal with Budget-Busters, OMAHA WORLD HERALD, Sept. 28, 2004, at B8.
\item \textsuperscript{88} Id.
\item \textsuperscript{89} See THE KAMBER GROUP, MODERN DAY SNAKE OIL: TERM LIMITATIONS AND WHY THEY MUST BE DEFEATED 21 (1991); but see KOUSSER, supra note 68, at 211 (finding that “[u]sing the simple metric of the portion of introduced bills that eventually succeed, there has been no dramatic impact on a legislature’s overall achievement”).
\item \textsuperscript{90} See CAIN & KOUSSER, supra note 44, at vi.
\item \textsuperscript{91} Carey et al., 31 LEGIS. STUD. Q. at 124.
\item \textsuperscript{92} But see Richardson et al., 37 ST. & LOC. GOV’T REV. at 189 (finding that at least in Missouri “lobbyists are adapting to term limits by spending more money on legislators. Moreover, they are focusing attention on supporting candidates early in their campaigns, and there are indications that some groups are actively recruiting their members to serve in the legislature.”).
\item \textsuperscript{93} Nate Jenkins & Nancy Hicks, Werner Returns To Politics, LINCOLN J. STAR, Mar. 21, 2006, at B2 (noting Nebraska will have approximately forty percent of its state senators term limited in 2006, whereas Michigan had fifty-eight percent of its House members limited in 1998, Florida forty-six percent in 2000, and Arkansas forty-nine percent in 1998).
\item \textsuperscript{94} See CAIN & KOUSSER, supra note 44, at ix (finding that few of “the worst fears of” opponents to term limits in California “have materialized”); see also Arizona Center
An additional drawback to term limits is the leadership of the state legislature will be less experienced. For example, one study found that “[t]he average legislative experience of speakers elected in states without term limits is twenty-four years, compared with just six years in the termed states.” This inexperience could lead to a number of problems. As an Ohio state senator wrote, “[m]embers with legislative experience are vital to producing quality legislation because they help to ensure continuity in leadership, they develop relationships across party lines, they are a means through which long-term legislation can be pursued, and they retain the institutional memory.” In contrast, supporters of term limits argue that the leadership in the legislature may actually improve because it will “be based on ability, not seniority.”

To attempt to meet the challenge of inexperienced leadership in the legislature, Nebraska state legislators are being cultivated earlier in their tenure for leadership posts. For example, in January of 2005, two Nebraska state senators in their first term were selected to be chairmen of the Commerce and Insurance Committee and the Urban Affairs Committee. One of the reasons these freshman senators were selected to these positions was because they had “demonstrated the potential to move promptly into a leadership role” once the term limits took effect.

The problem of inexperienced legislative leaders might also be solved by electing state senators who have greater familiarity with the legislative process over less experienced candidates. For example,
during the 2004 election, voters were urged to elect senators “who are capable of mastering the job quickly.”\textsuperscript{102} Also, state senators might specialize in certain areas of policy and defer to each other to compensate for lack of knowledge and experience in the “collective group.”\textsuperscript{103} However, at least one study has found the “shortened time horizons” created by term limits may “reduce the incentives of members to specialize in a policy area” and that “the sharp spikes in turnover brought by limits make other members less willing to delegate power to them.”\textsuperscript{104}

Furthermore, even if state legislators are more experienced when they are elected or they are given greater opportunities to develop their leadership skills earlier in their tenure, they could still prove to be ineffective “because it is so difficult for a term-limited leader to sanction rank and file membership.”\textsuperscript{105} In fact, the study by Professors Carey, Niemi, Powell, and Moncrief found that “the influence of majority party leaders and committee chairs” was weakened in states with term limits.\textsuperscript{106} State legislative leaders in Nebraska may also find it challenging to consistently “herd” a majority of state senators to advance a legislative agenda because these leaders will not have as many tools to encourage state senators to stay in line. For example, state legislators who are term limited may care less about gaining key committee assignments.\textsuperscript{107}

Another concern is that at least three studies have found that term limits increase the power of the executive branch at the expense of the legislature.\textsuperscript{108} State senators may be less likely to oppose the individual they may view as possibly providing them their next career opportunity once they are forced out of office. This type of outcome could be particularly likely in Nebraska given that before the 2006 elections thirty-four of the forty-nine state senators and the governor were Republican.\textsuperscript{109} Advocates of term limits might argue that even if

\textsuperscript{102} Needed: Quick Study Our Suggestions for Electing State Senators to Face Challenge of Term Limits, OMAHA WORLD HERALD, Oct. 28, 2004, at B6.

\textsuperscript{103} Richardson et al., 37 St. & Loc. Gov't Rev. at 186-87.

\textsuperscript{104} KOUSSER, supra note 68, at 205-06.

\textsuperscript{105} McLin, 32 U. Tol. L. Rev. at 541.

\textsuperscript{106} Carey et al., 31 Legis. Stud. Q. at 105.

\textsuperscript{107} See generally Michael J. Malbin & Gerald Benjamin, Legislatures After Term Limits, in LIMITING LEGISLATIVE TERMS (Gerald Benjamin & Michael J. Malbin eds., 1992).

\textsuperscript{108} Carey et al., 31 Legis. Stud. Q. at 125 (finding “[t]erm limits clearly increase the power of the executive branch relative to the legislature”); CAIN & KOUSSER, supra note 44, at 207 (finding that term limits in California resulted in the legislature being “less likely to alter the governor's budget” and the “legislative oversight of the executive branch . . . decline[n] significantly”); KOUSSER, supra note 68, at 207 (finding “that term-limited legislatures play a diminished role in crafting the state's budget”).

\textsuperscript{109} Martha Stoddard, In The Legislature, OMAHA WORLD HERALD, Apr. 6, 2004, at B5; see also Linda R. Cohen & Mathew L. Spitzer, Term Limits and Representation, in
the governor gains influence, it would be a minimal shift in the overall balance of institutional powers, and term limits are needed to keep in check the state legislature that has become too powerful in recent years.

Skeptics may also argue that legislators who know they will not be in office for more than eight years may feel rushed to produce legislation that has not been thoroughly considered by either the legislators or relevant parties. Legislators may also be more likely to pursue legislation with quick returns, rather than legislation with long-term benefits. For example, if there were term limits in the U.S. Congress, members would be even less likely to tackle problems with Social Security because while there may be long-term fiscal problems with the program, any adjustments to ensure the viability of the program are likely to be painful and politically unpopular.

Similarly, in Nebraska, legislators may be tempted to ignore the less "sexy" needs of the state, such as the maintenance of state highways and buildings, and instead concentrate on more headline grabbing issues like legalized gambling, bans on smoking in bars, state university tuition increases, or providing tax cuts. This is particularly true for those legislators who are merely using the legislature as a stepping-stone to other career opportunities.

There is a possibility that term limits could result in the legislature becoming "a bus station where some people have just arrived and others are waiting to leave, and as a result the institution itself does not elicit much loyalty or devotion." In fact, in 2006, four state senators decided to run for other offices. Three of these were forced out of office early because of term limits and the fourth only had two years left on his second term. Other legislators who are term limited may also look for their next career opportunity early in their last term as a

LEGISLATIVE TERM LIMITS: PUBLIC CHOICE PERSPECTIVES 47, 60 (Bernard Grofman ed., 1996) (noting state senators may also be more likely to consider the views of lobbyists in the hopes that they will provide employment once the senators are unable to run for re-election).

110. Peter Schrag, The Populist Road to Hell: Term Limits in California, AM. PROSPECT, Winter 1996, available at http://www.prospect.org/web/page.ww?section=root&name=viewPrint&articleId=4976; see also Herrick & Thomas, 33 AM. POL. RES. at 728 (finding that state senators in states with term limits are "more likely to possess progressive ambition, thereby countering the argument that limits will attract fewer careerists").

111. Martha Stoddard, Incumbents' Deadline is Short on Surprises Who's Running, OMAHA WORLD HERALD, Feb. 16, 2006, at A1 (noting State Senator Adrian Smith is running for Congress, State Senator Mike Foley is running for auditor, State Senator Matt Connealy is running for Public Service Commission, and State Senator Ed Schrock is running for the Nebraska Public Power District (NPPD)).

112. Id. (stating Mike Foley "is in the middle of his second legislative term").
state senator. Pursuing these other opportunities will take state senators' time away from their responsibilities in the legislature.\textsuperscript{113}

One study found that of the state legislators who were term limited in 1998, approximately fifty-four percent "chose to run for other political offices after being forced from office"\textsuperscript{114} and another "one-third of term-limited legislators moved into non-elective political positions in lobbying, government bureaucracies, or political organizations."\textsuperscript{115} The study concluded that, as a result, term limits "do not appear to be accomplishing their most basic goal: the creation of a non-careerist, citizen-led political process."\textsuperscript{116} Instead, they only forces state legislators "into other political positions."\textsuperscript{117}

For example, State Senator Adrian Smith indicated as early as May of 2004 that he was considering running for Congress in 2006 once he was forced from the state legislature.\textsuperscript{118} Someone in Senator Smith's position might be tempted to focus on issues that would best position him for his run for Congress once he was term limited from the state legislature, even if these were not the most important needs of his district or of the state.

However, one could also argue that Senator Smith had the incentive to work extra hard for his constituents to gain support to be elected to Congress. Furthermore, Senator Smith’s campaign could have raised his profile in the state legislature, allowing him to increase his influence to advance those issues that are most important to his district. Finally, at least one study found that term limits “mak[e] those who face . . . expulsions less risk-averse and more innovative.”\textsuperscript{119} Thus, constituents might be fortunate to have had Senator Smith representing them as opposed to having a state senator who had been serving for twenty years, who most likely would not see any significant opposition in the next twenty years in retaining her seat,


\textsuperscript{114} Richard J. Powell, \textit{The Unintended Effects of Term Limits on the Career Paths of State Legislators, in The Test of Time Coping with Legislative Term Limits} 133, 140 (Rick Farmer, John David Rausch Jr., & John C. Green eds., 2003).

\textsuperscript{115} \textit{Id.} at 146.

\textsuperscript{116} \textit{Id.}

\textsuperscript{117} \textit{Id.}


\textsuperscript{119} Kousser, \textit{supra} note 68, at 207 (finding that “[i]n sessions held on the eve of limits, legislators deviate more from federal guidelines in devolved policy areas and craft more policies that win innovation awards.” However, the same study also found that “[w]hen term limit laws replace these veterans with less knowledgeable new members . . . the drops in innovation are significant.”).
and might become lazy in her legislative duties and not be the most
effective representative for her district.\textsuperscript{120}

Furthermore, as Nebraska State Senator Tom Baker put it, term
limits result in having senators who during their second term “don’t
have to answer to their constituents if they don’t want to.”\textsuperscript{121} In fact,
one study found that state legislators in term-limited states “pay less
attention to their constituents.”\textsuperscript{122} Particularly during their last
term, state senators in Nebraska may decide that there are better
things to do with their time than answer constituent mail when they
know they cannot run for reelection.

Term limits could also deter some candidates from running for the
Nebraska state legislature. As previously noted, the salary of Ne-
braska state senators is approximately only $12,000 per year.\textsuperscript{123} The
combination of low pay and term limits could lead to a scarcity of qual-
ified candidates deciding to run, as they could determine that it is sim-
ply not worth it since they will be thrown out of office after only eight
years regardless of how good of a job they do.

Opponents of term limits also argue term limits will “hinder bi-
partisan relationships because they limit the amount of time in which
trust can be built.”\textsuperscript{124} At first glance, it might seem that Nebraska’s
unicameral will not be affected by this phenomenon because it is non-
partisan.\textsuperscript{125} However, Arizona Senator Peter Rios has argued that
term limits have made Arizona’s legislature less civil because “[n]ow,
everyone is in a big hurry to climb up the political ladder, and they
don’t care who they run over.”\textsuperscript{126} A similar nonpartisan scurry for
leadership posts and committee chairmanships could occur in
Nebraska.

Proponents of term limits might also argue that term limits will
result in state senators not redrawing districts to protect them-

\begin{footnotes}
\textsuperscript{120} See Herrick & Thomas, 33 Am. Pol. Res. at 727 (noting studies have shown
that “[m]embers in their final Congress change their voting behavior and are less active
on constituent communication than those who run for reelection”).
\textsuperscript{121} Gloria Masoner, \textit{Baker Sees Bad Effects from Term Limits}, McCook County
1089338.html}.
\textsuperscript{122} Carey et al., 31 Legis. Stud. Q. at 123.
\textsuperscript{123} Nebraska Legislature Online, \textit{About Nebraska Senators}, supra
note 16.
\textsuperscript{124} McLin, 32 U. Tol. L. Rev. at 541; see also Kousser, \textit{supra} note 68, at 206-07
(finding “[t]erm limit laws reduce the personal ties that form across party lines and
guarantee that opposing partisans will not be part of each other’s futures. These experi-
ence and time horizon dynamics are the most likely explanations of why majority par-
ties appear to become less cooperative in allowing minority members to be effective
legislators.”).
\textsuperscript{125} Robak, 76 Neb. L. Rev. at 815-16.
\textsuperscript{126} Backman, Daily Nebraskan, Feb. 21, 2006, at 1.
\end{footnotes}
However, the redistricting process may not significantly change because term-limited state senators can run in their districts the next election cycle after taking a term off and, therefore, will still have an incentive to have their district drawn in a way that is favorable to them in case they decide to run again. Furthermore, state senators will still be concerned that redistricting could force them out of their seats by having their districts eliminated by the redistricting process even before they are required to leave because of term limits.

Finally, opponents of term limits argue that term limits are not necessary. If voters are concerned with some of the problems term limits are intended to solve, they can impose a "term limit" by not re-electing their representative. Instead, term limits "throw everyone out and start over with fresh faces but little experience." Furthermore, opponents contend the only reason why the term limits amendment passed was because "[n]on-Nebraskans waged a huge campaign, spending thousands of dollars to convince Nebraskans they wanted term limits." In particular, "[t]he Nebraska Term Limits Committee spent more than $380,000." Nebraskans that did not have the resources to fight these outside groups are now merely using legal

127. Rick Ruggles, Official Questions Chunks Added for Redistricting, OMAHA WORLD HERALD, Jul. 7, 2001, at 51 (noting that, in Nebraska, a committee of nine senators oversees the drawing of the legislative districts); see also Robynn Tysver, Redistricting Challenged Again, OMAHA WORLD HERALD, Sept. 11, 2001, at B1 (finding that the state legislative maps drawn after the 1990 census, before term limits had passed, and after the 2000 census, after term limits had passed, both resulted in lawsuits on the basis that the districts were drawn to protect incumbents rather than to follow county lines as required by the Nebraska State Constitution).

128. Robynn Tysver, Some Senators' Quarrels Reach Points of Disorder, OMAHA WORLD HERALD, Jun. 3, 2001, at B6 (noting the elimination of State Senator Doug Cunningham's district may have contributed to "tense moments" in the Nebraska State Legislature).

129. Alan E. Peterson, Term Limits: The Law Review Article, Not the Movie, 31 CREIGHTON L. REV. 767, 774 (1998) (noting "voters can do the term limiting themselves, and they often do"); see also The KAMBER GROUP, supra note 89, at 8 (arguing "[a]rtificial term limits . . . are inherently undemocratic because they deny voters a choice that is rightfully theirs"); but see Basham, supra note 53, at 14 (arguing "[t]erm limits' critics reply that the people always have the power to reject incumbents. But relatively few incumbent politicians are defeated in the normal course of events. Absent term limits, significant turnover only occurs after years of fiscal irresponsibility and incompetence. In most jurisdictions, the ship of state apparently has to sink before the crew can be fired, such are the advantages of incumbency."); Barnhart, supra note 85, at 68 (noting that "between 1967 and 1993, the chance that a member of the Michigan House would lose an election was roughly equal to the chances he or she would die in office").


means to change the outcome of that ballot measure.\textsuperscript{133} In contrast, supporters of the term limits claim that while outside groups may have provided some of the funding for the term limits initiative, ultimately it was Nebraska voters who approved the measure.\textsuperscript{134}

III. EFFORTS TO REPEAL THE TERM LIMITS

Legal and legislative efforts have resulted in term limits being ended in eight states. The following chart outlines when and how term limits have been ended in these states:

<table>
<thead>
<tr>
<th>State</th>
<th>Year Repealed</th>
<th>Who Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wyoming\textsuperscript{135}</td>
<td>2004</td>
<td>State High Court Held Unconstitutional</td>
</tr>
<tr>
<td>Utah\textsuperscript{136}</td>
<td>2003</td>
<td>Legislature Ended</td>
</tr>
<tr>
<td>Idaho\textsuperscript{137}</td>
<td>2002</td>
<td>Legislature Ended</td>
</tr>
<tr>
<td>Oregon\textsuperscript{138}</td>
<td>2002</td>
<td>State High Court Held Unconstitutional</td>
</tr>
<tr>
<td>Washington\textsuperscript{139}</td>
<td>1998</td>
<td>State High Court Held Unconstitutional</td>
</tr>
<tr>
<td>Massachusetts\textsuperscript{140}</td>
<td>1997</td>
<td>State High Court Held Unconstitutional</td>
</tr>
<tr>
<td>Nebraska\textsuperscript{141}</td>
<td>1996</td>
<td>State High Court Held Unconstitutional</td>
</tr>
</tbody>
</table>

\textsuperscript{133} Id.

\textsuperscript{134} See Russ Rathjen, Letter to the Editor, Arrogant Legislators, McCook Daily Gazette, Feb. 24, 2005, at 2, available at http://www.mccookgazette.com/story/1089948.html (noting "it was Nebraskans who voted overwhelmingly to enact term limits, not outsiders. The last I knew, outsiders are not allowed to vote in Nebraska.").

\textsuperscript{135} Cathcart v. Meyer, 88 P.3d 1050 (Wyo. 2004).

\textsuperscript{136} Bob Bernick Jr., Term Limits Get The Boot, Deseret News, Mar. 6, 2003, at A26 (noting "[o]nly one House member spoke against repeal").

\textsuperscript{137} Betsy Z. Russell, Supporters of Term Limits Won't Go Away, Spokesman Rev., Nov. 7, 2002, at B1 (noting the legislature repealed the term limits over the Idaho Governor Dirk Kempthorne's veto); see also Basham, supra note 53, at 10 (arguing "[t]erm limits opponents won in Idaho by a razor thin margin after a deceptive advertising campaign that unfairly benefited from taxpayer-subsidized advocacy").

\textsuperscript{138} League of Or. Cities v. State, 56 P.3d 892 (Or. 2002).

\textsuperscript{139} Gerberding v. Munro, 949 P.2d 1366, 1377-78 (Wash. 1998).


\textsuperscript{141} Duggan v. Beerman (Duggan II), 249 Neb. 411, 421-22, 544 N.W.2d 68, 75 (1996).
As this chart shows, the majority of states that have repealed term limits have done so via the state high court. This section addresses the legal challenges currently working their way through the Nebraska court system, gives an overview of the successful legal challenges in other states, and then addresses some of the legislative proposals that have been made in Nebraska to repeal or alter the term limits.

A. LEGAL CHALLENGES TO NEBRASKA’S TERM LIMITS

In November of 2005, two state senators’ applications to run for re-election were rejected because of the term limits. They and others filed a lawsuit in the Nebraska Supreme Court in December of 2005, naming the Nebraska Secretary of State, John Gale, as the defendant. The three named state senators in the suit consist of Ernie Chambers, an Independent, who was first elected in 1970; Marian Price, a Republican, who was first elected in 1998; and U.S. Term Limits, Inc., 514 U.S. at 783 (arguing that “[a]llowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States. If the qualifications set forth in the text of the Constitution are to be changed, that text must be amended.”).

142. U.S. Term Limits, Inc., 514 U.S. at 783 (arguing that “[a]llowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States. If the qualifications set forth in the text of the Constitution are to be changed, that text must be amended.”).
Dennis Byars, a Republican, who first served in the legislature in 1988. The plaintiffs are represented by Alan Peterson ("Peterson"), who was successful in winning court decisions that invalidated term limit provisions that were enacted in Nebraska in 1992 and 1996.

Without comment the Nebraska Supreme Court rejected Peterson's effort to bypass the lower court. The lower court subsequently "ordered Secretary of State John Gale to allow term-limited lawmakers to file for re-election or go to court Jan. 18 to explain why he didn't." In February of 2006, Lancaster District Judge Karen Flowers threw the term limits challenge out. The opponents of term limits have subsequently appealed to the Nebraska Supreme Court.

It is difficult to predict whether this appeal will ultimately be successful. The following chart summarizes the outcomes in other states to recent major cases involving term limits:

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Court</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Wyoming</td>
<td>2004</td>
<td>Wyoming Supreme Court</td>
<td>Overthrown</td>
</tr>
<tr>
<td>Oregon</td>
<td>2002</td>
<td>Oregon Supreme Court</td>
<td>Overthrown</td>
</tr>
<tr>
<td>Missouri</td>
<td>1998</td>
<td>Federal District Court</td>
<td>Overthrown</td>
</tr>
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155. State v. Chambers, No. CI05-5297, at 4 (District Court of Lancaster County, Neb. Feb. 3, 2006); see also Nate Jenkins, Foes of Term Limits Take Case to State High Court, LINCOLN J. STAR, Mar. 1, 2006, at B2.


157. Cathcart, 88 P.3d at 1071 (holding it is unconstitutional under the Wyoming State Constitution for a legislative action or initiative to alter "the time period any one person can hold a state legislative office").

158. National Briefing Northwest: Oregon: Court Rejects Term Limit Law, N. Y. TIMES, Jan. 12, 2002, at A10 (noting the Oregon Supreme Court unanimously struck down the term limits ballot measure because it "had too many constitutional changes by seeking to limit Congressional terms as well as state legislative ones. The ruling said such changes should be offered to voters separately.").

159. Gralike v. Cook, 996 F. Supp. 917, 918, 922 (D. Mo. 1998), aff'd, 191 F.3d 911 (8th Cir. 1999) (enjoining the Missouri Secretary of State from implementing a state constitutional amendment directing members of "Congress from Missouri to use their
delegated powers to pass a Congressional Term Limits Amendment to the United States Constitution. The Amendment also requires candidates for United States Congress to either support the congressional term limits amendment or have words state that they failed to support the amendment placed by their names on the ballot.

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Court</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michigan</td>
<td>1998</td>
<td>Sixth Circuit Court of Appeals</td>
<td>Upheld</td>
</tr>
<tr>
<td>Colorado</td>
<td>1998</td>
<td>Colorado Supreme Court</td>
<td>Overthrown</td>
</tr>
<tr>
<td>Washington</td>
<td>1998</td>
<td>Washington Supreme Court</td>
<td>Overthrown</td>
</tr>
<tr>
<td>California</td>
<td>1997</td>
<td>Ninth Circuit Court of Appeals</td>
<td>Upheld</td>
</tr>
<tr>
<td>Washington</td>
<td>1997</td>
<td>Washington Supreme Court</td>
<td>Overthrown</td>
</tr>
</tbody>
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160. Citizens for Legislative Choice v. Miller, 144 F.3d 916 (6th Cir. 1998) (finding lifetime term limits do not violate the First or the Fourteenth Amendments to the U.S. Constitution).

161. Morrissey v. State, 951 P.2d 911, 913, 917 (Colo. 1998) (holding a state constitutional amendment unconstitutional that "set forth the 'exact language' of a proposed Term Limits Amendment" to the United States Constitution and directs Colorado's state legislators to apply for a constitutional convention and ratify the Amendment when it is referred to the states. The Amendment would have also "directed Colorado's congressional representatives to approve the Term Limits Amendment. In order to ensure compliance, the words 'DISREGARDED VOTER INSTRUCTION ON TERM LIMITS' are required to appear on all primary and general election ballots beside the name of any incumbent who fails to comply with Amendment 12's directives." The court found this amendment was unconstitutional because it took away "elected representatives' discretion" and ran "contrary to the principle of representative government.").

162. Gerberding, 949 P.2d at 1368-69, 1377-78. (finding that an initiative approved by voters that included term limits for the governor, lieutenant governor, state legislators, and U.S. Representatives and Senators was unconstitutional because it "improperly attempted to add qualifications to constitutional office by statute. A statute, whether adopted by the legislature or the people, may not add qualifications for state constitutional officers where the Constitution sets those qualifications.").

163. Bates v. Jones, 131 F.3d 843, 845, 847 (9th Cir. 1997), cert. denied, 523 U.S. 1021 (1998) (upholding a voter approved proposition that required a lifetime limit of state senators serving in office to two terms, state assembly members to three terms, and the state governor to two terms. The Proposition also limited to two terms the Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and the members of the Board of Equalization. The court did not apply strict scrutiny after finding that the proposition's impact on "the right to vote for the candidate of one's choice and the asserted right of an incumbent to again run for his or her office" was not significant because it was "a neutral candidacy qualification, such as age or residence, which the State certainly has the right to impose." The court also recognized that California had a legitimate state interest because "a lack of term limits may create 'unfair incumbent advantage.'").

At first glance, this chart might indicate that it is likely that the Nebraska Supreme Court would overthrow the term limits. However, this is not necessarily the case when examining the various holdings of the courts and applying them to Nebraska's term limits. Indeed, it seems that proponents of term limits have learned from these cases and crafted the Nebraska term limits amendment in such a fashion as to increase the probability that it will be upheld by the Nebraska Supreme Court.

In Washington and Wyoming, the term limits were struck down because the state high courts ruled that constitutional qualifications for state offices could not be set by statute. However, the term limits in Nebraska are established via a state constitutional amendment and not by statute.

The term limits in Oregon were struck down because the term limits initiative addressed “more than one section of the state’s constitution, and was therefore in violation of the [state’s] single-subject

<table>
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<tr>
<td>Nebraska165</td>
<td>1996</td>
<td>State Supreme Court</td>
<td>Overthrown</td>
</tr>
<tr>
<td>Arkansas166</td>
<td>1995</td>
<td>U.S. Supreme Court</td>
<td>Overthrown</td>
</tr>
<tr>
<td>Nebraska167</td>
<td>1994</td>
<td>State Supreme Court</td>
<td>Overthrown</td>
</tr>
</tbody>
</table>

165. Duggan II, 249 Neb. at 435, 544 N.W.2d at 82 (holding the amendment was “unconstitutional as it applies to federal offices, and the remaining amendments are so intertwined with the unconstitutional amendment that they, too, must be declared void”).

166. U.S. Term Limits, Inc., 514 U.S. at 783 (holding that “[a]llowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States. If the qualifications set forth in the text of the Constitution are to be changed, the text must be amended.”).

167. Duggan v. Beerman (Duggan I), 245 Neb. 907, 915, 515 N.W.2d 788, 794 (1994) (holding there was an insufficient number of valid signatures to get the measure on the ballot. Because the number of signatures was “insufficient, the Secretary of State’s placement of the petition on the ballot was erroneous.”).

168. Gerberding, 949 P.2d at 1377-78.

169. Cathcart, 88 P.3d at 1071.


rule" for initiatives.\textsuperscript{172} Although Nebraska has a similar single-subject rule for initiatives,\textsuperscript{173} unlike Oregon's term limits on both federal and state legislators,\textsuperscript{174} the term limits in Nebraska affect only state senators and so it is unlikely to be struck down on these grounds.\textsuperscript{175}

The term limit state constitutional amendments overthrown by the Missouri and Colorado Supreme Courts did not provide for term limits for state legislators, but instead contained "Scarlet Letter" provisions.\textsuperscript{176} For example, the Missouri amendment "required ballots to list Congressional candidates' stands on term limits.\textsuperscript{177} Incumbent candidates who failed to support Congressional term limits would have the words 'disregarded voters' instructions on term limits' printed next to their names."\textsuperscript{178}

Similarly, the term limit constitutional amendment overthrown by the Colorado Supreme Court did not involve term limits for state legislators, but instead contained a Scarlet Letter provision.\textsuperscript{179} The provision provided that if state and congressional representatives and candidates did not "support a term limits amendment to the U.S. Constitution . . . [They] would be identified on primary and general election ballots with the words 'disregarded voter instructions on term limits' or 'declined to take pledge to support term limits' next to their names."\textsuperscript{180} Unlike Missouri and Colorado, Nebraska's amendment does not contain a similar Scarlet Letter provision.\textsuperscript{181}

Thus, although several state high courts have overturned term limits, they have done so based on arguments that have no direct ap-

\textsuperscript{172} National Conference of State Legislatures, \textit{Legislative Term Limits: An Overview}, supra note 31; see also Huefner, 79 \textit{Ind. L.J.} at 442 (noting "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").

\textsuperscript{173} \textsc{Neb. Const.} art. III, §14.


\textsuperscript{175} \textsc{Neb. Const.} art. III, §14; see also National Conference of State Legislatures, \textit{Legislative Term Limits: An Overview}, supra note 31 (noting the "Montana Supreme Court rejected a similar challenge to that state's term limit law").


\textsuperscript{177} National Conference of State Legislatures, \textit{Missouri "Scarlet Letter" Provision Found Unconstitutional}, supra note 176.

\textsuperscript{178} \textit{Id.}

\textsuperscript{179} National Conference of State Legislatures, \textit{Colorado "Scarlet Letter" Provision Found Unconstitutional}, supra note 176.

\textsuperscript{180} \textit{Id.}

\textsuperscript{181} \textsc{Neb. Const.} art. III, §14.
plication to Nebraska's term limits amendment. Opponents to Nebraska's amendment have raised two arguments different than those used in the above cases. First, they argue there are "constitutionally fatal" drafting errors. That is, the specific wording of the Nebraska term limits amendment could result in state senators being allowed to serve only half of their second term. In particular, a provision in the amendment says that "service in office for more than one-half of a term shall be deemed service for a term." This provision "could be interpreted as saying a senator's second four-year term actually would be over once he or she passed the two-year mark." As a result, "upon a close and literal reading of the term limits law as drafted, the restrictions on them as voters are potentially bizarre and far more extreme than advertised."

Furthermore, "[t]he six-year interpretation could lead to a government crisis where the legality of a law passed by disqualified legislators could be challenged." Also, "[i]f lawmakers can be removed halfway through their second terms and replaced with political appointees . . . voters would be deprived of the right to campaign for and elect legislators."

In contrast, opponents argue that the provision only applies to state senators elected in midterm elections to replace those who have died or resigned. Also, the clause "was intended to prevent lawmakers from quitting on the next-to-last day of their terms to claim eligibility for another term, and to cover those who have been appointed to a partial term to fill a vacancy." Similarly, the lower court judge who ruled against the opponents of term limits, Lancaster District Judge Karen Flowers, wrote that it should "carry its ordinary meaning and be interpreted in the 'most natural and obvious

183. Leslie Reed, Court Challenge of Term Limits Begins A Lawyer Asks the State Supreme Court to Consider His Case Saying the Law is More Restrictive Than Voters Intended, OMAHA WORLD HERALD, Dec. 3, 2005, at A1.
184. Id.
185. Id.
186. Id.
187. Id.
188. Id.
191. White, OMAHA WORLD HERALD, Feb. 6, 2006, at B1 (noting Assistant Attorney General Charles Lowe made this argument to Lancaster County District Judge Karen Flowers); Respondent's Initial Brief at 15, Chambers, No. C105-5297 (arguing the amendment only prevents a state senator from running for a second term only if she "will have served more than six years when his or her full four-year term is set to expire (more than one half of a full four-year term plus one subsequent full four-year term)").
Judge Flowers went on to note that to agree with the plaintiffs' interpretation would require "torturing the plain language of the amendment." 193

Second, the plaintiffs argue the term limits violate the voters' First Amendment right to free speech to elect "the candidate of their choice" and the Fourteenth Amendment's right to equal protection. 194 The above interpretation of the amendment will result in "the dilution of voting power and of the right to select candidates for a full four years" hitting "the various districts unequally." 195 This contradicts Bush v. Gore, 196 which provides that different counting of votes violates the Equal Protection Clause. 197

Also, the term limits have a particularly negative effect on the one district in Nebraska where the majority of voters are African-American. 198 That district did not support the term limits proposal and State Senator Ernie Chambers has served the district very well over the past three decades. 199 Thus, these minority voters have effectively had their voting power taken away from them and "made it impossible for [Senator Chambers] to continue to serve them." 200 The plaintiffs argue this abrogation of voting power "violates the fundamental suffrage rights and principles set forth eloquently in Reynolds v. Sims as well as in the Jacobberger case. It violates the fundamental right to have equal suffrage, and its application to remove the sole black senator representing the sole black majority district is both reprehensible and unconstitutional under Sims and its progeny." 201

While these arguments have not gathered much traction in other courts, 202 it is not entirely clear how they will be received by the Ne-
braska Supreme Court. One might think that the previous two cases where the Nebraska Supreme Court struck down various term limits amendments are an indication of how the court might rule. However, these previous cases do not shed much light on how the court will rule in this case. In 1994, the court overturned term limits, but it was on the basis that there was an insufficient number of valid signatures to get the measure on the ballot. No legal claims have been raised that the current term limits amendment is void on this basis.

In 1996, the Nebraska Supreme Court held that another term limits ballot measure was unconstitutional because the federal term limit provisions could not be sufficiently distinguished from the term limits provisions found unconstitutional by the U.S. Supreme Court in *U.S. Term Limits, Inc. v. Thornton*. In *Thornton*, the Court held that a term limit restriction on congressional offices was unconstitutional because it violated the Qualifications Clauses of the U.S. Constitution and that such requirements would require a federal constitutional amendment to be valid. There have been no claims that the current term limits amendment is invalid based on *Thornton* because it does not restrict congressional incumbents from serving a certain number of terms.

Thus, while these opinions show a willingness of the Nebraska Supreme Court to strike down term limit amendments, none of the justifications it has used to do so in the past are applicable to the current term limits amendment. While this certainly does not preclude...
the court from finding other justifications for striking down the amendment, it does not make it a foregone conclusion that it will necessarily do so.

B. LEGISLATIVE EFFORTS TO REPEAL NEBRASKA'S TERM LIMITS

In addition to the legal efforts, several state constitutional amendments have been offered to repeal the term limits. Nebraska State Senator DiAnna Schimek, a Democrat,\(^\text{207}\) serving in the legislature since 1988,\(^\text{208}\) has introduced legislation to repeal term limits immediately.\(^\text{209}\) State Senator Chris Beutler, a Democrat,\(^\text{210}\) first elected to the legislature in 1978,\(^\text{211}\) has introduced two constitutional amendments.\(^\text{212}\) The first would eliminate the term limits by 2010.\(^\text{213}\) This would assure “every senator in office when term limits were adopted is turned out of office as voters intended.”\(^\text{214}\) The second would eliminate term limits and instead give constituents the ability to recall senators from office after two terms.\(^\text{215}\) Finally, State Senator Ed Schrock, a Republican,\(^\text{216}\) who was initially appointed to the legislature in 1990,\(^\text{217}\) has introduced a constitutional amendment to extend term limits from two to three terms.\(^\text{218}\)

Several organizations have come out in support of these efforts to repeal the term limits.\(^\text{219}\) However, there has also been vocal opposi-


\(^{208}\) Nebraska Legislature Online, Senator DiAnna Schimek, http://www.unicam.state.ne.us/senators/district27.htm (last visited Apr. 16, 2006).


\(^{216}\) Nebraska Republican Party, supra note 148.

\(^{217}\) Nebraska Legislature Online, Senator Ed Schrock, http://www.unicam.state.ne.us/senators/district38.htm (last visited Apr. 16, 2006).


\(^{219}\) Walton, LINCOLN J. STAR, Feb. 10, 2005, at 1 (noting “the League of Nebraska Municipalities, the Nebraska chapter of the American Civil Liberties Union, Common
tion to these proposals.\textsuperscript{220} For example, in February of 2005, a citizen group called “Don’t Touch Term Limits” toured a 12-foot-tall carved wooden horse across the state in a sign of protest against the Executive Board of the Legislature’s consideration of these amendments.\textsuperscript{221} The wooden horse was intended to draw attention to the term limits possibly being revoked and to “promote a ‘citizen cavalry’ defending term limits.”\textsuperscript{222} The board ultimately decided not to “advance the amendments to full debate, killing any chance for the senate to repeal the law [before the 2006 elections].”\textsuperscript{223}

Even if the state legislature were to pass one of these amendments, it would also have to be approved by voters on the next general election ballot, too late to prevent the twenty senators who were forced out by the 2006 election.\textsuperscript{224} However, this is unlikely, as Nebraska voters have repeatedly demonstrated a strong commitment to supporting term limits. In 1992, sixty-eight percent of Nebraska voters passed a ballot measure imposing term limits on Congress and state legislative and executive offices.\textsuperscript{225} In 1994, sixty-eight percent of Nebraska voters supported term limits on Congress and on state legislative and executive offices.\textsuperscript{226} Similarly, in 1996, fifty-eight percent of Nebraska voters supported term limits via Scarlet Letter ballot labels.\textsuperscript{227} Finally, the current term limits amendment was approved by fifty-five percent of Nebraska voters.\textsuperscript{228}

Cause Nebraska and the Nebraska State Education Association” have all come out in support of efforts to repeal term limits).


\textsuperscript{221} Id.

\textsuperscript{222} Walton, \textit{LINCOLN J. STAR}, Feb. 10, 2005, at 1; \textit{see also} Martha Stoddard, \textit{Group Mounts Defense of Nebraska Term Limits}, \textit{OMAHA WORLD HERALD}, Feb. 9, 2005, at A1 (noting the group argues “Nebraskans voted for the limits and politicians should leave them alone”).

\textsuperscript{223} Joel Gehringer, \textit{High Profile Bills Still Awaiting Passage}, \textit{DAILY NEBRASKAN}, May 3, 2005, at 3; \textit{see also} Stoddard, \textit{OMAHA WORLD HERALD}, Feb. 9, 2005, at B1 (noting similar term limits supporters have already defeated efforts to weaken term limits in Arkansas and Michigan).


\textsuperscript{225} Peterson, \textit{31 CREIGHTON L. REV.} at 767.

\textsuperscript{226} Id.

\textsuperscript{227} \textit{Id.} at 792 (noting the ballot measure would require the Nebraska Secretary of State to place the label of “Disregarded Voters [sic] Instruction on Term Limits” on the ballot next to the name of any state senator, U.S. Congressman, or Senator who refused to support term limits. In addition, any nonincumbent candidate who refused to support term limits “would be labeled, again on the ballot, Declined to Pledge to Support Term Limits.”).

\textsuperscript{228} Robynn Tysver, \textit{Term Limits Approved Nebraska Voters Back Initiative 415, Which Holds State Senators To Two Consecutive Terms}, \textit{OMAHA WORLD HERALD}, Nov. 8, 2000, at 21.
These ballot measures demonstrate the strong tendency of Nebraska voters to support term limits. In addition, similar attempts to expand the length of time state representatives in other states can serve have been unsuccessful.\textsuperscript{229} For example, in 2004, voters in Montana and Arkansas rejected an attempt to expand term limits from eight to twelve years.\textsuperscript{230} Consequently, even if one of the term limit measures were to pass in the Nebraska state legislature, it is likely voters would not approve the measure.

IV. POLICY RECOMMENDATIONS: INCREASING SALARIES, LENGTHENING THE TERM LIMITS, AND ENHANCING PUBLIC FINANCING FOR SERIOUS CANDIDATES

This section outlines three policy recommendations that should be considered to prevent the possible negative ramifications of the current term limits in Nebraska. First, the salaries of state senators should be increased.\textsuperscript{231} Second, the term limits should be extended from two to three terms.\textsuperscript{232} Finally, enhanced public financing should be provided for serious candidates.

None of these recommendations should be viewed as an independent silver bullet to reach the goals expressed by supporters of term limits. Instead, an assortment of these could be adopted to reach the common underlying objectives of these policy proposals. That is, a combination punch of all three recommendations might be the best way to ensure effective and accountable state senators who are attentive and responsive to the needs of their constituents and who are most likely to ensure the long-term institutional integrity of the unicameral.

A. INCREASE THE SALARIES OF STATE SENATORS

The salary of Nebraska state senators has been approximately $12,000 per year since 1988.\textsuperscript{233} In May of 2006, voters had the opportunity to approve a state constitutional amendment to increase the


\textsuperscript{230} National Conference of State Legislatures, Florida Voters to Reconsider Term Limits, supra note 229.

\textsuperscript{231} See Gehringer, Daily Nebraskan, May 3, 2005, at 3.


\textsuperscript{233} Nebraska Legislature Online, About Nebraska Senators, supra note 16; Gehringer, Daily Nebraskan, Feb. 18, 2005, at 1.
salaries of state senators to $21,000, but the amendment failed. The combination of the low salary plus the knowledge that they will be allowed to serve a maximum of eight years might result in well qualified candidates deciding not to campaign. Potential candidates may decide that it is not worth the emotional and financial hardship to run for office only to be thrown out regardless of how good of a job they do after only eight years. Also, many of the citizen legislators sought by the proponents of term limits cannot afford to live only on this meager salary. Nebraska state senators should not have to choose between living in poverty or holding a second job that may conflict with their responsibilities to their constituents.

Also, even doubling the salary would have a very minimal effect on the Nebraska state budget, costing only approximately $588,000 per year. This is less than one percent of the over $3 billion spent by the State of Nebraska each year. A pay increase would be a wise investment that could have enormous returns in ensuring that well qualified legislators are determining how to spend the rest of the state budget. For example, one study found that increasing the salaries of state legislators might allow them to be more effective in negotiating with the executive branch because it “reduce[s] the private costs that legislators face when an agreement is delayed and they are called into

235. See Stoddard, OMAHA WORLD HERALD, Jan. 12, 2005, at A1 (stating “[s]ome political observers cited the legislative pay level as one reason for a scarcity of candidates last year”); see also Leslie Reed, Senators' Pay Raise Clears 1st Round Plan Faces 2 More Legislative Votes Then It Goes on Ballot How They Voted, OMAHA WORLD HERALD, Mar. 24, 2005, at A1 (quoting one Nebraska state senator as stating the reason he ran unopposed was, “[m]any people closed the door to the Legislature because they can’t afford it”).
236. See Gehringer, DAILY NEBRASKAN, Feb. 18, 2005, at 1 (quoting Nebraska State Senator Arnie Stuthman as saying, “[w]ith term limits in place and with the current salary, are we going to get the right candidates?”); Richardson et al., 37 Sr. & Loc. Gov’t Rev. at 184 (arguing “[t]erm limits and the demands of legislative services are influencing the reasons people seek legislative office in Missouri”); see also Herrick & Thomas, 33 AM. POL. RES. at 730 (noting that “because term limits decrease the ability of politicians to make a career out of a single position, they may decrease the willingness of career-minded legislators to serve”); see also Kousser, supra note 68, at 204 (finding that “[i]ncreased salaries make up for the opportunity costs of not performing their duties in the private sphere and give them an incentive to stay within the institution”).
237. Gehringer, DAILY NEBRASKAN, Feb. 18, 2005, at 1 (noting that as Nebraska State Senator Arnie Stuthman put it, people simply “can’t afford to live on $12,000 a year”).
238. Forty-nine state senators times $12,000 per year equals approximately $588,000.
239. Martha Stoddard, Plan Would Boost Spending By 7.3%, OMAHA WORLD HERALD, Mar. 4, 2006, at B5 (noting the two-year budget for the state general fund approved by the Nebraska state legislature in 2005 was $6.13 billion).
special sessions.” Furthermore, “[i]n states where legislators are paid higher salaries, their opportunity costs of delving into the details of legislation should be reduced. This may explain why the higher salary bodies are more likely to design programs and policies that win awards for being innovative.”

While it is true that many state senators have other sources of income because the unicameral meets only a few months a year, state senators have other time consuming commitments when they are not in session, such as fundraising, attending events, and answering constituent inquiries. Nebraska voters have decided to decrease the attractiveness of running for the state senate by limiting the maximum number of terms a state senator can be in office. They should be willing to counterbalance this by increasing the salaries of state senators. Surely no one wants less qualified state senators.

B. EXTENDING TERM LIMITS FROM TWO TO THREE TERMS

Nebraska state senators and voters should also strongly consider approving State Senator Ed Schrock’s proposal to lengthen term limits from two to three terms. This would help negate many of the harms of the current term limits. In particular, the legislature would not only consist of either freshman senators learning the process or lameduck senators who are not accountable to the voters. By doing so, it would also provide the unicameral with state senators that have more institutional memory. This could help ensure that state senators will not have to rely extensively on legislative staffers, bureaucrats, and lobbyists, particularly for information on what occurred more than eight years ago. It would also help encourage state senators to pursue legislation that has long-term benefits since they may be serving long enough to realize the political benefits of those policies.

In addition, it would provide the unicameral with more experienced leadership and provide the time needed for state senators to develop relationships across party lines. Furthermore, state senators would have a longer period of time to observe the skills of their fellow senators before having to decide who should be elected to a
leadership post or committee chairmanship. It would also provide leadership with a greater ability to sanction state senators, which could possibly result in a more effective unicameral.

Finally, allowing state senators to serve for three terms instead of two might encourage more qualified individuals to campaign since they could possibly serve in the unicameral for twelve years instead of eight. Thus, it would likely result in state senators being less likely to look at the unicameral as a mere stepping-stone to other career opportunities.

C. ENHANCING PUBLIC FINANCING FOR SERIOUS CANDIDATES

In addition to increasing the salary and lengthening the amount of time a state senator can serve before being forced out of office, the Nebraska State Legislature should consider providing enhanced public financing for serious candidates. Under the Nebraska Campaign Finance Limitation Act (the CFLA), candidates for the state senate have a voluntary spending limit of $73,000 for the election period, including $36,500 for the primary election period. Those who choose to abide by this expenditure limit are eligible to receive public campaign funds if they have filed the required forms, raised at least $18,250 in qualifying contributions, and at least one of their opponents has "filed a Candidate's Affidavit Not to Abide by Spending Limits, has estimated maximum expenditures which exceed the voluntary expenditure limits of the CFLA . . . and [h]as spent at least 40% of his/her estimated expenditures for the election." The amount of public funds a candidate receives is "based upon the difference between the expenditure limits of the CFLA and the highest estimate of the maximum expenditures filed by a Legislative candidate in that District."

However, only nine candidates have qualified for public financing since the law was enacted in 1992 and at least six of these were candidates for an office other than the state legislature. The Nebraska state legislature should have a system that mirrors some of the public financing systems of other states, which provide campaign funds if a candidate meets certain requirements, regardless of how much anyone else in the campaign has spent. For example, in Maine, state senate candidates qualify for public funding by receiving a minimum of

248. Id. at 6-7.
249. Id. at 9.
150 contributions that are at least five dollars.\textsuperscript{251} Similarly, in Arizona, state senate candidates must receive at least 200 five dollar contributions to qualify for public financing.\textsuperscript{252} In Wisconsin, a candidate for state senate is eligible if they "raise 10% of the spending limit . . . in individual contributions of $100 or less."\textsuperscript{253} Finally, during the 2004 election, candidates for the North Carolina Supreme Court were required to raise $34,590 in contributions from at least 350 registered North Carolina voters to qualify for public funding.\textsuperscript{254} Once a candidate meets the contribution requirements, they receive varying amounts of money in each state.\textsuperscript{255}

A similar program in Nebraska would help maintain the fiscal discipline of the system, while also ensuring that only serious candidates who have demonstrated a minimum amount of support receive funding. It would also encourage qualified candidates to campaign who might not otherwise want to spend their own financial resources or receive contributions from individuals and corporations who will later lobby them if they are elected.

More generous public financing would help address many of the concerns of those advocating term limits. Term limits were initially passed to address the frustrations of voters over "the lack of representativeness of elected officials" and to negate "the corrupting effect of money in politics."\textsuperscript{256} Improved public financing would provide a more equitable distribution of resources between incumbents and challengers and, therefore, help challengers get enough visibility to promote competition and accountability. This could result in more competitive elections and challengers having more success in defeat-


\textsuperscript{255} Maine's Commission on Governmental Ethics and Election Practices, \textit{Initial Distribution Amounts for 2006 Elections}, http://www.maine.gov/ethics/mcea/initialdist.htm (last visited Mar. 23, 2006) (noting contested senate candidates during the 2006 election will receive $20,082); U.S. Gen. Accounting Office, \textit{supra} note 252, at 88 (noting candidates for the Arizona Senate receive $45,000 in total public funding); Wisconsin Legislative Fiscal Bureau, \textit{supra} note 253, at 12 (noting the maximum grant amount available for candidates for the Wisconsin State Senate is $15,525); Bend, 18 GEO. J. LEGAL ETHICS at 600 (noting that in North Carolina "during the 2004 election, candidates for the court of appeals were initially entitled to receive $138,125 each, and candidates for the supreme court, $201,775 each").

\textsuperscript{256} Huefner, 79 IND. L.J. at 432.
ing incumbent state senators. These newly elected members would bring the fresh ideas to the legislature sought by proponents of term limits.257

As is the case with term limits, there are numerous arguments against public financing of candidates. Some critics argue that public financing forces taxpayers to pay money indirectly to candidates they do not support;258 that public financing programs “inappropriately insert[] the government into the electoral process;”259 and that spending limitations placed on candidates who participate in some of the programs are an unconstitutional restraint on their right to free speech.260

In addition to these general concerns about public financing, critics may point to some of the specific problems experienced by programs in other states, such as low taxpayer participation in the voluntary check-off programs, and argue that these should serve as red flags that warn against Nebraska implementing a similar program.261 Finally, they may point to academic studies that have shown that public financing does not necessarily result in more competitive elections.262

It will be very difficult for state legislators to extend the term limits or to provide public financing, as they will be seen as passing self-interested legislation to allow them to stay in office longer while not

259. Id.
260. Id.
261. See ABA Standing Comm. on Judicial Independence, Report of the Commission on Public Financing of Judicial Campaigns 28 (Feb. 2002), available at http://www.abanet.org/judind/pdf/commissionreport4-03.pdf (finding taxpayer participation in Wisconsin for all public funding decreased from 19.9% in 1979 to only 8.7% in 1998); University of Vt., Vt. Legislative Research Shop, Public Funding of State Campaigns, http://www.uvm.edu/~vlrs/ (last visited Apr. 6, 2006) (noting that from 1980 to 1994 Minnesota had a three percent drop in taxpayer participation); Bend, 18 GEO. J. LEGAL ETHICS at 604 (noting “[o]nly seven percent of taxpayers contributed to the program when they filed their 2003 income taxes”).
262. Kenneth R. Mayer & John M. Wood, The Impact of Public Financing on Electoral Competitiveness: Evidence from Wisconsin, 1964-1990, 20 LEGIS. STUD. Q. 69, 69 (1995) (finding “no evidence that providing challengers with public money has made elections more competitive, although it has narrowed the spending gap between incumbents and challengers. Most important, public financing has not increased the number of challengers, as incumbents increasingly face no opposition at all. We argue that challengers consider the overall strategic environment, and not just the question of fundraising, when making the initial decision to run. The availability of public money does little to encourage the challenges to safe incumbents.”); but see Patrick D. Donnay & Graham P. Ramsden, Public Financing of Legislative Elections: Lessons From Minnesota, 20 LEGIS. STUD. Q. 351, 351 (1995) (finding that once the authors “introduce a variety of controls and examine the data with multivariate regression, [they] find that public financing did in fact go a long way toward increasing the competitiveness of Minnesota’s legislative elections”).
having to raise as much money for their campaigns. Nebraskans will question why more of their hard-earned tax dollars should be used to fund the campaigns of candidates rather than pay for better health care, education, or tax cuts. However, this is a battle that has been won in Arizona, Hawaii, Maine, Minnesota, Wisconsin, and North Carolina and is well worth the fight in Nebraska.\textsuperscript{263}

CONCLUSION

In the next four years, the Nebraska State Legislature will see a massive change in both the individual senators who serve in it and how it functions as a legislative body. Although this change may bring new faces and energy, it could also drain the institutional memory of the legislature and cause an increased reliance on the legislative staff, bureaucrats, and lobbyists. To counter these negative symptoms of term limits, the Nebraska State Legislature and voters should consider increasing the salaries of state senators, extending the term limits from two to three terms, and enhancing public financing for serious candidates. Such changes would help ensure that the goals of advocates of term limits are adequately met while protecting Nebraskans from a legislature that consists only of freshman and lameduck legislators.

\textsuperscript{263} Common Cause, Public Financing in the States, http://www.commoncause.org/site/pp.asp?c=DKLNK1MQIwG&b=507399 (last visited Nov. 11, 2006) (noting that Arizona, Hawaii, Maine, Minnesota, Nebraska, and Wisconsin provide some form of public financing for statewide and legislative candidates); Bend, Note, 18 GEO. J. LEGAL ETHICS 597 (describing the public financing program available for some judicial candidates in North Carolina).