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How and Why Idaho Terminated Term Limits

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HOW AND WHY IDAHO TERMINATED TERM LIMITS

SCOTT W. REED¹

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I. INTRODUCTION

This article chronicles how the state of Idaho became a unique standout in the term limits controversy of the past several decades. In February 2000, this author and Jerry Mason filed a complaint in the Power County, Idaho district court seeking to have term limits declared

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in violation of the suffrage clause in the Idaho Constitution.² What followed were an appeal in 2001 and a subsequent repeal in 2002. This article is not intended to argue the merits of the lawsuit or to challenge the Idaho Supreme Court's reversal. Instead, this article will provide a discussion of the term-limits initiatives in Idaho and elsewhere.

II. THE 1994 INITIATIVE

At the general election on November 8, 1994, Idaho voters adopted the Term Limits Initiative by a 58% margin.³ This initial term-limits law, codified as Idaho Code § 34-907, placed limits on elected Idaho members of Congress: allowing three terms for Idaho's representatives in the U.S. House of Representatives and two terms for Idaho's senators in the U.S. Senate.⁴

The law also adopted term limits for state officials. Officials elected to state-level office were barred after eight years.⁵ State legislators who had served for eight or more of the previous fifteen years were barred from running again in a primary or general election.⁶ County commissioners who had served for six or more of the previous eleven years were barred from running again in a primary or general election.⁷ Sheriffs, clerks, treasurers, assessors, and coroners who had served for eight or more of the previous fifteen years were barred from running again.⁸ Mayors and city council members were barred from running for office if they had served for eight or more of the previous fifteen years.⁹ School district trustees who had served for six or more of the previous eleven years were barred from running again.¹⁰

The decade-long record of term-limits initiatives in Idaho begins with six years of repeated victories at the general elections that changed in 2000 to a roller coaster ultimately crashing and then burning out in the 2002 referendum.¹¹ Idaho is unique in its particular history with term limits. This is a brief chronology of the rollercoaster: a 1994 initia-

2. *Rudeen v. Cenarrusa*, 38 P.3d 598, 136 Idaho 560 (2001). The Idaho Constitution guarantees the right to vote, stating: "No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." IDAHO CONST. art. I, § 19.

3. *Idaho General Election Results: November 8, 1994*, IDAHO SEC'Y OF STATE, <http://www.sos.idaho.gov/elect/rsltgn94.htm> (last visited June 8, 2014).

4. IDAHO CODE ANN. § 34-907 (West 2001) (repealed 2002).

5. *Rudeen*, 38 P.3d 598 at 603.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 603-04.

11. See Wayne Hoffman, *The Battle Over Term Limits: Concluding That Term Limits Were Bad for the State, Idaho Lawmakers This Session Repealed a Term Limits Law Passed by Voters in 1994. Now They Face a Political Quagmire the Likes of Which They Have Never Seen*, ST. LEGISLATURES, May 2002 at 25, available at <http://www.apsanet.org/~lss/Newsletter/July02/battle.html>.

tive win;¹² a 1996 initiative win;¹³ a 1998 initiative win;¹⁴ a 2000 district court loss;¹⁵ a December 2001 supreme court win;¹⁶ a January 2002 legislature loss;¹⁷ a February 2002 governor's veto win;¹⁸ a February 2002 legislature override loss;¹⁹ a July 2002 signatures on referendum win;²⁰ and a November 2002 vote on referendum loss.²¹

Only in Utah, which is also a strongly Republican state, has the legislature also repealed term limits.²²

A. Origin of Initiatives for Term Limits

At the turn of the nineteenth century, a large majority of farmers and laborers joined the populist movement in Oregon and Wisconsin.²³ The populists looked to Switzerland's governing process and borrowed the democratic tools of the initiative and referendum to allow each state's people to write and pass their own laws.²⁴ Initially the initiative was recognized as a way to bypass or nullify the influence of railroads, mining companies, and other powerful corporations that were buying, or were perceived to be buying, the votes of legislators.²⁵ Although motivated by conservatives, term limits had broad bipartisan and independent popular support across the country.²⁶

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See Hoffman, supra* note 11.

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. Patrick Basham, *Defining Democracy Down Explaining the Campaign to Repeal Term Limits*, POL'Y ANALYSIS, Sept. 30, 2003, at 1, 6 [hereinafter *Defining Democracy*], available at <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa490.pdf>.

23. *See* Charles Postel, *The Populist Vision* 3–22 (2007).

24. *See id.*

25. *See id.*

26. *See, e.g.*, Patrick Basham, *Term Limits: A Reform that Works*, 2 (MacMillin Slobodien ed., 2011) [hereinafter *Term Limits*], available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&ved=0CGQQFjAG&url=http%3A%2F%2Fwww.democracyinstitute.org%2FLiteratureRetrieve.aspx%3FID%3D87909&ei=3uH7UuqEMorhqqHquYGoCA&usg=AFQjCNFAEF7x6J47gRygLKLj4TNgIGghfw&sig2=pmHeL1Eh7LBhx1S6gSMKlw&bvm=bv.61190604,d.aWM> (“Term limits are not a new concept. The historical roots of term limits go as far back as Athenian democracy in the fifth century B.C. and are grounded in traditional republican and classical liberal models of limited, democratic government. In Colonial America, term limits were referred to as the ‘rotary system,’ or the principle of ‘rotation in office.’ The New England Colony’s charter provided for the rotation of public officials and a limit on years of office-holding. By 1777, seven (of the 10) new state constitutions provided for rotation in office. 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.”).

Dating from the American Revolutionary War, American citizens have been politically schizophrenic about government at all levels.²⁷ Citizens have wanted government at the national, state, and local levels to be strong, effective, and helpful.²⁸ However, citizens readily vote in opposition to potentially strong, effective, and helpful government actions, particularly when there is a significant cost to the taxpayers.²⁹ Within this framework, term limits have long been a part of the general resistance to large government.³⁰ In 1947, Congress initiated, and states approved, Constitutional Amendment No. 22 limiting presidents to two terms.³¹

While the concept of limiting the terms that individuals can be elected to government offices was not new, the idea of initiative campaigns for term limits came to full fruition in Oklahoma in 1990.³² Two very wealthy Oklahomans—Edward L. Gaylord, owner of the state’s largest newspaper, *The Daily Oklahoman*, and oilman Lloyd Noble II—created “Oklahomans for Legislative Reform,” which circulated an initiative to adopt term limits on legislators.³³ The voters passed this initiative in 1990.³⁴

Every elected official, at every level in the United States, is subject to the potential of defeat in the next election. However, some so-called “safe districts” exist for various federal and state elected officials.³⁵ In safe districts, office holders can reasonably expect re-election for many terms.³⁶ In these situations, term limits were intended to weed out career legislators and their staff by requiring a relatively rapid turnover.³⁷ Advocates argued that with a timely turnover the presence of replace-

27. See Douglas J. Amy, *What Americans REALLY Think about Government*, GOV’T IS GOOD, <http://www.governmentisgood.com/feature.php?fid=3> (last visited June 8, 2014).

28. See *id.*

29. See, e.g., Samuel Thernstrom, *The Quiet Death of the Kyoto Protocol*, AMERICAN (Nov. 5, 2009), <http://www.american.com/archive/2009/november/the-quiet-yet-historic-death-of-the-kyoto-protoco>.

30. *Term Limits*, *supra* note 26, at 1.

31. U.S. CONST. amend. XXII, § 1; *Amendment 22*, NAT’L CONST. CENTER, <http://constitutioncenter.org/constitution/the-amendments/amendment-22-presidential-term-limits> (last visited June 8, 2014). This was a retrospective, across-the-nation reaction against the four terms of President Franklin D. Roosevelt. *FDR’s Third-Term Decision and the 22nd Amendment*, NAT’L CONST. CENTER (July 18, 2013), <http://blog.constitutioncenter.org/2013/07/fdrs-third-term-decision-and-the-22nd-amendment/>.

32. See Alan E. Peterson, *Term Limits: The Law Review Article, Not the Movie*, 31 CREIGHTON L. REV. 767, 778 (1998).

33. *Id.*

34. *Id.*

35. Doug Mataconis, *38% of Congressmen Represent “Safe” Districts*, OTB (Oct. 7, 2013), <http://www.outsidethebeltway.com/38-of-congressmen-represent-safe-districts/>.

36. See generally Rhodes Cook, *Congressional Redistricting: Is Creating “Safe” Districts a Dying Art?*, U. OF VIRGINIA CENTER FOR POLITICS (Mar. 31, 2011), <http://www.centerforpolitics.org/crystalball/articles/frc2011033101/>.

37. See Dan Greenberg, *Term Limits: The Only Way to Clean Up Congress*, HERITAGE FOUND. (Aug. 10, 1994), <http://www.heritage.org/research/reports/1994/08/bg994nbsp-term-limitsnbsp-the-only-way>.

ments in elected positions would favor more limited government.³⁸ Taxpayers could expect an end to increased spending and taxation.³⁹

Under such a theory, then relatively unknown conservative brothers and billionaires, Charles and David Koch from Wichita, Kansas formed “Citizens for Congressional Reform.”⁴⁰ The principal aim of the organization was to remove Democrats in the U.S. Congress, but the term-limits initiatives included state officials and legislators.⁴¹ That organization eventually morphed into “U.S. Term Limits.”⁴² The Oklahoma and Kansas groups combined to support initiative campaigns in a number of states besides Oklahoma and Kansas.⁴³ The usual method was to create a separate state organization, such as “Citizens for Term Limits,” for initiative work.⁴⁴

III. THE TERM LIMITS HAVE POPULAR APPEAL

If viewed metaphorically, term limits are a political colonoscopy. The process of flushing out incumbents every eight to twelve years would make for a supposedly healthier governmental body, which some citizens found a very attractive concept. However, similar to developing new medical treatments, obtaining term limits was an expensive process.⁴⁵ Oklahomans for Legislative Reform paid \$200,000 for petition circulators to get signatures in 1990.⁴⁶

The idea of term limits for all federal and state offices initially had broad public appeal across the country.⁴⁷ However, term limits did not share the same appeal in Congress because, arguably, incumbent congressional representatives had a strong incentive to remain in their positions.⁴⁸ As a result, all of the reported statewide laws enacting term

38. See Patrick Basham, *Defining Democracy Down: Explaining the Campaign to Repeal Term Limits*, 490 POL’Y ANALYSIS 1, 4 (2003), available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/pa490.pdf>.

39. *Id.* at 1–5.

40. See TONY CARRK, THE KOCH BROTHERS: WHAT YOU NEED TO KNOW ABOUT THE FINANCIERS OF THE RADICAL RIGHT 3, 9 (2011), available at http://www.americanprogressaction.org/wp-content/uploads/issues/2011/04/pdf/koch_brothers.pdf.

41. See generally Peterson, *supra* note 32.

42. *Id.* at 780.

43. *Id.* at 775, 780–81.

44. See generally Citizens for Term Limits, *About Us*, TERMLIMITS.COM, <http://www.termlimits.com/about> (last visited June 8, 2014).

45. See Peterson, *supra* note 32, at 778–81.

46. *Id.* at 778.

47. See Jim Argue, Jr., *Term Limits: Panacea or Snake Oil?*, 28 ARK. LAW. 47, 47 (1994).

48. See Paul J. Spetrini, *RI’s Congressional Delegation Oppose Term Limits*, GOLOCALPROVNEWS (Jan. 29, 2013), <http://www.golocalprov.com/news/ris-congressional-delegation-oppose-term-limits/>.

limits were created by passing state initiatives.⁴⁹ By 1998, the state term-limit initiative movement had really gained traction; there had been successful term-limits initiatives in at least twenty states,⁵⁰ numerous lawsuits,⁵¹ at least five books,⁵² and innumerable law review articles, all about term limits.⁵³ These initiatives became part of state constitutions and statutes, as well as ordinances for cities and counties throughout the country.⁵⁴ Facially this initiative process was attractive because it is politically neutral and initiatives can be used for any purpose by any group.⁵⁵

A. Term Limits are a Conservative Movement

As evidenced by the initial funding for term-limits initiatives, the movement, at least at its start, was a conservative movement. The Oklahoma and Kansas billionaire Koch brothers were, and continue to be, right-wing Republicans.⁵⁶ Their monetary contributions initially formed the foundation for the multi-state term-limits initiatives.⁵⁷ Their contributions were large.⁵⁸

However, term limits continue to be a conservative, Republican cause.⁵⁹ Howard S. Rich, a wealthy Manhattan-based real estate investor, formed U.S. Term Limits with the Koch Brothers in 1992 and has continued as chairman up to the present.⁶⁰ Rich is a prominent Republican on the board of directors of the CATO Institute, along with David Koch,⁶¹ and serves on the board of the Club for Growth.⁶²

49. See generally Brendan Barnicle, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415 (1992).

50. *The Term-Limited States*, NCSL (Jan. 2013), <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx#Repeals>.

51. See generally Peterson, *supra* note 32.

52. See Peterson, *supra* note 32, at 778 n.17, 779 nn.18–22.

53. See generally Peterson, *supra* note 32.

54. See Barnicle, *supra* note 49, at 415–21.

55. See Univ. of S. Cal., *Initiative & Referendum Institute*, INITIATIVE & REFERENDUM INSTITUTE, http://www.iandrinstute.org/statewide_i%26r.htm (last visited June 8, 2014).

56. Carrk, *supra* note 40, at 8.

57. See *id.* at 8–11.

58. *Id.*

59. See Rebecca Shabad, *House GOP Bill Pushes Term Limits*, THE HILL (Feb. 5, 2014, 11:55 AM), <http://thehill.com/blogs/blog-briefing-room/news/197521-house-gop-lawmakers-file-bill-to-impose-12-year-term-limits-on>.

60. *Howard Rich*, NETRIGHTDAILY, <http://algprojects.org/nrd/contributors/howard-rich/> (last visited June 8, 2014); *Who's Who: Key Leaders of Independent Groups*, NPR (Sept. 22, 2008), <http://www.npr.org/templates/story/story.php?storyId=93351993#R>.

61. *Board of Directors*, CATO INST., <http://www.cato.org/board-of-directors> (last visited June 8, 2014).

62. *Board of Directors*, CLUB FOR GROWTH, <http://www.clubforgrowth.org/aboutus/?subsec=0&id=122> (last visited June 8, 2014).

The CATO Institute and Club for Growth are Republican-leaning organizations. The CATO Institute supports term limits.⁶³ A press release by U.S. Term Limits on September 23, 2013 praised Republican leaders in the U.S. Senate and U.S. House of Representatives for supporting the term limits constitutional amendment.⁶⁴ In fact, the organization has released over 200 “praises” of U.S. Senate and U.S. House of Representatives candidates for pledging to support a constitutional term-limits amendment.⁶⁵

The principal objective of the creators and funders of the term-limits movement was to remove long-serving Democrats in Congress. Initially, efforts were focused at amending state constitutions to impose qualifications on U.S. Congress members stricter than the qualifications specified in the Federal Constitution.⁶⁶ However, in 1995, in *U.S. Term Limits, Inc. v. Thornton*, the U.S. Supreme Court held that the term-limits constitutional amendment initiative, adopted in the November 3, 1992 general election by voters in Arkansas, was in violation of several provisions of the U.S. Constitution that exclusively established that federal qualification requirements for serving in Congress are not subject to state modification.⁶⁷ Thus, the supporters of term limits were forced to turn to the states for political reform.⁶⁸

IV. TERM LIMITS VIOLATE FOUR STATE CONSTITUTIONS

There are four states where term limits have been declared unconstitutional by state judiciaries: Massachusetts, Washington, Wyoming, and Oregon.⁶⁹ All four were rulings upon initiative amendments to the state constitutions.⁷⁰ The Washington and Oregon initiatives had been adopted at general elections in 1992.⁷¹ The Massachusetts initiative had

63. CATO INST., CATO HANDBOOK FOR POLICYMAKERS 91–98 (7th ed. 2009), *available at* <http://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2009/9/hb111-8.pdf>.

64. *U.S. Term Limits Praises ID-2 Candidate Bryan Smith for Pledge*, U.S. TERM LIMITS (Sept. 23, 2013), <http://termlimits.org/wp-content/uploads/2012/08/USTL-IDCD2-9-23-13.pdf>.

65. *See* Press Releases, U.S. TERM LIMITS, <http://termlimits.org/news/press-releases/> (last visited June 8, 2014).

66. *See* *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 837–38 (1995).

67. *Id.* The Court was sharply divided. *Id.* at 779. Justice Stevens wrote the majority opinion, which was joined by Justices Kennedy, Souter, Ginsburg and Breyer. *Id.* Justice Thomas dissented joined by Justices Rehnquist, O’Connor and Scalia. *Id.* The opinions in the Supreme Court Reporter occupied 75 pages. *See id.*

68. *See id.* at 838.

69. *League of Women Voters of Mass. v. Sec’y of the Commonwealth*, 681 N.E.2d 842, 847 (Mass. 1997); *Gerberding v. Munro*, 949 P.2d 1366, 1377–78 (Wash. 1998); *Lehman v. Bradbury*, 37 P.3d 989, 1001 (Or. 2002), *Cathcart v. Meyer*, 88 P.3d 1050, 1067 (Wyo. 2004); *Maxfield v. State*, 294 P.3d 895, 903 (Wyo. 2013).

70. *League of Women Voters of Mass.*, 681 N.E.2d at 843; *Gerberding*, 949 P.2d at 1368; *Lehman*, 37 P.3d at 991; *Cathcart*, 88 P.3d at 1055; *Maxfield*, 294 P.3d at 897.

71. *Gerberding*, 949 P.2d at 1368; *Lehman*, 37 P.3d at 992.

been adopted at the general election in 1994.⁷² The initiatives in these five cases were nearly identical in the fact that they had wording that applied to state legislators and state executive officers.⁷³ In three cases, state courts recognized the U.S. Supreme Court decision, holding that term limits could not apply to candidates for Congress.⁷⁴ However, the decisions in Massachusetts, Washington, Oregon, and Wyoming were different from Idaho in one important area. The initiatives for term limits voided by judicial decisions in those four states were similar to the 1994 Idaho initiative except for the fact that there were no references to elected incumbents in counties, cities, and school boards.⁷⁵

It is also relevant to point out the fact that not all states have ruled term-limit laws to be unconstitutional. A report published in 2003 by the CATO Institute stated that term limits were in force as to legislators and executive officers in nineteen states and in 2,890 cities and counties in forty states.⁷⁶

A. Massachusetts

In *League of Women Voters of Massachusetts v. Secretary of the Commonwealth*, a unanimous 1997 opinion by the Massachusetts Supreme Court, the court determined term-limit qualifications for candidates violated Article 48 of the Massachusetts Constitution.⁷⁷ In essence, the court reasoned the legislature could not change qualifications for state officials and an initiative to amend the state constitution could only do what the legislature could do.⁷⁸ Thus, the Massachusetts term-limit initiative violated the Massachusetts constitution.⁷⁹

It is interesting to point out the fact that the Massachusetts term-limits initiative had a provision that allowed an incumbent to run for office after his term expired as a write-in candidate.⁸⁰ The court's opinion characterized this "loophole" as creating a costly and probably impossible task:

72. *League of Women Voters of Mass.*, 681 N.E.2d at 843.

73. *See League of Women Voters of Mass.*, 681 N.E.2d at 843; *Gerberding*, 949 P.2d at 1367–68; *Lehman*, 37 P.3d at 991; *Cathcart*, 88 P.3d at 1055; *Maxfield*, 294 P.3d at 896.

74. The Supreme Court case referred to by the Massachusetts, Washington, and Oregon state courts was *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). *See League of Women Voters of Mass.*, 681 N.E.2d at 845; *Gerberding*, 949 P.2d at 1372; *Lehman*, 37 P.3d at 992.

75. . For excerpted relevant statutory language see: *League of Women Voters of Mass.*, 681 N.E. at 844 ; *Gerberding*, 949 P.2d at 1368; *Lehman*, 37 P.3d at 992; *Cathcart*, 88 P.3d at 1055; *Maxfield*, 294 P.3d at 897–98.

76. Patrick Basham, *Defining Democracy Down: Explaining the Campaign to Repeal Term Limits*, 490 POLICY ANALYSIS 1, 2 (2003) <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa490.pdf>.

77. *League of Women Voters of Mass.*, 681 N.E.2d at 846–47.

78. *Id.*

79. *Id.*

80. *Id.* at 845.

The difficulties confronting a candidate who seeks election as a “sticker” or “write-in” candidate when other candidates’ names are printed on the ballot are substantial. The time, effort, and expense of such a candidacy make the task monumental. The denial of compensation to such a write-in candidate (except a candidate for Governor), if he or she were successful in his or her candidacy, heavily discourages such an official from seeking to run for re-election.⁸¹

Thus, the court found that a candidate's ability to run as a write-in candidate was not an easy task and thus, not a significant loophole.⁸² It is interesting to point out the fact that Idaho's term-limit law had a similar write-in loophole.⁸³

B. Washington

A year later, in 1998, the Washington Supreme Court issued a split decision that gave extensive coverage of the issue, with six justices on the eleven page majority and two justices dissenting in an equal eleven pages.⁸⁴ The majority, in substance, reached the same conclusion as Massachusetts, ruling term limits violated Washington's constitution.⁸⁵ Thus, an initiative seeking term limits was barred by the Washington constitution.⁸⁶ The majority opinion noted, but did not rule upon the suffrage objection similar to what plaintiffs relied upon in *Rudeen*.⁸⁷ The majority, instead, held the initiative was an “unconstitutional attempt to impose statutory qualifications for office” on those prescribed by Washington’s constitution.⁸⁸ However, the dissenting justice closed by stating that all those voters could not be wrong, where “[t]oday, six votes on this court are the undoing of the 1,119,985 votes that Washingtonians cast at the polls in favor of term limits.”⁸⁹

C. Wyoming

Two Wyoming cases similarly found that the qualifications set forth in the Wyoming constitution could not be changed by initiative.⁹⁰ In the November 1992 general election, voters in Wyoming approved a term-limits initiative with the customary wording barring incumbents

81. *Id.*

82. *Id.*

83. *Rudeen v. Cenarrusa*, 38 P.3d 598, 602 (Idaho 2001).

84. *See Gerberding v. Munro*, 949 P.2d 1366, 1366 (Wash. 1998).

85. *Id.* at 1370.

86. *Id.* at 1377–78.

87. *Id.* at 1370, 1377 n.12; *see Rudeen*, 38 P.3d at 598.

88. *Id.* at 1366.

89. *Id.* at 1388.

90. *Maxfield v. State*, 294 P.3d 895, 902 (Wyo. 2013); *Cathcart v. Meyer*, 88 P.3d 1050, 1054 (Wyo. 2004).

from running again after a certain period of time.⁹¹ What followed was an unusual by-play between the Wyoming Supreme Court and the legislature.

The initiative applied to state-elected officials and legislative senators and representatives.⁹² Two state representatives filed suit just as their allowable term expired.⁹³ The Wyoming Supreme Court then ruled that the Wyoming Constitution provided exclusive provisions on incumbency that precluded limitation as against legislators.⁹⁴ The legislature then repealed the provision regarding legislators but re-enacted term limits against state elected officials.⁹⁵ In 2012, Secretary of State Max Maxfield filed a declaratory judgment action seeking to nullify the term-limits restriction that would prevent him from running for re-election in 2015.⁹⁶ The district court certified two issues to the Wyoming Supreme Court, which then ruled that the Wyoming Constitution provision was exclusive and precluded amendment of qualifications.⁹⁷

In answering that question, the Court looked to article 1, section 3 of the Wyoming Constitution, which states:

§ 3. Equal political rights.

Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, *or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.*⁹⁸

However, the Wyoming Supreme Court rejected the invitation to apply the ruling to the gubernatorial office.⁹⁹ Therefore, as of February 1, 2013, term limits were still on the books in Wyoming as against the governor, state auditor, treasurer, and superintendent of public instruction.¹⁰⁰

91. WYO. STAT. ANN. § 22-5-103 (West 1992), *declared unconstitutional by* Maxfield v. State, 294 P.3d 895 (Wyo. 2013).

92. *Id.*

93. *Cathcart*, 88 P.3d at 1054.

94. *Id.* at 1067.

95. *Maxfield*, 294 P.3d at 897–98.

96. *Id.* at 898.

97. *Id.* at 896, 904.

98. *Id.* 902 (emphasis added by the Wyoming Supreme Court).

99. *See id.* at 904.

100. *But see id.* at 897-898 (“[T]he term limit law for statewide elected officials, is unconstitutional with respect to the offices of secretary of state, auditor, treasurer, and superintendent of public instruction . . .”).

D. Oregon

The Oregon case was filed by two state representatives after their declaration of candidacy for election in 2002 had been rejected by the Secretary of State because each representative had already served the maximum term allowed in the Oregon Term Limits Initiative.¹⁰¹ Intervener U.S. Term Limits joined the Oregon Secretary of State in the defense.¹⁰²

As defendants, Oregon and U.S. Term Limits answered that because plaintiffs had waited nine years after passage to file their action, they should be barred by the doctrine of laches.¹⁰³ The Oregon Supreme Court rejected the argument, noting that the representatives had not suffered injury until the Secretary of State rejected their declaration for candidacy.¹⁰⁴

Then, the Oregon Supreme Court voided term limits based upon the Oregon constitutional requirement that such an initiative must relate to only one constitutional change under Oregon's separate-vote requirement.¹⁰⁵ The defendants argued that the interpretation of the Oregon Constitution in *Armatta v. Kitzhaber*¹⁰⁶ needed clarification.¹⁰⁷ However, the Court declined the invitation¹⁰⁸ with wording that, if applied, would have shortened many appellate opinions. The Court stated:

Defendant apparently believes that *Armatta* needs clarification. However, adopting defendant's "clarification" would mean that we potentially were permitting our task under Article XVII, section 1, to degenerate into an endless war of adjectives and adverbs, each battle of which would involve further efforts to explain and elaborate on whichever set of adjectives and adverbs had been used in the next preceding case.¹⁰⁹

Thus, the Oregon Supreme Court ruled term limits to be unconstitutional.¹¹⁰

101. *Lehman v. Bradbury* 37 P.3d 989, 991 (Or. 2002).

102. *See id.* at 989.

103. *Id.* at 993.

104. *Id.* at 993–94.

105. *Id.* at 996 ("The separate-vote requirement . . . focuses upon the form of submission of an amendment, as well as the potential *change* to the existing constitution, by requiring that two or more *constitutional amendments* be voted upon separately.") (quoting *Armatta v. Kitzhaber*, 959 P.2d 49 (Or. 1998)).

106. *Armatta*, 959 P.2d at 49.

107. *Lehman*, 37 P.3d at 996.

108. *Id.*

109. *Id.*

110. *Id.* at 991.

V. PROPOSITION TWO: AN IDAHO INITIATIVE FOR TERM LIMITS

In Idaho, the Secretary of State publishes an Idaho Voters' Pamphlet that sets forth each proposition that will appear on the general election ballot in November of that year.¹¹¹ The arguments for and against each proposition, and rebuttals, are included in the pamphlet.¹¹²

For the November 8, 1994 election, the initiative to impose term limits on elected Idaho officials was called Proposition Two.¹¹³ Arguments in favor of term limits were made by Idahoans for Term Limits,¹¹⁴ a non-profit Idaho corporation succeeded in 1996 by Citizens for Term Limits, the same non-profit Idaho corporation that intervened in *Rudeen*.¹¹⁵

On the side in favor of term limits, the intent was said to be to “put[] Idahoans back in charge of their government.”¹¹⁶ Incumbents were argued to have an unfair advantage because of year-round free publicity and fundraising events.¹¹⁷ In theory, term limits would make incumbents keep in touch with the views of their constituents.¹¹⁸ It was argued that greater citizen participation in government would occur from school district trustees all the way up to members of Congress.¹¹⁹

On the other side, the rebuttal to Proposition Two was made on behalf of the Idaho Association of Counties.¹²⁰ It argued term limits were aimed primarily at Congress, and the United States Supreme Court could strike that portion down.¹²¹ Proposition Two would do “serious and needless harm to hundreds of state and local offices in Idaho for the sake of four congressional offices.”¹²² Proposition Two would, it argued, create a radical departure from the system “used to elect our legislators for over two hundred years.”¹²³ This organization pointed out that it was often difficult to find anyone to run for certain public offices in rural, sparsely populated Idaho.¹²⁴

111. See, e.g., OFFICE OF THE SEC'Y OF STATE, IDAHO VOTERS' PAMPHLET: MAKING ELECTIONS MAKE SENSE, (2012), available at <http://www.sos.idaho.gov/elect/INITS/2012/2012%20Pamphlet.pdf>.

112. See *id.*

113. OFFICE OF THE SEC'Y OF STATE, IDAHO VOTERS' PAMPHLET 6 (1994) [hereinafter Idaho Voters' Pamphlet] (on file with author).

114. *Id.* at 7.

115. See *Rudeen v. Cenarrusa*, 38 P.3d 598, 602, 136 Idaho 560, 564 (2001).

116. IDAHO VOTERS' PAMPHLET, *supra* note 113, at 7.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. IDAHO VOTER'S PAMPHLET, *supra* note 113, at 7.

123. *Id.* at 8.

124. *Id.*

Proposition Two carried easily with 59% of the vote.¹²⁵ Only eight small counties, including Power County, voted against, while 36 counties including all the largely populated counties voted yes.¹²⁶

While previous state initiatives included state legislators and elected executive officers, Idaho cast a wider net.¹²⁷ Proposition Two casted its net wide enough to include elected officials at the city, county, and school board level.¹²⁸

A. The 1996 Initiative

After the U.S. Supreme Court decision that killed term limits against U.S. Senators and Representatives, U.S. Term Limits devised a second initiative that required candidates for Congress and the legislature to make a pledge to support term limits.¹²⁹ If the candidates failed to sign the pledge, the Secretary of State would require “DECLINED TO PLEDGE TO SUPPORT TERM LIMITS” to be printed on the ballot.¹³⁰ This pledge requirement was enacted by initiative in Idaho in 1996.¹³¹

However, the pledge requirement was quickly challenged in Idaho court.¹³² Ten Idaho legislators brought a writ of prohibition to declare the pledge requirement unconstitutional.¹³³ The Idaho Supreme Court declared that the pledge was in violation of the speech and debate clauses of the Idaho and U.S. Constitutions.¹³⁴ However, the portion of the initiative that instructed members of Congress and legislators to support term limits was held to be valid.¹³⁵

B. The 1998 Initiative

In 1998 another initiative by the same pro term-limits group was placed on the ballot and approved in the general election in November

125. *Idaho Initiative History*, OFF. OF THE SECRETARY OF ST. OF IDAHO, <http://www.sos.idaho.gov/elect/inits/inithist.htm> (last visited June 8, 2014).

126. *1994 Idaho General Election – November 8, 1994 Initiative Propositions Vote by County*, OFF. OF THE SECRETARY OF ST. OF IDAHO, <http://www.sos.idaho.gov/elect/abstract/94gnprop.htm> (last visited June 8, 2014).

127. *See State Legislative Term Limits*, U.S. TERM LIMITS, <http://termlimits.org/term-limits/state-term-limits/state-legislative-term-limits/> (last visited June 8, 2014).

128. *Idaho Initiative History*, *supra* note 125.

129. *See* U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995); U.S. TERM LIMITS, U.S. TERM LIMITS AMENDMENT PLEDGE, *available at* http://www.ustermlimitsamendment.org/wp-content/uploads/2010/10/Candidate_Pledge.pdf.

130. Simpson v. Cenarrusa, 944 P.2d 1372, 1374, 130 Idaho 609, 611 (1997).

131. *Id.* at 1373, 610.

132. *Id.* at 1374, 611.

133. *Id.*

134. *Id.* at 1374–76, 611–13.

135. *Id.* at 1376–77, 613–14.

by approximately 55%.¹³⁶ This initiative directed the Secretary of State to print whether or not candidates for congressional office had signed the term limits pledge in election ballots and in the voters' pamphlets.¹³⁷ The initiative required this to take place in two years, starting in 2000.¹³⁸

The 1998 initiative would have only applied to long-time Second District U.S. Representative Mike Simpson, who in the November 7, 2000 general election received an overwhelming vote of 70.7%.¹³⁹ First District U.S. Representative Butch Otter was running for his third term.¹⁴⁰ Neither U.S. Idaho senator was up for election.¹⁴¹

Term limits had been approved by Idaho voters in three consecutive elections in 1994, 1996, and 1998.¹⁴² In 1999, the Idaho Associations of Counties and Cities, facing a probable large turnover of their city and county elected officials, asked their attorney, Jerry Mason, to see if there could be a judicial remedy.

Mr. Mason did extensive research and concluded that a case could be made that the Idaho Constitution had provisions that would nullify term limits on grounds other than qualifications, which did not apply to local elected officials.

VI. POWER COUNTY AND TERM LIMITS COMPLAINT

Mr. Mason invited this author to join him in the potential case, and we began preparing a complaint. For several reasons, Mr. Mason decided to file suit in Power County in American Falls in South Idaho. In Power County, the term-limits initiative had been defeated in 1994.¹⁴³ The elected county officials were about equally divided between Repub-

136. *Idaho General Election Results November 3, 1998*, OFF. OF THE SECRETARY OF ST. OF IDAHO, <http://www.sos.idaho.gov/elect/98result/98gnrslt.htm> (last visited June 8, 2014).

137. *1998 Proposed Ballot Initiatives*, OFF. OF THE SECRETARY OF ST. OF IDAHO, <http://www.sos.idaho.gov/elect/inits/98init04.htm> (last visited June 8, 2014).

138. *See generally id.*

139. *Idaho Secretary of State Election Division: November 7, 2000 General Election Results*, OFF. OF THE SECRETARY OF ST. OF IDAHO, http://www.sos.idaho.gov/ELECT/2000rslt/general/tot_stwd.htm (last visited June 8, 2014) [hereinafter *November 7, 2000 General Election Results*].

140. Jeff Trandhall, Statistics of the Presidential and Congressional Election of November 7, 2000 at 18 (2001), http://clerk.house.gov/member_info/electionInfo/2000election.pdf.

141. *See November 7, 2000 General Election Results*, *supra* note 139.

142. Michael Janofsky, *Idaho Legislature Repeals Term Limit Law, Undoing Voter-Approved Measure*, N.Y. TIMES, Feb 2, 2012, <http://www.nytimes.com/2002/02/02/us/idaho-legislature-repeals-term-limit-law-undoing-voter-approved-measure.html>.

143. The vote was 1,062 yes and 1,345 no. *1994 Idaho General Election – November 8, 1994 Initiative Propositions Vote by County*, SOS.IDAHO.GOV, <http://www.sos.idaho.gov/elect/abstract/94gnprop.htm> (last visited June 8, 2014). In the most recent general election in 1998, Power County had again voted against a Term Limits related initiative: 970 yes and 1,104 no. *1998 Idaho General Election – November 3, 1998 Initiative and Advisory Vote by County*, SOS.IDAHO.GOV, <http://www.sos.idaho.gov/elect/98result/98gninit.htm> (last visited June 8, 2014).

licans and Democrats most of whom had served more than six years.¹⁴⁴ The bipartisanship was best exemplified by Coroner Bud Kelly who had first been elected as a Democrat, but in a successive election failed to file. The Republican party put Kelly on the ballot and he had continued to be elected without opposition.¹⁴⁵

There were other reasons. The Power County docket was not crowded.¹⁴⁶ When this author and Mr. Mason filed our complaint in late February 2000, it was numbered Case No. 12 compared to February numbers in the high hundreds in neighboring Bannock and Bonneville counties.

In order to be assured of complete standing for all levels, the complaint named plaintiffs led by Power County Commissioner Kent Rudeen with seven other county-elected office holders from all over Idaho, including two mayors, two county clerks, two sheriffs, two school trustees, a councilman, a county assessor, a county treasurer, and a county prosecuting attorney.¹⁴⁷

The lead defendants, Secretary of State Pete Cenarrusa and Power County Clerk Christine Steinlich, were named as each having power to prepare ballots for an election.¹⁴⁸ Seven county and city clerks and two school district clerks also named as defendants, opposite named plaintiffs in the same county, city and school district.¹⁴⁹

For the named county, city, and school district defendants, their attorneys, none of who participated further, made nominal appearances.¹⁵⁰ The defense was carried by the Deputy Attorney General Matthew J. McKeown acting in his representative capacity for Secretary of State Cenarrusa.¹⁵¹

A. Preliminary Injunction Sought

Plaintiffs moved for a preliminary injunction to suspend term limits to allow filing in a race for county commissioners in the year 2000 for the primary and general elections.¹⁵² Citizens for Term Limits, represented by attorney Peter C. Erbland was allowed to intervene on the side of defendants. On March 9th, prior to the argument on the motions for preliminary injunction, Judge Smith allowed a hearing of witnesses

144. See generally Ben Ysursa, *Elections, Campaign Disclosure and Lobbyists*, IDAHO SEC'Y OF ST., <http://www.sos.idaho.gov/elect/results.htm> (last visited June 8, 2014).

145. Supplemental Reps. Tr. on Appeal at 124, Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598 (2001) (No. 26975-6) [hereafter Transcript].

146. See generally Rudeen, 136 Idaho at 560-71, 38 P.3d at 598-609.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. Rudeen, 136 Idaho at 564, 38 P.3d at 602.

affected by term limits.¹⁵³ The plaintiffs' objective was to put a human face upon office holders at all levels where they would be impacted.¹⁵⁴ Nineteen witnesses involved in the affected office-holder categories testified.¹⁵⁵

B. Local Officials Impacted

The testimony of local officials impacted by term limits shows why term limits were unsuccessful in Idaho's various election districts. For example, Benewah County Commissioner Jack Buell was first elected in 1974.¹⁵⁶ Buell's business includes a large fleet of trucks and mechanics.¹⁵⁷ It has been Buell's practice in the twenty-six years of service to maintain and repair all county trucks at no cost.¹⁵⁸ Another official, Vernon Newby, had been a trustee in Coeur d'Alene School District 271 for twenty years.¹⁵⁹ Newby described trusteeship as a learning process that never finished.¹⁶⁰ Newby had won five contested elections by margins ranging from five votes to seventy votes.¹⁶¹ Newby estimated his trustee volunteer time was ten to twenty hours per week.¹⁶²

Yet another official, Blaine County Sheriff Jerry (Walt) Fleming, had been sheriff since 1987.¹⁶³ There were 1.2 million visitors' days in the most recent year in the Sun Valley Resort area.¹⁶⁴ Fleming had used his contacts developed with Washington, D.C., Los Angeles, Scotland Yard, and elsewhere.¹⁶⁵ These contacts resulted in one million dollars coming to Blaine County for law enforcement.¹⁶⁶

The longest office holder was Chubbuck Mayor John Cotant who had first been elected as a write-in candidate thirty-one years earlier.¹⁶⁷ Chubbuck's population had grown from 1,100 to 10,500.¹⁶⁸ No other candidate had run against Cotant in recent years.¹⁶⁹

Another official, Harley Hinshaw, had been in the Valley County Assessor's office since 1981 and had been appointed county assessor in 1994.¹⁷⁰ Valley County encompasses large areas of recreation land,

153. *See generally* Transcript, *supra* note 145.

154. *Id.*

155. *Id.*

156. *Id.* at 36.

157. *Id.* at 36-39.

158. *Id.* at 39.

159. *See generally* Transcript, *supra* note 145, at 50-59.

160. *Id.*

161. *Id.*

162. *Id.* at 53, 55, 57.

163. *Id.* at 60, 61.

164. *Id.* at 63.

165. *See generally* Transcript, *supra* note 145, at 72.

166. *Id.* at 73.

167. *Id.* at 83-84.

168. *Id.* at 84.

169. *Id.* at 94.

170. *Id.* at 157-58.

which had gone in assessed valuation from \$750,000 in 1981 to \$1,411,000.¹⁷¹ By 2000, appeals to the county commissioners of the assessed values were high, reaching 450 in 2000.¹⁷² Hinshaw gave great importance to “institutional memory,” which would be lost if term limits barred the election of other commissioners, clerks, treasurers, coroners, prosecutors, and him in Valley County.¹⁷³

Duane Smith had been Minidoka County Clerk since he had been elected in 1982 after defeating the incumbent who had been a clerk for twenty years.¹⁷⁴ Smith had been past president of the Idaho Association of Counties, the Idaho Association of County Recorders and Clerks, and the National Association of County Recorders and Clerks.¹⁷⁵

Philip Brown, prosecuting attorney for Gooding County, had gone to work six days a week for five years, virtually without vacations.¹⁷⁶ There were only five other attorneys in Gooding County, none of whom wanted to be the prosecuting attorney.¹⁷⁷

Since 1987 Armand Eckert, a farmer, had been a trustee of the Buhl School Board, running five times without opposition.¹⁷⁸ At time of testimony, Eckert was president of the Idaho School Board Association.¹⁷⁹ Eckert described being trustee “. . . as a continual learning process” and for a voluntary unpaid position, it could be very expensive.”¹⁸⁰

In all, nineteen witnesses testified ranging from officials in Coeur d’Alene in the north to officials holding positions in Bear Lake County in the south.¹⁸¹ All but one would be barred from their next scheduled election by term limits.¹⁸²

Argument about the preliminary injunction immediately followed and continued for two and half hours.¹⁸³ It was not so much argument as dialogue where Judge Smith would pose questions that Deputy Attorney General Matthew McKeon for the Secretary of State, Peter Erbland for Citizens for Term Limits, Mr. Mason, and the author would try to answer.¹⁸⁴

171. *See generally* Transcript, *supra* note 145, at 162.

172. *Id.* at 163.

173. *Id.* at 165–68.

174. *Id.* at 204.

175. *Id.* at 206.

176. *Id.* at 232.

177. *See generally* Transcript, *supra* note 145, at 232. .

178. *Id.* at 246–48.

179. *See id.* at 246.

180. *Id.* at 250, 257.

181. *See generally id.*

182. Valerie Hoyberg had been first elected as a Power County Commissioner in 1998. *See generally* Transcript, *supra* note 145, at 266–67.

183. *Id.* at 292–392.

184. *Id.*

Judge Smith's questions covered all the issues raised in the respective briefs, but also went far beyond reflecting his intense study of the Idaho Constitutional convention record.¹⁸⁵

C. Preliminary Injunction Granted

Judge Smith issued his twenty-seven page Memorandum Decision and Order re: Preliminary Injunction a week later.¹⁸⁶ Judge Smith ruled that the Idaho Constitution granted a fundamental right of suffrage.¹⁸⁷ The ruling included findings that the right to access the ballot is part of the right of suffrage, and that a candidate had the constitutional right to decide that his name be on the ballot in the column of the party of his choice.¹⁸⁸

The order suspended the effect of term limits on all county commissioners.¹⁸⁹ All government officials were ordered to accept declarations of candidacy for county commissioners until March 1, 2001.¹⁹⁰ After the decision, Secretary of State Cenarrusa issued an order to all county clerks to allow all five barred county commissioners to file and run.¹⁹¹

D. Judge Smith Grants Summary Judgment

All parties moved for summary judgment.¹⁹² On August 17, 2000, Judge Smith in American Falls held a four-hour hearing.¹⁹³ On August 23, 2000, Judge Smith granted summary judgment to plaintiffs:

Allowing the term limits candidates for these public offices to be changed at the whim of the majority of the legislature and/or the people serves no legitimate purpose. The lives and fortunes of public servants are at stake here. The future of county, school, and city government may also be at stake. That interest should not be subject to the winds of change in political thought in this state and the enactment/repeal of the law (given that change of thought).¹⁹⁴

As was abundantly clear to the Court from the testimony given in this matter, knowing what to do and how to do it in these county, city,

185. *See id.* at 291–391.

186. *See generally* Rudeen v. Cenarrusa, No. CV00-00012 (D. Idaho) (order granting preliminary injunction) [hereinafter Preliminary Injunction].

187. *Id.* at 8–10, 18.

188. *Id.* at 18.

189. *See generally id.*

190. *Id.* at 3–4.

191. *Id.* at 23–24. Secretary of State Cenarrusa was subsequently in the referendum campaign in 2002 featured by opponents of Term Limits as a reason for rejecting Term Limits. *See Defining Democracy, supra* note 22, at 10–14. By 2002, Cenarrusa had served as Secretary of State for thirty-five years.*Id.*

192. *See* Rudeen v. Cenarrusa, 136 Idaho 560, 564, 38 P.3d 598, 602 (2001).

193. *See generally id.*

194. Rudeen v. Cenarrusa, No. CV00-00012 (D. Idaho August 23, 2000).

and school offices (gained from experience in office) is helpful to democracy and to the State of Idaho (its counties, cities, and school).¹⁹⁵ Thus, Judge Smith granted summary judgment to the plaintiffs.¹⁹⁶

In response, the defendants appealed.¹⁹⁷ Four Republican legislators moved to intervene and sought to expand the appeal:

On September 26, 2000, a petition for intervention was granted, allowing Bruce R. Newcomb, Robert L. Geddes, Wayne Hurst and Rhett M. Price (Newcomb) to intervene as respondents, extending this appeal to cover the constitutionality of the remaining provisions of the Term Limits Act, those provisions applicable to state legislators and state-elected officials.¹⁹⁸

Thus, the four Republican legislators were allowed to intervene, extending the appeal to cover the constitutionality of the whole Term Limits Act.¹⁹⁹

E. Supreme Court Reverses

Argument was held before the Idaho Supreme Court in Boise on November 2, 2001.²⁰⁰ The spacious courtroom behind the attorneys was filled with legislators, state executives and staff all in support of the respondents.²⁰¹

On December 13, 2003, in a unanimous opinion, Judge Smith's decision was reversed.²⁰² Chief Justice Trout, writing the opinion, gave a different interpretation of the Idaho Constitution:

Moreover, there is Idaho authority, dating to the time of the constitutional convention, indicating that the right of suffrage and the right to hold office are two separate acts. In 1889, the same year as the convention, the Supreme Court of the Idaho Territory noted that the qualifications of candidates and voters could be prescribed by the Territories, subject to the qualifications of sections 1851 and 1860 of the Revised Statutes of the United States that: "(1) The right of suffrage and of holding of office shall be exercised only by citizens of the United States." . . . We hold that while the right of suffrage might be broader than

195. *Id.*

196. *Id.*

197. *Rudeen v. Cenarrusa*, 136 Idaho 560, 564, 38 P.3d 598, 602 (2001).

198. *Id.* at 602.

199. *Id.*

200. *See generally* *Rudeen v. Cenarrusa*, 136 Idaho 560, 38 P.3d 598 (2001).

201. *Id.*

202. *Id.* at 604–09. Judge Smith has since been appointed as the second judge from Idaho to serve on the Ninth Circuit Court of Appeals. *The Judges of this Court in Order of Seniority*, U.S. COURTS FOR THE NINTH CIRCUIT (Apr. 2014), http://www.ca9.uscourts.gov/content/view_seniority_list.php?pk_id=0000000035.

simply the right to vote, it is not so broad that it encompasses the right to hold office.²⁰³

Thus, the Court reversed Judge Smith's opinion.²⁰⁴

In December of 2001, when the Idaho Supreme Court's decision on appeal was issued, time was running out on all of the Republican leaders in the legislature.²⁰⁵ They all would be barred from running in the next election.

VII. LEGISLATURE COMMENCES REPEAL OF TERM LIMITS

In January of 2002, the legislature took unusual action. It repealed term limits.²⁰⁶ This calls to mind Kurt Veil's September Song: "It's a Long Ways from May to December."²⁰⁷ It was December. The chariot that had been delivered to the Republicans by initiative in 1994 would soon turn into a pumpkin, which would not let them run in the next election.²⁰⁸

In 2000, the clock struck midnight for long-term county officers. In two more years, time would have run out on most long-terms in the legislature, state and city elected offices, and school board positions.

The legislative leadership was well aware of the *Rudeen* lawsuit. Four of the Republican leaders, all of whom would have been term-limited, intervened in the appeal.²⁰⁹

The Idaho Supreme Court decision in *Rudeen v. Cenarrusa*, was announced on December 13, 2001.²¹⁰ The Speaker of the House Bruce Newcomb, with two other representatives, presented to the House Senate Affairs Committee a bill to repeal term limits on January 14, 2002, which was printed as HB 425.²¹¹ Subsequently two lengthy hearings ensued, the first before the House State Affairs Committee on January 21st, followed by a hearing before the Senate State Affairs Committee

203. *Id.* at 604–605 (quoting *Wooley v. Watkins*, 2 Idaho 555, 562, 22 P.102, 110 (Idaho Terr. 1889)). The Court stated the “[r]ight of ‘suffrage’ is the right of a man to vote for whom he pleases.” *Id.* at 604. However, the court stated “[a] national search of the case law reveals no authority to interpret the meaning of the word suffrage so broadly as to include the right to hold office.” *Id.* Based upon this reasoning, the court held “that while the right of suffrage might be broader than simply the right to vote, it is not so broad that it encompasses the right to hold office.” *Id.* at 605.

204. *Id.*

205. *See supra* Part II.

206. Michael Janofsky, *Idaho Legislature Repeals Term Limit Law, Undoing Voter-Approved Measure*, N.Y.TIMES, Feb. 2, 2002, <http://www.nytimes.com/2002/02/02/us/idaho-legislature-repeals-term-limit-law-undoing-voter-approved-measure.html>.

207. ApekatoFilm, *Kurt Weill Duo, September Song*, YOUTUBE (June 25, 2011), <http://youtu.be/boeHRC-wrxU>.

208. *See supra* Part II.

209. *See Rudeen v. Cenarrusa*, 136 Idaho 560, 38 P.3d 598 (2001).

210. *Id.*

211. *House Bill No. 245: Daily Data Tracking History*, IDAHO LEGISLATURE, <http://legislature.idaho.gov/legislation/2002/H0425.html> (last visited June 8, 2014).

on a January 28th.²¹² Interest was high. Fifty-five people signed up to testify before the house committee, and forty-one signed up to testify before the senate committee.²¹³

A. Hearing Witnesses Support Repeal

Testimony in both hearings was approximately two to one in support of repeal.²¹⁴ Individuals representing school boards, school districts, and teachers were adamantly opposing limitations that would prevent trustees from remaining in these unpaid positions.²¹⁵ Sharon Perry, representing the Idaho School Board Association, and Armand Eckert, representing the Buhl School District, each stressed the unpaid, volunteer time of trustees, and the importance of continuity, experience, and knowledge.²¹⁶

Ken Harward, for the Idaho Association of Cities, testified to being at a conference in 1998 in San Jose where a representative of U.S. Term Limits stated that term limits was not needed in Idaho because of high turnover, but Idaho was an easy state to pass an initiative.²¹⁷

Don Morgan, the Idaho spokesperson for Citizens for Term Limits, stressed that the people of Idaho had voted three times for term limits, as had the Idaho Supreme Court.²¹⁸ If repeal passed, Morgan threatened to bring another initiative in the fall.²¹⁹

In the hearing before the Senate State Affairs Committee, there were a number of witnesses who had not testified in the house, but the message was pretty much the same; witnesses expressed the pros and cons of term limits.²²⁰ The minutes reflect lengthy exchanges of committee members with Dennis Mansfield, representing the Voice of the People in Opposition to HB 425, and with Jerry Mason, in support of HB 425.²²¹

212. See *Hearing on RS11510 Before the H. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002); *Repeal of Term Limits: Hearing on HB0425 Before the S. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002).

213. See *Hearing on RS11510 Before the H. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002); *Repeal of Term Limits: Hearing on HB0425 Before the S. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002).

214. See *Hearing on RS11510 Before the H. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002); *Repeal of Term Limits: Hearing on HB0425 Before the S. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002).

215. *Hearing on RS11510 Before the H. Comm. on State Affairs*, 2002 Leg., 56th Sess. 2 (Idaho 2002).

216. *Id.* at 2.

217. *Id.* at 5.

218. *Id.* at 2.

219. *Id.*

220. See *Repeal of Term Limits: Hearing on HB0425 Before the S. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002).

221. *Id.* at 4, 6-7.

Both committees voted to pass repeal, which the House did on January 20th, fifty to twenty, and the Senate did on January 30th, twenty-seven to eight.²²² Governor Dirk Kempthorne vetoed HB 425 on January 31st. The next day, February 1st, the House and Senate each voted to override the veto by nearly identical margins as having been cast on January 31st.²²³ The governor's veto had no effect and HB 425, as the first session law written in 2002, was declared effective February 1, 2002 under the emergency clause.²²⁴

Following the Supreme Court reversal and before the introduction of HB 425, an Idaho Statesmen editorial on December 19, 2001 estimated that "60 percent of local officials were scheduled to be term-limited out of office in 2002, including 30 sheriffs, 44 county commissioners, 29 county clerks, 24 county treasurers, 34 coroners, and 27 assessors."²²⁵

B. Republicans Switch to Oppose Term Limit

In Idaho, in the lawsuit in 2000 and repeal of 2002, the political parties generally switched sides on term limits.²²⁶ In the hearing before Judge Smith, the county officials testifying against term limits included many more Republicans than Democrats.²²⁷ The legislative repeal and the override of the veto came from a Republican legislature; sixty-one out of seventy of representatives and thirty-two out of thirty-five Senators were Republican.²²⁸ Senate Democratic Minority Leader Clint Stennett and Democratic Representative Tom Loertscher voted to sustain the veto.²²⁹

In April of 2003, University of Denver Professor of Political Science Daniel A. Smith wrote an analysis of the repeal describing the action as follows:

As a result of the legislature's brash action, Idaho became the first state to completely strike down citizen-imposed term limits through legislative action. Local and national groups advocating term limitations, in disbelief of the audacity of the legislature

222. See *Year 2002 Proposed Referendum*, IDAHO SECRETARY OF ST., <http://www.sos.idaho.gov/elect/inits/02init06.htm> (last visited June 8, 2014) [hereinafter *Idaho Initiative History*] (11/5/2002: A "[r]eferendum reinstating term limits for elected state, county, municipal and school district officials through ballot access restrictions.").

223. *Id.*

224. *Id.*

225. Daniel A. Smith, *Overturing Term Limits: The Legislature's Own Private Idaho?*, 36 POL. SCI. & POL. 215, 218 (2003).

226. Not all Idaho Representatives switched sides. For example, Idaho First District Republican representative Raul Labrador, who initially opposed term limits, is quoted in a Rich press release as now supporting term limits after seeing how Congress works to place re-election first. Howard Rich, *Term Limits—Not Totalitarianism*, NETRIGHTDAILY (Oct. 3, 2011), <http://netrightdaily.com/2011/10/term-limits-not-totalitarianism/>.

227. See Transcript, *supra* note 145 (City and School Board are non-partisan elections).

228. Hoffman, *supra* note 11.

229. Hoffman, *supra* note 11, fn. 84.

and concerned that several other state legislatures might follow Idaho's lead, were understandably livid.²³⁰

Though representatives had to backtrack, the repeal meant many representatives could stay in office.²³¹

The legislative repeal of term limits was not repealed by referendum.²³² In July of 2002, enough signatures were collected on a referendum to re-enact term limits.²³³ However, the ballot initiative did not receive enough signatures to be presented to voters.²³⁴ Thus, once popular term limits, were no longer in place in Idaho.

VIII. MAJOR FINANCIAL SUPPORT FOR TERM LIMITS

U.S. Term Limits has financed initiative circulation and initiative campaigns in many states. A current status report from U.S. Term Limits recites:

Term limits have been placed on 15 state legislatures, eight of ten largest cities in America adopted Term Limits for their city councils and/or mayor, and 37 states place term limits on their constitutional officers.²³⁵

Thus, term limits are still in place in many locations.

These are the reported political campaign contributions in Idaho received by Citizens for Term Limits in 1994 and 1998 and then by the Committee to Repeal the Repeal in 2002. The funds came primarily from U.S. Term Limits. The 1994 initiative circulation and pro initiative campaign cost \$82,204.54.²³⁶ The 1998 initiative circulation and pro initiative campaign cost \$518,691.84.²³⁷ The 2002 referendum circulation

230. Smith, *supra* note 225, at 215.

231. Smith, *supra* note 225, at 215.

232. See *Idaho Initiative History*, *supra* note 222. (11/5/2002: A "[r]eferendum reinstating term limits for elected state, county, municipal and school district officials through ballot access restrictions.").

233. *Id.* (stating "this referendum will enact ballot access restrictions that will have the practical effect of imposing term limits on state elected officeholders, state legislative elected officeholders, county elected officeholders, and municipal elected officeholders and school board members.").

234. See *id.*; Smith, *supra* note 225, at 219 (stating "[i]ncidentally, a proposed 2002 statutory ballot initiative calling for term limits for state legislative and executive officials but exempting local officeholders did not qualify for the ballot.").

235. *About Term Limits*, U.S. TERM LIMITS, <http://termlimits.org/about/> (last visited June 8, 2014).

236. SECRETARY OF STATE, 1994 COMMITTEE SUMMARY REPORT 1 (1999), <http://www.sos.idaho.gov/eid/pdf/94cmtsum.pdf>.

237. SECRETARY OF STATE, 1998 *Committee Summary Report* p. 5 (Dec. 3, 1999), <http://www.sos.idaho.gov/eid/pdf/98cmtsum.pdf>.

and general election campaign cost \$240,000.²³⁸ The litigation costs are not discoverable, but must have been substantial.

The Koch brothers have gone way beyond putting their money where their mouth was in creating the idea of countrywide term limits.²³⁹ U.S. Term Limits, which they created, has received support from Howard Rich,²⁴⁰ CATO Institute, and others, but the Koch brothers are the main continuing financial supporter.²⁴¹

U.S. Term Limits is still a full-time, active organization in Fairfax, Virginia, which acts to promote a constitutional term-limit amendment and praises candidates who have taken a U.S. Term Limits Amendment Pledge.²⁴² U.S. Term Limits is actively soliciting pledges from congressional candidates to serve only three terms.²⁴³ For example, Idaho First District U.S. Representative Helen Chenoweth signed such a pledge and did not seek a fourth term.²⁴⁴

IX. CONCLUSION

238. COMMITTEE TO REPEAL THE REPEAL, CAMPAIGN FINANCIAL REPORT: Summary Page 12, (May 12, 2012), available at http://www.sos.idaho.gov/elect/finance/2002/PrePrimary/Repeal_the_Repeal.pdf.

239. Peterson, *supra* note 33, at 788–80 (As an example, contributions in Nebraska from U. S. Term Limits were \$80,404 in 1992, \$219,385 in 1994, and \$167,742 in 1996. U. S. Term Limits contributed \$280,000 to the California campaign opposing repeal of term limits.).

240. See Russ Choma, *Rich Rewards: One Man's Shadow Money Network*, OPENSECRETSBLOG, (June 19, 2012, 2:59 PM), <http://www.opensecrets.org/news/2012/06/rich-rewards-one-mans-shadow-money-network.html>.

241. Dan Morain & James Bornemeier, *Secretive Group is Major Supporter of Term Limits: Election: Organization, Which Has Ties to Libertarian Movement, Has Given \$678,000 to Promote Prop. 164*, L.A. TIMES, October 28, 1992, http://articles.latimes.com/1992-10-28/news/mn-1004_1_u-s-term-limits. Koch Industries, owned wholly by Charles and David Koch, is the umbrella corporation for what Fortune magazine terms, “[T]he vast private business empire.” Christopher Leonard, *The New Koch*, FORTUNE, Dec. 20, 2013, at 60–67. Koch Industries’ revenues have doubled in the last decade to \$115 billion. *Id.* at 62. The Kochs have sponsored another conservation political action group, “Americans for Prosperity” to which they gave \$122 million in 2012. *Id.*

242. Press Release, U.S. Term Limits, U.S. Term Limits Praises ID-2 Candidate Bryan Smith for Pledge, (Sept. 23, 2013), available at termlimits.org/wp-content/uploads/2012/08/USTL-IDCD2-9-23-13.pdf; Press Release, U.S. Term Limits, U.S. Term Limits Seeks Clarification on Murky Anti-Term Limits Vote (Nov. 11, 2013), available at termlimits.org/wp-content/uploads/2013/11/November-11-AR-Survey-Press-Release.pdf; *The US Term Limits Amendment Pledge*, U.S. TERM LIMITS AMENDMENT, <http://www.ustermlimitsamendment.org> (last visited Apr. 30, 2014).

243. *The US Term Limits Amendment Pledge*, U.S. TERM LIMITS AMENDMENT, http://www.ustermlimitsamendment.org/wp-content/uploads/2010/10/Candidate_Pledge.pdf.

244. See U.S. House of Representatives: History, Art & Archives, *CHENOWETH-HAGE, Helen P.*, HOUSE. GOV. [http://history.house.gov/People/Listing/C/CHENOWETH-HAGE,-Helen-P--\(C000345\)/](http://history.house.gov/People/Listing/C/CHENOWETH-HAGE,-Helen-P--(C000345)/).

The legislative repeal of term limits is without reported precedent. The minutes of the Idaho House and Senate hearings on repeal make little mention of *Rudeen v. Cenarrusa*.²⁴⁵ However, the Republican leadership was thoroughly familiar with the lawsuit, and the legal reasoning behind the lawsuit. Rejection by the Idaho Supreme Court on appeal made repeal the only method for that leadership to avoid being banned from re-election in the 2004 general election. This banning would have included all Republican senators and representatives who would have served for more than eight years. The actions of the Idaho legislature give a clear picture of the very dubious prospects of any larger U.S. constitutional term-limit amendment ever being passed by Congress. Since incumbents, all of whom will have served more than three terms hold the leadership of both parties in the United States Senate and House of Representatives political hari-kari is highly unlikely.

245. See generally *Repeal of Term Limits: Hearing on HB0425 Before the H. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002); *Repeal of Term Limits: Hearing on RS11510 Before the H. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002); *Repeal of Term Limits: Hearing on HB0425 Before the S. Comm. on State Affairs*, 2002 Leg., 56th Sess. (Idaho 2002).

