

TERM LIMITS

Term limits are the most significant institutional change in American politics since the reform era of the 1960s and 1970s.¹ As such, the term limits enacted over the past two decades continue to have a positive impact in state legislatures around the country.

The first states to vote on implementing term limits were California, Colorado, and Oklahoma in 1990, and the most recent state was Nebraska in 2000. In all, voters in 21 states approved legislative term limits. However, the limits were either repealed by fearful legislatures (in Idaho and Utah) or thrown out by state courts (in Massachusetts, Oregon, Washington and Wyoming) in six states, leaving 15 states with term limits currently on the books, while others are debating their adoption. By 2010, term limits had kicked-in all 15 affected states.

Consequently, well over two thousand state legislators have termed out since 1996. Furthermore, 17,000 local politicians in 2,900 cities, counties, and towns throughout 40 states are now subject to term limits. At the national level, between 1990 and 1994 22 states amended their constitutions by imposing term limits on members of Congress, which many legal scholars consider to be the largest grassroots movement in modern American history.

We are now able to move beyond mere speculation and assess the available sample of term-limited states. Whilst largely positive, the effects of term limits vary with the length and severity of the legislative service restriction. Predictably, term limits typically have had the largest impact in the states where there was the greatest potential for change. Overall, term limits foster more energetic and more effective deliberative legislative bodies.

The balance of the available research evidence supports the following three conclusions:

1. Term limits stimulate electoral competition in state legislative elections.

¹ See, for example, the Joint Project on Term Limits, quoted in Matthew C. Moen, Kenneth T. Palmer, and Richard J. Powell, *Changing Members: The Maine Legislature in the Era of Term Limits*, Lanham, MD: Lexington Books, 2005, p. 2.

2. Term limits enable nontraditional candidates to run for seats in state legislatures.
3. Term limits weaken the leadership of a state legislature because term limits weaken seniority systems in state legislatures.

Background

Term limits are not a new concept.² The historical roots of term limits go as far back as Athenian democracy in the 5th century BC³ and are grounded in traditional republican models of limited, democratic government.⁴ In Colonial America, term limits were referred to as the “rotary system,” or the principle of “rotation in office.”⁵ The New England Colony’s charter provided for the rotation of public officials and a limit on years of officeholding. By 1777, seven (of the 10) new state constitutions provided for rotation in office.⁶ Convened in 1777, the Continental Congress approved the Articles of Confederation that became the nation’s first constitution in 1781. The articles included rotation of offices and limited federal legislators to a maximum of three years in Congress.⁷

In 1787, the Constitutional Convention in Philadelphia revised the Articles of Confederation, thereby producing the nation’s second constitution. Clearly, the Framers intended the country to be governed by successive citizen congresses. After all, as Gale Norton, a former US Interior

² Steven Millman, “Term Limitations: Throwing Out the Bums—Or the Baby with the Bathwater?” <http://web.mit.edu/millman/www/WPSA.html>

³ See, for example, A.H.M. Jones, *Athenian Democracy*, Baltimore: Johns Hopkins University Press, 1986, p. 105.

⁴ See, for example, J.G.A. Pocock, editor, *James Harrington: The Commonwealth of Oceana*, Cambridge: Cambridge University Press, 1992, and James Burgh, *Political Disquisitions Volume 3*, New York: Da Capo, 1971.

⁵ T.H. Benton, *Thirty Years’ View Volume 1*, New York: Appleton, 1854.

⁶ The states were Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, and Virginia. See Alan Grant, “The Term Limitation Movement in the United States,” *Parliamentary Affairs* 48 (1995): 515-530; and Mark P. Petracca, *The Poison of Professional Politics*, Cato Institute Policy Analysis No. 151, May 10, 1991, p. 13, <http://www.cato.org/pubs/pas/pa-151.html>.

⁷ Edmund C. Burnett, *The Continental Congress*, New York: Macmillan, 1941, p. 250.

Secretary and a former Colorado Attorney-General, reminds us: “The Framers...lived in a different time. Congress as they envisioned it did not need term limits, because Congressional service as they envisioned it was always going to be a part-time job... That assumption, understandable in its day, allowed the Framers to believe that Congress would just naturally remain a citizen legislature, without any Constitutional requirement that those serving in Congress not spend their entire lives there.”⁸

The Framers debated the idea of mandatory rotation but, confident that sufficient safeguards (such as short terms in office and voluntary retirements) were in place to forestall careerism, and concerned that its inclusion meant “entering into too much detail” for a short document,⁹ they set aside the arguments of the anti-Federalists and chose not to include a term limits provision in the new Constitution. Moreover, President George Washington’s voluntary retirement after his second term in office set a precedent that held among occupants of the White House until the mid-20th century administration of Franklin D. Roosevelt.¹⁰ As Mark P. Petracca establishes, “A general aversion to making a career of legislative service also characterized state and local politicians.”¹¹ At the state level, gubernatorial term limits have been commonplace throughout our nation’s history.¹²

Municipal term limits have been in place since 1851 when the Indiana Constitution prescribed county-level limits.¹³ At the federal level, a tradition of voluntary retirement after only one or two terms in the U.S. House of Representatives lasted until nearly the end of the 19th century.¹⁴

⁸ Gale Norton, *Finishing Madison’s Work with a Term Limits Amendment*, Independence Institute, June 19, 1996, <http://i2i.org/SuptDocs/OpEdArcv/Op061996.htm>.

⁹ John H. Fund, *Term Limitation: An Idea Whose Time Has Come*, Cato Institute Policy Analysis No. 141, October 30, 1990, p. 1, <http://www.cato.org/pubs/pas/pa-141.html>.

¹⁰ Presidential term limits were introduced by the Twenty-Second Amendment to the Constitution on February 27, 1951.

¹¹ Petracca, *The Poison of Professional Politics*, p. 5.

¹² Alexander Tabarrok, “A Survey, Critique, and New Defense of Term Limits,” *Cato Journal* 14 (1994): 333-350, <http://www.cato.org/pubs/journal/cjv14n2-9.html>.

¹³ The most comprehensive treatment of term limits at the local level is found in Danielle Fagre, “Microcosm of the Movement: Local Term Limits in the United States,” U.S. Term Limits Foundation, Washington, 1995, http://www.termlimits.org/Current_Info/microcosm.

¹⁴ Grant.

From 1830 to 1850, turnover in the House averaged 51.5 percent. After the Civil War, legislative tenure gained new importance when the introduction of the seniority principle for congressional committee membership changed the dynamics of obtaining leadership positions. Consequently, between 1860 and 1920 House members' average tenure increased from four to eight years, and it has continued to rise ever since.¹⁵

In the 1960s and 1970s, the average state legislature experienced the turnover of one third of its members every two years. During the 1980s, however, turnover declined considerably, and by 1988 average turnover had fallen to only 16 percent of state legislators.¹⁶ Overall, during the 1980s 99.3 percent of unindicted congressional and state legislative incumbents won reelection.¹⁷

Challenging Careerism

Term limits seek to improve American democracy by addressing the problem of careerism. As state legislatures have become more professional, they have attracted candidates who can and do spend their entire careers in the state capital. Careerism flourishes because incumbents are virtually certain to be reelected, largely because of the inherent advantages of holding office.¹⁸

Careerism poses several problems for our system of representative democracy. Once in office, careerist legislators pay less attention to the needs and wishes of their constituents. Moreover, careerist elected officials became a political class attentive to their own interests. As term limits researcher Eric O'Keefe writes, "The problem, quite simply, is that our representatives are not representative. They are a separate class, identifying their interests with those of the government,

¹⁵ *Ibid.*

¹⁶ Karl T. Kurtz, "No Change—For a Change," *State Legislatures*, January 1989, p. 29.

¹⁷ Doug Bandow, *Real Term Limits: Now More Than Ever*, Cato Institute Policy Analysis No. 221, March 28, 1995, p. 7, <http://www.cato.org/pubs/pas/pa-221.html>.

¹⁸ See, for example, Edward H. Crane, "Reclaiming the Political Process," in David Boaz and Edward H. Crane, editors, *Market Liberalism: A Paradigm for the 21st Century*, Washington: Cato Institute, 1993, pp. 53–64; Paul Jacob, "From the Voters with Care," in *The Politics and Law of Term Limits*, Edward H. Crane and Roger Pilon, editors, Washington: Cato Institute, 1994, pp. 30–34; and Mark P. Petracca, "Restoring 'The University in Rotation': An Essay in Defense of Term Limitation," in *The Politics and Law of Term Limits*, pp. 68–69.

not the people. When the interests of the government in which they serve and the people they putatively serve conflict...they invariably side with the government.”¹⁹

Substantial and continuing public support for term limits suggests widespread distaste for careerism in politics, as well as a conviction that the continual infusion of fresh blood into state legislatures will improve American government.

Anti-Term Limits Argument

Term limits continue to be opposed by a majority of politicians and by a majority of the legislative staff, bureaucrats, journalists, and interest groups that depend on politicians for employment, patronage, sources, and votes. Special interest groups (especially large, heavily regulated corporations, as well as unions that rely on government intervention in the labor market) have long viewed term limits as anathema to their interests.

These opponents of term limits emphasize the benefits of seniority and experience. Critics lament the projected loss of experienced legislators. In short, critics believe that institutional memory will be lost. It is predicted that this would lead to less effective legislatures, with some suggestion that policymaking will suffer from a lack of careful deliberation and compromise. Furthermore, critics predicted a significant rise in the influence of the remaining tenured actors – bureaucrats, lobbyists, and legislative staffers – who would run institutional rings around the rookie legislators.

More Competitive Elections

Unquestionably, term limits have made elections more competitive. More candidates for office and the increased turnover of state legislatures have produced better choices for voters. Term limits have had a much richer effect on state legislative careers than previously understood, as they reduce the benefits of seeking reelection, even for state legislators who are eligible to run,

¹⁹ Eric O’Keefe, *Who Rules America? The People vs. the Political Class*, Spring Green, WI: Citizen Government Foundation, 1999, p. 1.

and reduce the opportunity cost of running for other offices. By increasing the supply of experienced challengers, term limits increase competition in elections for non-term-limited offices and, consequently, the quality of representation provided by those elected.

Among its many advantages, vigorous electoral competition helps states to avoid budgetary problems.²⁰ More generally, by truncating service term limits create massive turnover in some state legislatures where they exist, bringing flocks of newcomers into office.²¹

Number of Candidates

An increase in voter choice is achieved, in part, by the fact term limits increase the number of candidates seeking election.²² To cite some examples:

In California, the imposition of state-level term limits in 1990 led to a 1992 increase of more than 25 percent in candidate filings for the state Senate and more than 50 percent for the state Assembly.²³ With term limits creating an unprecedented number of open seats, an historic number of candidates competed for New York City's citywide elections in 2001.²⁴

More recently, in Nebraska, 83 candidates filed to run for 24 state senate seats in the 2006 primary. This constituted a 51 percent increase over the number of candidates who ran in the primary in 2004 and a 66 percent increase over the 2002 primary.²⁵ At the time of writing, in

²⁰ Jeff Cummins, "Term Limits, Electoral Competition and the Impact on State Fiscal Conditions," Paper presented at the annual meeting of the Western Political Science Association, San Diego, March 20, 2008.

²¹ Marjorie Sarbaugh-Thompson, et al. "Democracy among Strangers: Term Limits' Effects on Relationships between State Legislators in Michigan," *State Politics & Policy Quarterly* 6.

²² See, for example, Neil Pinney, George Serra, and Dalene Sprick, "The Costs of Reform: Consequences of Limiting Legislative Terms of Service," *Party Politics*, 10 (2004); 69-84.

²³ John C. Armor, "Foreshadowing Effects of Term Limits: California's Example for Congress," *Term Limits Outlook* 3, no. 1, U.S. Term Limits Foundation, Washington: U.S. Term Limits Foundation, June 1994: 3.

²⁴ Source: New York City Finance Board, A Brief History of the CFB, <http://www.nyccfb.info/press/info/history.aspx>

²⁵ Doug Bend, "Term Limits for Nebraska State Senators: A Challenge to the Future Effectiveness of the Nebraska State Legislature," *Creighton Law Review*, 40 (2006).

San Antonio 38 candidates are running for only 11 city council seats in the city's May 14, 2011 election.

In 1990, Proposition 140 made California one of the first three states to adopt term limits for legislators. California's term limits are among the strictest: six years in the assembly and eight years in the Senate. In every election cycle, at least 10 senators and 27 assembly members are termed out. California State Assembly elections have experienced a modest, but significant, decline in incumbents' average winning margin since term limits went into effect in 1996.

Overcoming incumbent advantage is one of the most useful results of term limits. Without term limits, there is little competition when incumbents run for re-election because they have such a huge fundraising advantage and possess an equally large advantage in name identification. Jon Fleischman, an influential California political blogger, therefore argues that term limits provide the only practical opportunity for voters to “have a real impact on their representation in Sacramento.”²⁶

An empirical analysis of the general election results for the lower state house in five states – Montana, California, Florida, Michigan, and Arkansas – found that the overall margin of victory fell nearly 2.5 points after term limits were enacted, which is a statistically significant change. In Florida, the margin of victory declined 2.7 points after term limits. California saw a nearly 2 point decline in the margin of victory after term limits.²⁷

During the last three California state legislative primary cycles, of all the Assembly open seat primaries (89 in total) only 37 (42 percent) of the races were seriously contested,²⁸ and only 9 of 31 Senate primaries met that test. This represents significantly more competition than before term limits. In the races in the last three legislative primary cycles before the advent of term limits in 1992, there were only 23 open seat races in the Assembly (compared to 89 post-term

²⁶ Quoted in Robert W. Naylor, "The Good and The Bad of Term Limits," *California Journal of Politics and Policy*: 2 (2010).

²⁷ Jeff Shank, *Term Limits*, SSRP, University of Nebraska, August 21, 2009.

²⁸ Here, “seriously contested” is defined as the victor winning by under 15 percent of the popular vote.

limits), and only 14 of those were seriously contested in the primaries. In the Senate, there were only 7 open seats (against 31 post-term limits) and of those 7, there were no contested Senate primaries (all but two involved the elevation of incumbent Assembly members).²⁹

In the 1990s, many political scientists predicted that, as the traditional minority party, Republicans would benefit disproportionately from term limits by eliminating the Democrats' incumbency advantage. In practice, however, term limits are not inherently biased in favor of either of the major parties; hence, Republicans have not gained representation at the state legislative level under term limits.

Furthermore, there is evidence that, in practice, term limits appear to act as a rather natural campaign finance reform, as in some states legislative term limits have reduced campaign expenditures. It seems that term limits diminish the value of a legislative seat to lobbyists and the special interests they represent in state capitals.

Increased Legislative Diversity

Overall, there has been an increase in the number of candidates from outside the political establishment and the number of successful female and minority candidates has risen. Female, Hispanic-American, and Asian-American candidates find it easier to enter term-limited legislatures than non-term-limited bodies. The record is more mixed for African Americans.

A recent analysis examined the number of female legislators in both chambers of the state legislatures in all 50 states from 1990 to 2006 and included the 21 states with term limits for their state legislators and 29 states that never had term limits. The results suggest a positive relationship between term limits and women's representation in state legislatures. This research is among the first to show a statistically significant relationship; the actual impact is estimated at

²⁹ Naylor.

2.6 percent. In other words, women's representation in legislatures is approximately 2.6 percent higher in term limited states than in non-term limited states.³⁰

Furthermore, the proportion of minority members elected to the Michigan house, for example, peaked in the 2000 election at 18 percent following term limits from a pre-term limits proportion of just 10 percent in the 1990s. This proportion declined in the 2002 election to 15 percent but has since remained above the pre-term limits levels.³¹

Better Legislative Institutions

It is clear that term limits have brought many changes to the legislatures where they are in effect. To date, terms limits have had a greater effect on those legislatures considered to be more professional.

More specifically, term limits opponents charged that regular turnover of lawmakers would diminish institutional knowledge and political experience. However, in many cases term limits have reinvigorated state legislatures, broken up the political class, and injected new ideas into the political mainstream. Furthermore, the faster turnover of officeholders has weakened the relationship between careerist politicians and special-interest lobbyists.

Many anti-term limits studies are deeply flawed, in a methodological sense, as they rely on a combination of interviews with current and former members, staffers, and lobbyists, or survey data from these stakeholders. Consequently, a great deal of self-interested opinion, but very little actual behavior, is examined in these studies.³² Nevertheless, more rigorous research is available to shed considerable light on the institutional changes wrought by term limits.

³⁰ Valerie O'Regan and Stephen Stambough, "Are Term Limits a Woman Candidate's Friend?" Paper presented at the annual meeting of the Western Political Science Association, Vancouver, Canada, March 19 2009.

³¹ Marjorie Sarbaugh-Thompson, et al., *The Political and Institutional Effects of Term Limits*, New York: Palgrave MacMillan Press, 2004.

³² John M. Carey, Richard G. Niemi, Lynda W. Powell, and Gary F. Moncrief, "The Effects of Term Limits on State Legislatures: A New Survey of the 50 States," *Legislative Studies Quarterly* 31 (2006): 105-134.

More Representative of Voter Preferences

Although a 2006 nationwide survey found that term-limited state legislators feel less constrained by their constituencies,³³ more recent research finds no evidence that term-limited legislators are any less representative of their constituents than are non-term limited legislators. These results under term limits are consistent with the so-called “sorting model,” which is found in the economics literature, in which elections are reasonably efficient at selecting leaders whose preferences align with those of their districts.³⁴

Term limits, therefore, serve to ensure that moderation receives a hearing in electoral politics. Chen and Niou provide an empirically powerful explanation for the seeming paradox that voters in some states reelect incumbents while unilaterally self-imposing legislative term limits. Their model shows that voters are more likely to support term limits if the incumbent’s position is farther from the median voter position or if the incumbent’s party is more moderate.³⁵

Term limits – or even the mere threat of term limits – increases the responsiveness of politicians' policy platforms.³⁶ And, even in those cases where term limits do not produce much partisan change, they are likely to produce legislators that are closer to the median voters in their districts than in situations where term limits do not apply.

Greater Ideological Consistency

Term-limited legislators are more likely to be motivated by issues than their non-term limited predecessors. There is further positive news for those who believe politicians should provide

³³ Neil Baer, "The Effects of Term-Limits on Co-sponsorship Behavior," Paper presented at the annual meeting of the Southern Political Science Association, Atlanta, January 6, 2010.

³⁴ Gerald C. Wright, “Do Term Limits Affect Legislative Roll Call Voting? Representation, Polarization, and Participation,” *State Politics & Policy Quarterly*, 7 (2007): 256-280.

³⁵ Kong-Pin Chen and Emerson M. S. Niou, “Term Limits as a Response to Incumbency Advantage,” *Journal of Politics* 67 (2005): 390-406.

³⁶ *Ibid.*

voters with a choice, not an echo. Anyone favoring more elected officials who stand on principle and refuse to bend to the latest focus group-driven political wind will be encouraged by the fact that, using legislators' individual voting records, it has been found that term-limited liberal legislators behave more liberally during their last period in office, and that term-limited conservative legislators behave more conservatively during their last period.³⁷

Periodic elections are the main instrument through which voters can hold politicians accountable. From this perspective term limits, which restrict voters' ability to reward politicians with re-election, may appear counterproductive. Nevertheless, economic research shows that, by reducing the value of holding office term limits can induce politicians to implement policies that are closer to their private preferences. Such "truthful" behavior by incumbents in turn results in better screening of incumbents. The combination of these two effects increases the benefits (economic and non-economic) to voters.³⁸

Less Powerful Party Leaders, Committees & Lobbyists

Critically, term limits have not strengthened interest groups, state bureaucracies, or legislative staffs, as predicted by critics of term limits. In truth, lobbyists are unsettled by the term limits–induced need to build new relationships from scratch.

By mandating frequent turnover, term limits bring new perspectives to state legislatures. The introduction of an arguably higher quality, more richly experienced, and more diverse pool of candidates and legislators has led to an infusion of new blood and ideas. For example, freshman legislators tend to ask tougher questions of bureaucrats and demand a higher level of performance from government agencies than did their predecessors.

³⁷ Allison L. Huang, *Term Limits and the Last Period Problem — with Evidence from Environmental Policy*, August 22, 2006.

³⁸ Michael Smart and Daniel M. Sturm, *Term Limits and Electoral Accountability*, CEP Discussion Paper No. 770, Centre for Economic Performance, London School of Economics, December 2006.

The earliest research on term limits suggested that term limits should reorient power within the legislature, pulling authority away from party leaders and toward rank-and-file members. In practice, term-limited legislators exercise greater independence than their non-limited peers and appear less fearful of incurring the wrath of either party power brokers or special interest groups.³⁹ The findings from the very latest research analysis confirm that, in the average state, party leaders do lose a small but statistically significant degree of influence when limits are implemented in the lower chamber of the legislature.

Committees are often described as “where the action is” in a legislature. So understanding the impact of term limits on committees is crucial to understanding their effect on the work of a legislature. Term limited legislatures report reduced influence of committees.⁴⁰ Generally speaking, term limits diffuse power in state legislatures, both by decreasing average contributions to incumbents and by reducing the power of party caucus leaders relative to other members.⁴¹

Regarding interest group influence, term limits have a slight negative impact in states, such as Florida, with very powerful interest group systems. That is, term limits have reduced the influence of lobbyists in Tallahassee, and arguably in other state capitals throughout the nation.

Term limits diminish the value of a legislative seat to lobbyists and the special interests they represent because term limits increase the cost of lobbying through individual politicians. That reduces the incentive for lobbyists to raise and to distribute the large campaign contributions, as the term-limited citizen legislator will only be in office for a comparatively short time. Furthermore, term-limited politicians are far more likely to have nonpolitical sources of income. Therefore, they are less likely to succumb to the enticements of lobbyists.

³⁹ Patrick Basham, “A Long View of Short Careers: The Case for Voluntary Term Limits,” *Reason*, March 15, 2005, http://www.cato.org/pub_display.php?pub_id=3709

⁴⁰ Jennifer Drage Bowser, “The Effects of Legislative Term Limits,” *The Book of the States 2005*, The Council of State Governments, pp. 111-115.

⁴¹ D. Apollonio and R.J. La Raja, “Term Limits, Campaign Contributions, and the Distribution of Power in State Legislatures,” *Legislative Studies Quarterly*, 31 (2006): 259-281.

Better Policymaking

Contemporary policymaking is nearly always a protracted process that produces complex pieces of legislation that are actually read by very few legislators and properly understood by an even smaller number. It is therefore noteworthy that, in one study, term limits reduced policy complexity in three hybrid and citizen legislatures.⁴²

It has always been alleged that term limits have the potential to encourage a politician to shirk his or her duties during his or her last term in office. However, the research evidence suggests that this is not the case, at least not in the case of governors, as they have career interests beyond their current office.⁴³

An empirical analysis of the legislative record that states produced between 1990 and 2004 found that term-limited legislatures perform the people's business more efficiently than do non-limited legislatures.⁴⁴ New York University's Brennan Center for Justice compared different legislative practices across all 50 states and studied legislative enactment rates. Michigan enacted 69 percent of introduced bills, Ohio 52 percent, and California 41 percent – all in term-limited legislatures. In striking contrast, Wisconsin, Pennsylvania, Massachusetts, New York, and New Jersey had enactment rates ranging from 2.7 percent to 8.5 percent; they are not term-limited legislatures.

The Brennan Center report concludes that, overall, New York State's non-limited legislative process is the most dysfunctional in the nation. According to the report, Albany systematically excludes rank-and-file lawmakers and the public from the process. Evan Davis, former counsel

⁴² Thad Kousser, "The Limited Impact of Term Limits: Contingent Effects on the Complexity and Breadth of Laws," *State Politics & Policy Quarterly*, 6 (2006): 410-429.

⁴³ Christopher Parker, "Do Term Limits Matter? The Case of Gubernatorial Economic Policy," Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, April 3, 2008.

⁴⁴ See the discussion in Patrick Basham, "Bring Back the Gov's Idea - Term Limits," *New York Daily News*, October 5, 2004.

to Gov. Mario Cuomo, observes, "Most New Yorkers are represented by people with no say. They vote on bills they have had no opportunity to read, let alone study."

Prior to term limits, California's state legislature was referred to as a political geriatric ward. After term limits were enacted, California went so far as to pass state budgets on time. One would have to go back decades to find legislative sessions that produced as much as some term-limited legislatures. In many instances, the loss of institutional memory, legislative knowledge, and political experience has fostered more energetic and more effective deliberative bodies.⁴⁵

Overall, term-limited state legislatures are effectively adapting to their new institutional environment.⁴⁶ The bottom line is that legislatures are resilient institutions, and they continue to function efficiently under term limits. Many of the problems experienced by today's term-limited legislatures, such as a decline in civility and collegiality, a lack of deep policy knowledge, and missteps and human limitations, are the same problems faced by all legislatures.⁴⁷

As term limits scholar, Michael New, explained, "Limiting the amount of time that individuals could remain in the state legislature would theoretically cause state legislators to place less value on getting reelected. They would become more likely to place the broad interests of the state ahead of the parochial interests of their constituents and therefore be less likely to vote for wasteful pork projects."⁴⁸ It turns out that, in practice, term limits can, in some cases, inhibit voters from selecting representatives who deliver particularistic benefits, and in these cases term limits reduce pork spending.⁴⁹

And, it is not merely term limits for elected officials that constrain government; terms limits for non-elected state officials serve a complementary purpose. For example, if one looks at the

⁴⁵ Basham, "Bring Back the Gov's Idea - Term Limits."

⁴⁶ Karl T. Kurtz, Bruce Cain, and Richard G. Niemi, editors, *Institutional Change in American Politics: The Case of Term Limits*, Ann Arbor: University of Michigan Press, 2007.

⁴⁷ Bowser.

⁴⁸ New.

⁴⁹ M.C. Herron and K.W. Shotts, "Term Limits and Pork," *Legislative Studies Quarterly*, 31 (2006): 383-403.

impact of auditor term length and term limits on government performance at the state level, one finds strong evidence for a positive and significant influence of term limits on state credit ratings. Auditors who face a binding term limit seem to be more effective monitors, which improves their states' credit ratings.⁵⁰

Neither term limits nor its economic benefits are limited to this country. In China's provinces, there is a documented positive impact of term-limited provincial governors on local economic growth.⁵¹ In other countries where terms are limited to two consecutive terms, it has been found that, interestingly, government does not grow as quickly as in countries with single-term limits.⁵²

Today's Term Limits Debate

Term limits remain popular with state electorates long after their introduction. Despite a steady onslaught of negative commentary emanating from the political and media establishments,⁵³ a very large number of Americans continue to support term limits. Clearly, most Americans continue to believe that term limits eliminate unfair political advantages and policy flexibility that accompanies long-term political careers.⁵⁴

The early advocates of modern-day term limits were largely correct. Term limits enable an elected official to gain the experience necessary to fulfill his or her role in legislative review and

⁵⁰ Mark Schelker, *Auditor Terms and Term Limits in the Public Sector: Evidence from the US States*, August 29, 2009, and Schelker, "The Influence of Auditor Term Length and Term Limits on US State General Obligation Bond Ratings," *Public Choice* (online), (2010) DOI: 10.1007/s11127-010-9688-4.

⁵¹ Jun Zhanga and Yuan Gao, "Term limits and Rotation of Chinese Governors: Do They Matter to Economic Growth?" *Journal of the Asia Pacific Economy*, 13 (2008): 274-297.

⁵² Joseph M. Johnson and W. Mark Crain, "Effects of Term Limits on Fiscal Performance: Evidence from Democratic Nations," *Public Choice*, 119 (2004): 73-90.

⁵³ See, for example, Jennifer Drage Bowser, Keon S. Chi, and Thomas H. Little, *Coping with Term Limits: A Practical Guide*, National Conference of State Legislatures, Denver, August 2006; and, most recently, the criticism of term limits presented in *The Economist*, "California's Legislature – the Withering Branch: How the Initiative Process Has Redistributed Power," April 22, 2011.

⁵⁴ Colleen Donovan, *Direct Democracy, Term Limits, and Municipal Fiscal Decisions in the United States*, October 19, 2009.

policy investigation while ensuring a renewal of ideas and perspectives on a regular basis.⁵⁵ One researcher has considered alternative institutional designs that might accomplish some of the goals of term limits, but found that none is likely to provide a perfect substitute. It was found that term limits have the advantage of clarity, making them relatively easy constitutional rules to enforce, and hence they should be considered an effective part of the arsenal of democratic institutions.⁵⁶

Term limits are an important instrument of democratization and not just because they constrain the power of individual leaders, but also because they tend to promote political party alternation, which in turn fosters democratic development.⁵⁷ Term limits reward real-world experience over backroom experience. They have reformed state and local government around the nation by replacing professional politicians with citizen legislators who participate in government largely out of a sense of civic duty.

Term limits are changing our country's political culture and paving the way to real reform. Consequently, the entrenchment of term limits in state constitutions, including Illinois', should be encouraged.

⁵⁵ Sebastian Spano, *Bill C-10: An Act to Amend the Constitution Act, 1867 (Senate term limits)*, Legislative Summary, Library of Parliament, Publication No. 40-3-C10-E, Ottawa, Canada, April 6, 2010.

⁵⁶ Tom Ginsburg, "On the Evasion of Executive Term Limits," *ExpressO*, 2010, http://works.bepress.com/tom_ginsburg/31.

⁵⁷ Gideon Maltz, "The Case for Presidential Term Limits," *Journal of Democracy*, 18 (2007): 128-142.

DISTRICT SIZE⁵⁸

Can one Illinois legislator truly be accountable to the needs and interests of 109,000 living in disparate circumstances? That is the question posed by the liberal researcher, Heather Barbour, who concludes that, “Illinois' legislative districts are too big and their unwieldy proportions seriously obscure the real diversity in the state’s lifestyles and politics.”⁵⁹

At both the state and federal level, a lower house is constitutionally designed to have localized constituencies and frequent elections. Our constitutional framers envisioned districts that each contained around 30,000 people. Nevertheless, constitutional architect, James Madison, assumed that, as population increased, the number of districts would be “augmented from time to time.” Since 1960, 34 states have adjusted the size of their legislatures at least once. Yet, Illinois has not augmented or adjusted the number of representatives in its legislature since 1982, when its total population was only 11.4 million.⁶⁰ Today, the state population is 12.9 million.

With a “too small” legislature, James Madison presciently warned of a lack of diversity in policy discussions and the ease of “combination for improper purposes.” The Illinois legislature clearly exhibits the symptoms of a governing body that is too small.

No single political reform is either an institutional or procedural silver bullet for all that ails Illinois state politics. Specifically, there is no research evidence indicating any ideal size for a state legislative body.⁶¹ Nevertheless, according to the available evidence, the proposal to reduce

⁵⁸ A state’s district population size is simply its total population divided by the number of representatives in the lower house of its legislature.

⁵⁹ Heather Barbour, “Slice 'N Dice: Smaller legislative districts will yield more lawmakers, more accountability and better decision making,” *California Journal*, January 1, 2005.

⁶⁰ In 1980, the first and only “binding” initiative appeared on the Illinois ballot. The initiative reduced the size of the state legislature from 177 members to 118 members. It passed overwhelmingly.

⁶¹ Brenda Erickson, senior research analyst, National Conference of State Legislatures, cited in Eric Boehm, “Lawmakers, analysts weigh pros and cons of smaller legislature,” *PA Independent*, March 31, 2011.

the size of each legislative district so that a smaller number of people will be represented may be expected to improve democratic government in the state of Illinois.

Background

According to the National Conference of State Legislatures, the number of seats in the lower house of state legislatures varies from a high of 400 in New Hampshire to a low of 40 in Alaska. The average size of state legislative districts is approximately 65,000 people.

Table 1 below lists the 10 states with the highest and lowest populations and the population per legislator. California has by far the largest population per district, New Hampshire the lowest. Illinois has the sixth largest population per legislator. As such, Illinois is one of only a handful of states that have as many as 100,000 people per legislative district; the majority has fewer than 50,000.

Table 1. House Legislative Seats and Population per Seat.

Highest Population			Lowest Population		
State	Seats	Population/ Legislator	State	Seats	Population/ Legislator
California	80	475,000	Wyoming	60	9,600
Texas	150	173,000	Vermont	150	4,200
New York	150	131,000	North Dakota	94	7,400
Florida	120	161,000	Alaska	40	18,300
Illinois	118	109,000	South Dakota	70	12,000
Pennsylvania	203	63,000	Delaware	41	22,400
Ohio	99	116,000	Montana	100	10,000
Michigan	110	90,000	Rhode Island	75	14,000
Georgia	180	55,000	New Hampshire	400	3,300
North Carolina	120	81,000	Maine	151	8,800

Source: National Conference of State Legislatures; U.S. Census Bureau.

Illinois' large districts contribute to political alienation, a fatal condition for representative government. In recent years, polls have found Illinois voters disapprove of the state legislature by a two-to-one ratio.⁶² As such, in Illinois the gap between the average representative and those he or she represents is perilously wide.

Under the proposed amendment, the increase in members of the state's lower house will alter the breakdown of the state electorate so that each member of the lower house represents approximately one-third fewer constituents than is currently the case.

Advantages of Smaller Districts

District boundary changes have important impacts on party politics, public policy, and representation. Consequently, there are many substantive arguments for increasing the size of the Illinois state legislature by nesting three (rather than the current two) lower house representatives within each state senate district. These arguments include the following:

1. Smaller districts will bring legislators closer to the people. Making districts smaller increases the weight of each vote.⁶³ With fewer constituents, a legislator is inherently better positioned to engage in direct contact with his or her constituents. The time available per constituent increases and, therefore, the likelihood that any given constituent will receive a timely reply from, or be granted a face-to-face meeting with, his or her elected representative, rises commensurately. In this manner, smaller districts "increase the likelihood that citizens know their representative and their representative knows them."⁶⁴

Barbour explains that, in practice, "A lawmaker representing urban, suburban and rural communities is forced to consider a myriad of often conflicting needs for schools, health

⁶² See, for example, David Ormsby, "Poll: Gov. Pat Quinn More Popular than Illinois Legislature," *Illinois Observer*, April 25, 2012.

⁶³ See Peter Wagner, "Importing Constituents: Prisoners and Political Clout in New York," A Prison Policy Initiative Report, April 22, 2002.

⁶⁴ Hans Zeiger and Hans Dunshee, "Bring democracy closer to the people," February 20, 2013.

care, public safety and other services. Many interests are left out without ever being heard in the Legislature. A lawmaker focused on a more concentrated population can be a better advocate.” Consequently, members of the lower house may be more effectively engaged with and sensitive to their constituents, which potentially may reduce the average constituent’s level of political alienation from the state capitol in Springfield.

Furthermore, the expanding scope and complexity of an already large state government necessitates more elected ombudspersons to help taxpayers and constituents navigate the bureaucracy.

2. It is far more common for a single political party to literally and figuratively dominate a legislature that contains fewer members than one with a larger membership. A greater degree of heterogeneity between districts, which is the probable outcome of smaller district sizes, reduces the likelihood of either Democrats or Republicans dominating, either in an electoral or in a legislative sense, the chamber.
3. In striking contrast to large districts, small districts provide a disincentive for legislators to appeal to ideological extremes of the left or the right. Very large districts such as those in California are institutional breeding grounds for political extremism. For example, Gerber and Lewis (2004) find that in California the relationship between legislator ideology and electoral success is conditioned by the ideological homogeneity of the district. That is, they find that in more homogeneous districts, the pull of the median voter is greater than in ideologically heterogeneous districts. In heterogeneous districts, legislators are less constrained by the median voter, and are more likely to allow party pressures or other interests to sway their behavior.

However, smaller state legislative districts are more likely to be politically homogeneous than the larger Congressional districts. With fewer voters per district, along with more homogeneous districts, the district median is more likely to be occupied by ideologically moderate voters.⁶⁵ As Nathaniel Birkhead documents, with large districts legislators are

⁶⁵ Nathaniel A. Birkhead, “The Role of Ideology in State Legislative Elections,” May 2013.

more likely to seek the favor of party leaders, party activists, campaign donors, or any number of forces encouraging extremism, as there are relatively few incentives for a legislator to moderate his or her behavior.

4. A larger legislature will increase the probability that legislation reflects an actual consensus among the members. The legislative status quo sees powerful special interest groups succeed due to their lobbyists' ability to influence a very small number of members in order to affect legislative and policy outcomes. Illinois' population has boomed since the current number of legislative seats was established. Now districts are so large, in both the sheer number of constituents and massive geographic area, that legislators cannot realistically represent the needs of their constituents. This has contributed to the stronghold that special interests have on politicians in Springfield because they need massive amounts of money to communicate with voters in their district.

However, the greater cross-section of viewpoints that is inherent in a legislature comprised of more members will make it harder to pass legislation that reflects the views of a slim and narrow majority. Lobbyists and special interests would lose power since they would be forced to persuade more lawmakers with closer ties to their voters. With more members, it will be necessary to incorporate a significantly larger number of members' views, which will require a greater willingness to compromise on the part of members, both individually and collectively. As a result, a larger legislature may reduce intra-state regional political rivalries, especially between rural and urban areas.

5. More members of the lower chamber will sanction a more efficient and effective division of labor among elected representatives. For example, committee assignments are more likely to be sought by those members with specialized knowledge, experience, and interest in particular issues and areas. As Heather Barbour explains, "With more eyes watching and questioning government decisions, Californians could also expect better oversight and higher quality legislation. Yet, committees produce good policy only when legislators have the time to become experts in the issues or there are many hands to

manage the workload.”⁶⁶ Hence, the oversight of administrative agencies is greater among larger legislatures representing smaller districts.⁶⁷

6. An increase in the number of members of the state’s lower house will not necessarily result in a significantly more costly legislature. The available evidence finds that there is a greater correlation between a state’s population and legislative costs than between legislative size and cost.⁶⁸ Furthermore, when Illinois reduced the size of its legislature in 1982, expected cost savings were never realized because larger districts meant more legislative staffers needed to be hired.
7. Legislative elections will be more competitive. Smaller state legislative districts are more likely to be politically homogeneous than the larger Congressional districts. With fewer voters per district, along with more homogeneous districts, the district median is more likely to be occupied by ideologically moderate voters. Independent candidates have a greater chance of winning these smaller districts.⁶⁹ In this manner, smaller districts will improve the representation of moderate, third party, independent voters whose collective voice is more likely to be heard in a district where they make up a greater share of the electorate.
8. Localized districts increase the willingness of citizens to offer themselves for public service and will make it easier for challengers to take on incumbents. In no small part, this is because smaller Assembly districts will help to control the skyrocketing costs of campaigns, as geographically and demographically smaller districts will ensure candidates do not have to spend as much money to reach voters. As Hans Zeiger and Hans Dunshee explain, “With less money to raise and less geographic territory to cover, it will be easier for a hard-working challenger to beat a better-funded incumbent.” The

⁶⁶ Barbour.

⁶⁷ Research by the National Conference of State Legislatures, cited in Bruce Bartlett, “The Size of State Legislatures,” December 31, 2013.

⁶⁸ *Ibid.*

⁶⁹ Barbour.

result will be that more citizens will be able to take participate directly in governing.

9. The academic literature suggests there are economic arguments for reducing the population in each legislative seat.⁷⁰ A 1999 study by economists Mark Thornton and Marc Ulrich found that government size is positively correlated with the size of legislative districts.⁷¹ That is, the more population per district, the bigger the size of government. [A 2006 study by Thornton, Ulrich and George S. Ford, which examined Britain, confirmed this result.⁷²]

10. It is undoubtedly the case that historical, demographic, and geographical factors are critical in determining the impact of a legislature's size on public policy, from either a liberal or conservative point of view. For example, academic research has shown that the more homogeneous a population is the more likely voters are to support redistribution, because they view the benefits as going to people like themselves. Geographically small states are more likely to be homogeneous; this suggests that larger, inherently more heterogeneous states will be less supportive of redistribution.

The best design for the Illinois Assembly is to seek to recapture the original conception of the chamber. The Assembly was always intended to be the larger house, where the passions and will of the people are expressed. This means Assembly districts should be as small as possible and Assembly seats most susceptible to challenge and competition. These conditions may be met by expanding the ratio of senators to Assembly members from the current 1-to-2 distribution to a 1-to-3 relationship. Revealingly, these dimensions are consistent with the recommendations of a 1970s study of state legislatures by the non-partisan Citizens Conference on State Legislatures.⁷³

⁷⁰ Bartlett.

⁷¹ Mark Thornton and Marc Ulrich, "Constituency Size and Government Spending," *Finance Review*, November 1999.

⁷² George S. Ford, Mark Thornton, and Mark Ulrich, "Constituency Size and the Growth of Public Expenditures: The Case of the United Kingdom," *Journal of Public Choice and Finance* 2006 (24).

⁷³ Citizens Conference on State Legislatures, *State Legislatures: An Evaluation of Their Effectiveness*, New York: Praeger, 1971.

As legislative districts grow larger, government tends to become more autocratic in nature. But, smaller state Assembly districts will make politics more relational, more people-centered, and place-centered. Illinois needs to make her political representatives more accountable to voters and reflective of their ideas. That is only possible when the governed are closer to their government.

VETO OVERRIDE

With limited authority over state lawmaking, but ultimate responsibility for the performance of government, governors are frequently ineffective in moving their legislative programs through the state capitol.⁷⁴ As gubernatorial scholars Thad Kousser and Justin Phillips explain:

“Governors...face a singular disadvantage when it comes to lawmaking. Though the public may look to governors to lead their states, credit them with any successes, and hold them accountable for most failures, state constitutions strip governors of any direct power to craft legislation. Legislators in this country hold a monopoly over the power to introduce, amend, and pass bills, giving them the ability to write laws and then present them as take-it-or-leave-it offers to America’s chief executives. A governor’s only formal legislative power is a reactive one – the ability to veto or sign bills that are passed by the other branch – and comes at the end of the lawmaking process.”⁷⁵

Hence, the need for procedural measures with the potential to bring twenty-first century legislative processes to Illinois state politics.

The proposal that the current three-fifths majority requirement to override a gubernatorial veto be raised to a two-thirds legislative, so-called “super majority” reflects both experience with such a procedural device at the federal level and within many state legislatures around the nation, as well as a prospective outlook on state politics, one that appreciates the benefits of time-honored traditions, but recognizes that occasional, highly targeted tweaks of the state constitutional fabric are characteristic of a modern democratic political system that seeks to enable its most senior elected officials to accomplish at least some of the goals they have been set by a demanding statewide electorate.

Background

⁷⁴ Thad Kousser and Justin H. Phillips, *The Power of American Governors: Winning on Budgets and Losing on Policy*, New York: Cambridge University Press, 2012.

⁷⁵ Kousser and Phillips.

Simply stated, a “supermajority” vote is a vote that must exceed the number of votes comprising a “simple majority.” For example, a simple majority in the 100-member US Senate is 51 votes; while a two-thirds supermajority requires 67 votes. In the 435-member House of Representatives, a simple majority is 218 votes; while a two-thirds supermajority requires 290 votes. In Congress, overriding a presidential veto of a bill requires a two-thirds supermajority vote in both the House and the Senate.⁷⁶

In general, the Founding Fathers favored requiring a simple majority vote in legislative decision making. Most of them, for example, objected to the Articles of Confederation's requirement for a supermajority vote in deciding such questions as coining money, appropriating funds, and determining the size of the army and navy.

However, the framers of the Constitution also recognized the need for supermajority votes in some cases. In Federalist No. 58, James Madison noted that supermajority votes could serve as a “shield to some particular interests, and another obstacle generally to hasty and partial measures.” Alexander Hamilton, too, in Federalist No. 73 highlighted the benefits of requiring a supermajority of each chamber to override a presidential veto. “It establishes a salutary check upon the legislative body,” he wrote, “calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.”

The fact is that, in contemporary American politics, “The critical details of veto powers...vary widely at the state level. Governors in a few states may be overridden by a simple majority of legislators (as in Kentucky), while others require very large supermajorities to do so.”⁷⁷

Why Increase the Requirements for a Veto Override?

⁷⁶ Article 1, Section 7, US Constitution.

⁷⁷ Kousser and Phillips.

There are two principled reasons why increasing the state legislature's veto override provision will benefit Illinois' political system.

1. Institutional learning. Supreme Court Justice Louis D Brandeis famously referred to the states as laboratories of democracy because a "single courageous state may, if its citizens choose, serve as a laboratory and try novel...experiments without risk to the rest of the country." It is well established that state governments can and do serve as policy laboratories. Their experiences, be they positive or negative, may serve to educate their peers in other states who may be saved from ill-advised choices while receiving an opportunity to identify policies that work at the state level.

Similarly, but far less appreciated, is the fact that state governments can and do serve as *institutional* and *procedural* laboratories for other states. As Virginia Gray, et al. write, "Brandeis's political insight is widely appreciated, but it is also true that states function as laboratories in another sense: their governments and policies permit comparisons that enable social scientists and others to identify the basic political processes at work in all or most of the states."⁷⁸

It is in this context that we detect a growing appreciation for a higher veto override provision. Such a change in the Illinois state constitution will not be the by-product of "presidential envy," that is, current and former governors bemoaning the Illinois governor's comparative dependency upon the whims of and the winds blowing through the state legislature. Rather, it constitutes recognition that there is no logical reason to think that what is working for the relationship between respective governors and legislatures in other states cannot also work in Illinois.

The adoption of a new veto override measure will illustrate powerfully that, in an institutional sense, the state of Illinois is not mired in the past. Rather, she is sufficiently self-confident to exhibit the institutional maturity necessary to recognise that even one of

⁷⁸ Virginia Gray, Russell L Hanson, and Thad Kousser, eds. *Politics in the American States: A Comparative Analysis*, Thousand Oaks, CA: CQ Press, 2013.

the nation's oldest, largest, and most important states may require from time to time an element of institutional tweaking and updating.

2. Democratic leadership. For democratic politics at the state level to operate as intended, it is paramount that the will of the people is respected. Consequently, popular sentiment should not be thwarted unnecessarily. As the Governor of Illinois is elected, unlike those occupying seats in the state legislature, by a state-wide electorate, it is a matter of democratic principle that as far as possible constitutional procedures permit the state's political leadership actually lead. Critically, under the proposed constitutional amendment in question, a gubernatorial veto will remain subject to the oversight of the state legislative.

However, rather than a slim majority of an inherently parochial legislative body possessing the de facto power of veto over the governor, a quite large legislative majority-coalition will be required to override a gubernatorial veto. Such a change does not threaten democratic governance in the state. On the contrary, it provides a powerful catalyst to ensure that state-wide sentiment is not sacrificed on the altar of highly partisan legislative deal-making.

Therefore, the case for greater protection for the decisions emanating from the executive branch of Illinois state government is grounded in majoritarian principles. A successful attempt to stymie the electoral majority may be justified in certain cases and at specific times, but it should be difficult to achieve. The proposed amendment is an important step towards achieving that goal.

Helping Democracy

Clearly, as "state constitutions are based, by and large, on the federal structure, the office of the governor operates much like the presidency."⁷⁹ Hence, Allan Rosenthal, a leading researcher on

⁷⁹ Kousser and Phillips.

state government, reminds us that, “Governors are expected to exercise policy leadership.”⁸⁰ And, Kousser and Phillips comprehensively laid out the evidence upon which to conclude that, “All governors are expected to be their states’ ‘legislator in chief’.” They conclude that, “Voters demand policy leadership and results from the governors whom they send to office, overlooking the mismatch between these expectations and the constitutional authority of the executive.”⁸¹

To contemporize Justice Brandeis’ analogy, the states are also laboratories for the study of executive power,⁸² including, perhaps especially, the determinants of executive power.⁸³ The historical record tells us that it is certainly true that governors can be powerful actors in the lawmaking process.⁸⁴

A revised super-majority veto process will assist governors in exercising their democratic mandate and in exercising the leadership that the state of Illinois both desires and requires of them.

⁸⁰ Alan Rosenthal, *The Best Job in Politics: Exploring How Governors Succeed As Policy Leaders*, Thousand Oaks, CA: CQ Press, 2013.

⁸¹ Kousser and Phillips.

⁸² Kousser and Phillips.

⁸³ Kousser and Phillips.

⁸⁴ Kousser and Phillips.

ILLINOIS ISN'T THE NEW CALIFORNIA

The positions presented in the preceding sections of this brief are straightforward and, perhaps, the arguments are persuasive, too. Therefore, this paper concludes by addressing a larger, comparatively amorphous, yet deeply significant question. Regardless of the respective merits of these three amendments seeking access to this November's ballot, does initiative-driven policymaking threaten to transform Illinois politics into something akin to the chaotic and unproductive direct democracy that characterizes politics in the state of California?

The answer is no. The explanation shall focus upon the most tangible reason why Illinois voters need not fear California-style policymaking. The reason is that the Illinois constitution does not permit anything approaching the mechanisms, instruments, and opportunities for initiative-driven ballot campaigns that exist in California.

In fact, it is extremely difficult for an initiative campaign to gain entry to the Illinois ballot.⁸⁵ In this regard, the gulf between the 23 initiative states and the 24th, Illinois, is a veritable chasm. Most importantly, Illinois' 1970 state constitution limits initiative questions to areas directly applicable to the state legislature. In the other 23 initiative states, including California, no such restraints are in place. Consequently, a review of the past decade of initiative-derived questions that have appeared on the California ballot finds that the overwhelming majority of them would never be sanctioned in Illinois.

Furthermore, an initiative victory in California requires a straightforward 50 percent plus one of the popular vote. However, in Illinois the Yes campaign requires the lower of 60 percent of the vote on the initiative or 50 percent plus one of the people who vote.⁸⁶ Consequently, those people who vote in the election but do not vote on a particular down-ballot initiative count effectively

⁸⁵ In reverse chronological order, the lengthy list of initiative campaigns, some well-funded, that have failed to gain access to the ballot includes: redistricting (2014); civil unions (2012); redistricting (2012); legislative reform (2010); traditional marriage (2006); health care (2006); gay marriage (2006); and treatment-on-demand (2004).

⁸⁶ Wyoming is the only other initiative state with the same rule as Illinois. As a result, it is rare for an initiative question to appear on the state ballot.

count as No voters on that question. In practise, an Illinois yes campaign requires approximately 55 to 56 percent of the votes, so the Yes side must win the ballot campaign by 10 to 12 percentage points. Such a high electoral bar obviously acts as a disincentive to those who may otherwise have committed the resources necessary to run a credible and effective initiative campaign.

The most telling observation about the arduous Illinois initiative process is that, due to its limited nature and severe degree of difficulty, many initiative scholars do not even consider it, in practise, to really be an initiative state.