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Montana's Agenda

ISSUES SHAPING OUR STATE



Trying to Throw the Bums Out: The Unanticipated Consequences of Term Limits

Jerry W. Calvert

Montanans voted in favor of a ballot measure in 1992 that imposed 8-year term limits on Montana legislators and all statewide-elected officers. With that vote, Montana joined 20 other states that ultimately adopted term limits in a short-lived drive to eclipse the careers of both state and national legislators.

State-imposed limits on members of Congress were quickly declared unconstitutional by the U.S. Supreme Court in *U.S. Term Limits v. Thornton* (1995), a decision that undercut proponents' argument that long-serving politicians automatically were corrupted. But Montana and 14 other states continue to be stuck with the bad consequences of this ill-conceived reform.

Proponents of the Montana reform measure, Constitutional Initiative 64, argued that term limits would increase competition, create a more diverse legislature, eliminate "long-term career politicians" and provide "more choices" for the voters. None of these claims has been realized.

The Montana term-limit clock started running with the 1992 election, and 8 years later the clock ran out for those who had bothered to stay in office. In the 2000 and 2002 elections, 73 House and Senate seats came open because the incumbents had served the maximum 8 years. In the 2004 election, the pace of forced retirement eased somewhat with 6 House and 10 Senate seats vacated by termed-out legislators.

Prior to the imposition of term limits, Montana already had enjoyed a "citizen legislature" in which the majority of members did not stay for 8 years. In the decade ending in 1992, an average of 26 percent of Senate seats were vacated each election due to the voluntary retirement of incumbents. The period of 1994-

2002 also saw an average volunteer retirement rate of 26 percent in the Senate. In the House, the rate of elective withdrawal averaged 16 percent in the 1974-1992 period, and 21 percent in the 1993-2002 period.

More telling is the mean eviction rate, defined as the number of seats vacated by the defeat of an incumbent seeking another term. Before term limits, an average of 13 House seats changed each election because voters rejected the incumbent. Once the term-limit clock began to run, the eviction rate dropped to an average of 8 House seats each election.

A closer look at electoral competition before and after term limits highlights even more the promise not realized. In the decade preceding term limits, the mean success rate of Senate and House incumbents seeking reelection was 77 percent and 85 percent respectively. During the 1994-2002 election period, after term limits became law, the mean success rate in the Senate and House climbed to 88 percent and 91 percent respectively.

We can also take a before-and-after look at the frequency of uncontested races, that is, contests in which a major-party candidate did not face a major-party opponent in the general election. Prior to the start of term limits, the Senate's mean of uncontested races was 19 percent of the seats up for election in a given year. For the House, it was 26 percent. In the era of term limits, Senate uncontested races jumped to an average of 31 percent, while the House, where uncontested races have been more common, showed a slight increase to 27 percent.

Another telling measure of competition is "district swing," that is, counting how many Senate and House district seats changed parties at least once between census-mandated redistricting. Before term limits (1984-1992), 26 percent of Senate district seats and 39 percent of House district seats changed from one party to the other at least once. Between 1994 and 2002, after the imposition of term limits,

district swing declined to 10 percent of Senate seats and 28 percent of House seats.

The reason for this precipitous drop in electoral competition is obvious. Under term limits a likely candidate, rather than stepping up to challenge the incumbent during the 8-year "term" of office, waits to run for an open seat when the member's "term" expires. In the 1998 election, an astonishing 46 percent of Senate races and 41 percent of House races were uncontested, double what they had been in previous elections.

Proponents counter that once a seat was vacated by a term-limited legislator, competition followed. If we use "swing" to measure competition, the answer

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is clearly no. In the 2000 and 2002 elections, we had 30 term-limited senators, and 29 of those open seats were retained by the party holding them before term limits. In the House there were 43 such districts, and 40 stayed with the same party.

Nor is there any evidence that term limits have produced a more demographically diverse legislature. The 2001 and 2003 legislatures did contain more women and American Indians and fewer ranchers and farmers than earlier assemblies, but not because of term limits. The 1995 legislature had 31 women, and the 2001 legislature had about the same number — 34. In term-limited districts, an ousted male was replaced by another male in almost all cases. And there are more American

Indians in the Montana Legislature, not because of term limits, but because new districts created under the Federal Voting Rights Act helped minority candidates get elected. Regarding farm- and ranch-connected legislators, there were 52 in 1985 and 30 today. This decline has been steady, but its cause is the state's changing economy and not term limits.

One certain term-limit-induced difference in the Montana Legislature is the level of experience, especially in the House. Prior to term limits, newly elected legislators called upon experienced hands to show them the ropes. In the 1993 House session, 24 percent of the members had served at least 8 years. In the Senate, 42 percent had been around that long. Ten years later, only 2 out of 100 House members had 8 years' experience under their belts. The Senate was in slightly better shape because it picked up a critical mass of term-limited House members with hands-on knowledge of how the legislative process works. This decline in legislative experience has had dire consequences. In the House, especially, mistakes in simple procedure have increased, and trust, especially across party lines, has eroded.

Proponents, however, still argue that term limits are necessary to curb a class of "professional politicians." If "professional" means an elected official who continues to seek election to new venues, then term-limit advocates must again be disappointed. In the 2000 election, 7 term-limited House members ran for and won another elective office, most often in the Montana Senate. Two years later, 3 of 7 term-limited representatives sought and won a Senate seat. More surprisingly, a few term-limited senators, with no prior experience in the other chamber, have run for a House seat with the hope of serving 8 additional years.

In November 2004, Montanans had the opportunity to extend legislative terms from 8 to 12 years. The constitutional referendum, authorized by House Bill 277, was backed by bipartisan

majorities in both chambers. But Constitutional Amendment 42 was soundly defeated in all of the state's 56 counties and by a 69 percent statewide majority. One reason for the drubbing was the lack of a visible and effective campaign. In the absence of persuasive evidence that change was needed, it is not surprising that Montana voters rejected this modest adjustment in term limits.

Montana, however, needs more than a mid-course correction. Term limits have robbed us of the right to reelect legislators who are doing a good job, increased the number of uncontested elections, and failed to promote competition between the parties. It is time for Montanans to exercise their common sense and consider doing away with term limits altogether. We don't fire our mechanic or doctor when they are serving us well, and we should not push out our elected officials who have performed effectively. Experience matters in other vocations. State legislative service should be no exception.

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Jerry Calvert dedicates this essay to the memory of Montana Representative Francis Bardanoue (1917-2002), who, had term limits been in place, would not have been able to serve the public interest so well for the 36 years he held office.





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