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**Proposition 28:
The Legislative Term Limits Reform Act.**

Initiative Constitutional Amendment.

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I. EXECUTIVE SUMMARY

Proposition 28, the Legislative Term Limits Reform Act,¹ is a constitutional amendment proposed by “Californians for a Fresh Start.”² The proposition would amend the current term limit rules as applied to California senators and assemblymembers.³ The current term limit rules were established in 1990 under Proposition 140 and limit the number of terms that state representatives may serve in their respective branch.⁴ Currently, members of the California State Assembly are limited to three two-year terms and members of the California State Senate are limited to two four-year terms.⁵ Under this system, a legislator can serve a maximum of fourteen years in the Capitol.⁶

Proposition 28 replaces the separate eight and six-year term limits on future state senators and assemblymembers, respectively, with a twelve-year limit that can be served in either the Senate, the Assembly, or a combination of both.⁷ If approved, these constitutional changes will only apply to those legislators first elected after the passage of the measure.⁸ Legislators elected before the measure is passed will continue to be subject to existing term limits.⁹

A “yes” vote on Proposition 28 will reduce the total number of years a California legislator can serve in the state legislature from fourteen years to twelve years.¹⁰ However, it would permit legislators to serve these twelve years in either the California State Senate, the California State Assembly, or a combination of both.¹¹ A “no” vote means that the current law, which limits California assemblymembers to three two-year terms and California senators to two four-year terms, will remain in place.¹²

II. BACKGROUND AND EXISTING LAW

a. Proposition 140

In 1990, voters passed Proposition 140 enacting the current term limit laws through a constitutional initiative.¹³ Under the proposition, California voters limited assemblymember

¹ California Secretary of State, Text of Proposed Laws - Proposition 28, *available at* <http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm> [hereinafter Text of Proposition 28].

² Press Release, L.A. Chamber of Com., “Fresh Start” for Term Limits Submits More than 1,050,000 Signatures in Bid to Qualify Ballot Initiative (April 22, 2010), <http://www.lachamber.com/news/2010/04/22/press-release/fresh-start-for-term-limits-submits-more-than-1-050-000-signatures-in-bid-to-qualify-ballot-initiative/> [hereinafter Fresh Start].

³ Text of Proposition 28, *supra* note 1.

⁴ California Secretary of State, California Ballot Pamphlet (Nov. 1990), http://library.uchastings.edu/ballot_pdf/1990g.pdf.

⁵ CAL. CONST. art. IV, § 2.

⁶ *Id.*

⁷ Text of Proposition 28, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ California Secretary of State, California Ballot Pamphlet (Nov. 1990), http://library.uchastings.edu/ballot_pdf/1990g.pdf.

service to six years (three two-year terms) and senator service to eight years (two four-year terms).¹⁴ The law also banned legislators from returning to the Senate or Assembly once their respective limits have been reached.¹⁵

b. Initiatives Addressing Term Limits Since Proposition 140

Since the enactment of Proposition 140, reformers have attempted to pass two other ballot measures. Both initiatives, Proposition 45 in 2002 and Proposition 93 in 2008, failed.

Proposition 45 (2002)

Proposition 45 would have allowed state legislators to run for re-election and serve for four years beyond the limits allowed by Proposition 140.¹⁶ If passed, registered voters in legislative districts could submit petition signatures that would have allowed their current legislator to serve above the maximum allowed by Proposition 140.¹⁷ Voters could exercise this option only once per legislator in the district they most recently served.¹⁸ Proposition 45 lost with 57.7% of voters opposed.¹⁹

Proposition 93 (2008)

Proposition 93 would have allowed state legislators to remain up to twelve years in their current chamber.²⁰ The twelve-year period was longer than the period allowed under Proposition 140 for a representative's respective house, but two years shorter than the total time allowed in the legislature.

Proposition 93 was very similar to the current Proposition 28 proposal. Like Proposition 28, Proposition 93 would have allowed a legislator to serve twelve consecutive years in the house to which they were elected and reduced the total amount of time a person may serve in the state legislature from fourteen years to twelve years.²¹ However, Proposition 93 did not take into account the prior years of service—in either house—that the legislator had already served.²² Consequently, voters saw the law as self-serving for the legislators already sitting in the Assembly and Senate because they would have been able to serve more years than their predecessors.²³ As a result of the “disingenuous gambit by some of the state's most powerful elected officials to retain control and extend their longevity,” many voters were not persuaded by

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ California Secretary of State, Voter Information Guide 26 (Mar. 2002), *available at* http://www.sos.ca.gov/elections/viguide_pe02/bp_pe02.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ California Secretary of State, Statewide Summary for Ballot Measures 126 (Mar. 2002), *available at* <http://www.sos.ca.gov/elections/sov/2002-primary/ssov/prop-sum.pdf>.

²⁰ California Secretary of State, Voter Information Guide, Proposition 93 Summary (Feb. 2008), *available at* http://www.voterguide.sos.ca.gov/past/2008/feb/title_sum/prop_93_title_sum.html.

²¹ *Id.*

²² *Id.*

²³ *Id.* "Proposition 93 has a special loophole that benefits 42 incumbent politicians who are termed out by giving them more time in office. Some politicians will even be able to serve up to 20 years in office—just like before we passed term limits." *Id.*

this attempt to reform term limits.²⁴ Although the margin was closer than Proposition 45, Proposition 93 still lost with 53.6% of voters opposed.²⁵

III. ROAD TO THE BALLOT

As noted above, “Californians for a Fresh Start” sponsored Proposition 45. The group is a coalition of both Southern California business and labor interests that includes the Los Angeles County Federation of Labor and the Los Angeles Chamber of Commerce.²⁶ The proponents hired Kimball Petition Management (KPM) to collect signatures. KPM received \$1,424,087 for their work.²⁷ The proponents hoped to qualify the measure for the November 2010 ballot, but were unable to validate the qualifying amount of signatures required in time.²⁸ As a result, the measure was moved to the next statewide election.

According to *Los Angeles Times* reporter Patrick McGreevy, the impetus behind Proposition 28 stems from a state legislative exemption given to a Southern Californian real estate developer.²⁹ In September of 2009, the legislature granted Majestic Realty (headed by billionaire Ed Roski) a California Environmental Quality Act (CEQA) exemption to build a new football stadium for a future Los Angeles team.³⁰ Two months after the exemption was granted, Majestic Realty made the first major contribution to Californians for a Fresh Start.³¹ Majestic Realty donated \$300,000, which was likely used to collect the 694,000 signatures to qualify the measure for the ballot.³²

Ronni Levine, leader of the group Citizens Against the Stadium, said Proposition 28 was “a way of returning a favor” for the football stadium’s legislative environmental exemption.³³ However, Mr. Levine’s “back scratching” argument fails to recognize that the proposition does not benefit current legislators.³⁴ California’s current serving legislators must carry out their terms under the limits set in Proposition 140.³⁵

As of March 30, 2011, Californians for a Fresh Start has raised \$2,101,918.00.³⁶ These donations have come primarily from Southern California business interests.³⁷

²⁴ Editorial, *Proposition 93: Term Limits Shift Too Shifty*, RECORDNET.COM, Jan. 28, 2008, http://www.recordnet.com/apps/pbcs.dll/article?AID=/20080128/A_OPINION01/801280308/-1/A_OPINION06.

²⁵ California Secretary of State, Statewide Summary for Ballot Measures, Supplement to the Statement of Vote 5 (Feb. 2008), available at http://www.sos.ca.gov/elections/sov/2008_primary/ssov/ballot_measures_all.pdf.

²⁶ Fresh Start, *supra* note 2.

²⁷ Campaign Finance Report, Californians For a Fresh Start, a Coalition Of Business, Businesspersons, and Working Men and Women (Dec. 18–Mar. 30, 2011), <http://calaccess.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1322596&view=expenditures> [hereinafter Campaign Finance Report].

²⁸ Torey Van Oot, *Term Limits Measure Unlikely to Make November Ballot Deadline*, SAC. BEE, (June 16, 2010, 5:42PM).

²⁹ Patrick McGreevy, *After Win in Sacramento, L.A. Football Stadium Developer Backs Easing of Term Limits*, L.A. TIMES (Dec. 30, 2009, 11:28AM) [hereinafter McGreevy].

³⁰ James Wagner, *Objections to NFL Stadium Exemption Rise as Possible Vote Nears*, SAN GABE. V. TRIB. (Sept. 3, 2009, 4:25 PM).

³¹ McGreevy, *supra* note 29.

³² *Id.*

³³ *Id.*

³⁴ Text of Proposition 28, *supra* note 1.

³⁵ *Id.*

³⁶ Campaign Finance Report, *supra* note 27.

³⁷ *Id.*

IV. PROPOSED CHANGES TO EXISTING LAW

Proposition 28 would amend Section 2 of Article IV of the California Constitution.³⁸ It would add the language “during her or his lifetime a person may serve no more than 12 years in the Senate, the Assembly, or both, in any combination of terms.”³⁹ This lifetime ban is similar to the current lifetime ban imposed on legislators after they have served fourteen years in the Capitol⁴⁰

This subdivision will only apply to those members of the Senate or the Assembly who are elected to the legislature for the first time after the effective date of his subdivision.⁴¹ Members of the Senate or Assembly elected before the effective date of Proposition 28 may only serve the number of terms allowed at the time of their last election.⁴²

V. FISCAL IMPACT

According to the California Secretary of State, Proposition 28 has no direct fiscal effect on state or local governments.⁴³

VI. CONSTITUTIONAL ISSUES

The constitutionality of California’s legislative term limit system, under Proposition 140, has been challenged twice. In both instances, courts upheld the constitutionality of the term limit system.

In *Legislature v. Eu*,⁴⁴ less than a year after Proposition 140 passed, the state legislature and several individual legislators challenged the constitutionality of Proposition 140's term limits under a petition for writ of mandate to the California Supreme Court. Among other post-election challenges to the legitimacy of Proposition 140, the petitioners argued that the proposition’s lifetime ban (after the maximum number of terms are served) substantially burdens two fundamental rights under the United States Constitution: the right to vote and the right to be a candidate for public office.⁴⁵ Using a rational basis test, the California Supreme Court held, “the interests of the state in incumbency reform outweigh any injury to incumbent officeholders and those who would vote for them.”⁴⁶ Thus, Proposition 140's term limit system did not violate the plaintiffs' federal constitutional rights.⁴⁷

The 9th Circuit reviewed the constitutionality of Proposition 140 nine years later in *Bates v. Jones*.⁴⁸ Bates, a termed-out assemblymember, sued in federal court to have the provisions of Proposition 140 declared unconstitutional based on his First and Fourteenth Amendment rights.⁴⁹

³⁸ Text of Proposition 28, *supra* note 1.

³⁹ *Id.*

⁴⁰ The lifetime ban would apply to a legislator that served six years (three terms of two years) in the Assembly and eight years (two terms of four years) in the Senate.

⁴¹ Text of Proposition 28, *supra* note 1.

⁴² *Id.* Thus, the current rules under Proposition 140 would apply.

⁴³ *Id.*

⁴⁴ *Legislature v. Eu*, 54 Cal.3d 492 (1991).

⁴⁵ *Id.* at 513.

⁴⁶ *Id.* at 524.

⁴⁷ *Id.*

⁴⁸ *Bates v. Jones*, 131 F.3d 843 (9th Cir. 1997).

⁴⁹ *Id.*

The district court agreed with his claim, but the 9th Circuit overturned the decision, keeping the limits in place.⁵⁰ On balance, the court found minimal impact on the legislator's rights compared to the legitimate state interest in incumbency reform.⁵¹

It is unlikely a court will find the constitutional rights at stake under Proposition 28 any greater than those in *Eu* or *Bates* because of the minimal difference in the amount of years a legislator can serve under Proposition 140 compared with Proposition 28. Because California has a legitimate interest in incumbency reform, Proposition 28 is likely to pass constitutional muster.

VII. POLICY CONSIDERATIONS

a. Proponents

The current term limit structure under Proposition 140 has resulted in frequent changes in the membership and the leadership of legislative committees.⁵² The system has been analogized to "musical chairs," as each newly elected California legislator starts "plotting to capture their next office even before they're sworn in to the one they've just won."⁵³ Further, because members of the Assembly have only six years before a lifetime ban goes into effect, Assembly Speakers have less than two years to leave their mark.⁵⁴

These lame duck leaders face serious obstacles, as term limits diminish a leader's ability to discipline another member's failure to compromise.⁵⁵ Former *Sacramento Bee* columnist Peter Schrag believes that term limits "created a [l]egislature that has neither an institutional memory nor members who can expect to be rewarded for long-term success, and thus, with rare exceptions, lack any motivation for leadership or inclination to sacrifice and compromise in the present."⁵⁶

Proponents argue that the current term limit structure has resulted in diminished expertise in significant policy areas.⁵⁷ Seemingly, lobbyists, special interests, and state bureaucrats now dominate the legislative process because of their superior knowledge of the legislative system compared with current legislators.⁵⁸ These "Sacramento mainstays" remain in the Capitol long

⁵⁰ *Id.*

⁵¹ *Id.* at 847

"The rights which plaintiffs seek to vindicate in this case are the right to vote for the candidate of one's choice and the asserted right of an incumbent to again run for their office. Prop 140's impact on these rights isn't severe. As argued by the State, term limits on state officeholders is a neutral candidacy qualification, such as age or residence, which the State certainly has right to impose."

Id.

⁵² *How Have Term Limits Affected the California Legislature?*, 94 PUB. POL'Y INST. OF CAL. RES. BRIEF 1, 1 (Nov. 2004), http://www.ppic.org/content/pubs/rb/RB_1104BCRB.pdf [hereinafter *How Have Term Limits Affected The California Legislature?*].

⁵³ George Skelton, *Study Opens Term-Limit Theory*, L.A. TIMES, July 21, 2011, <http://articles.latimes.com/2011/jul/21/local/la-me-cap-term-limits-20110721>. George Toebben, President of the Los Angeles Chamber of Commerce, says, "The musical chairs taking place is not beneficial to anyone. We need some experience and stability in Sacramento." *Id.*

⁵⁴ *How Have Term Limits Affected the California Legislature?*, *supra* note 52.

⁵⁵ Larry Levine, *The Late, Great California Legislature*, L.A. TIMES, Apr. 19, 2011, <http://articles.latimes.com/2011/apr/19/opinion/la-oe-levine-legislature-20110419>.

⁵⁶ Peter Schrag, *A Series of Bad Decisions Have Compounded Current Crisis*, CAL. PROG. REP. (Dec. 30, 2008), <http://www.californiaprogressreport.com/site/schrag-series-bad-decisions-have-compounded-current-crisis>.

⁵⁷ *How Have Term Limits Affected the California Legislature?*, *supra* note 52.

⁵⁸ Quentin L. Kopp, *Time To End Term Limits in California*, S.F. CHRON., Mar. 18, 2011, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/03/17/EDF31IDREC.DTL>.

after termed-out legislators leave.⁵⁹ The lack of expertise has been felt in the committees, where chairs of key committees have limited legislative experience before moving into these important positions.⁶⁰

Proposition 28 aims to address these issues by allowing legislators to serve more time in one house.⁶¹ Ideally, this will motivate legislators to serve longer in their current house because of increased opportunities for senior positions within their party and caucuses, and greater choice of committee service.⁶² These changes will benefit the legislature by providing members with a more thorough institutional knowledge of their respective house and committees, resulting in more effective and efficient policymaking.⁶³

Additionally, Proposition 28 will also guard against current legislators using the measure to extend their total service in the Capitol greater than that allowed by the current rules, as the proposition only applies to legislators first-elected after the measure is enacted.⁶⁴ This was a major concern for voters in 2008 regarding the unsuccessful Proposition 93.⁶⁵

b. Opponents

Groups on both sides of the term limits debate have expressed concerns about Proposition 28: Advocates of term limits are unhappy with the proposition's looser restrictions and opponents of term limits argue the measure does not go far enough.

U.S. Term Limits, a national group promoting term limits, has been one of only a few parties to publicly oppose Proposition 28.⁶⁶ This group and other critics point to two main problems with Proposition 28: the ballot title is misleading and the re-election rates of incumbents "would skyrocket."⁶⁷

Proposition 28's ballot title reads: "LIMITS ON LEGISLATOR'S TERMS IN OFFICE."⁶⁸ Critics argue that the title is misleading because Proposition 28 allows assemblymembers to serve in the Assembly for twelve years, not the six-year maximum permitted under the current

⁵⁹ Randy Bayne, *Time To End Term Limits*, CAL. PROG. REP. (Jan. 1, 2009), <http://www.californiaprogessreport.com/site/time-end-term-limits>.

⁶⁰ Assemblymember Bob Blumenfield, Budget Committee Chair, had no legislative experience when appointed; Assemblymember Felipe Fuentes, Appropriations Committee Chair, had three years experience when appointed; Assemblymember Nancy Skinner, Rules Committee Chair, had two years experience when appointed. *See* CAL. STATE ASSEMBLY COMMITTEES, <http://assembly.ca.gov/committees> (last visited Mar. 16, 2012). Senator Christine Kehoe, Appropriations Committee Chair, had five years experience when appointed; Senator Mark Leno, Budget and Fiscal Review Committee Chair, had three years experience when appointed; Senator Darrell Steinburg, Rules Committee Chair, had two years experience when appointed. *See* CAL. STATE SENATE COMMITTEES, <http://assembly.ca.gov/committees> (last visited Mar. 16, 2012). Readers should note that some of these legislators did have previous experience in another house.

⁶¹ Fresh Start, *supra* note 2.

⁶² *How Have Term Limits Affected the California Legislature?*, *supra* note 52.

⁶³ *Id.*

⁶⁴ Fresh Start, *supra* note 2.

⁶⁵ *See supra* text accompanying notes 9–11.

⁶⁶ The Republican Party came out against the measure as well. *See* Torey Van Oot, *California Republican Party Endorses Auto Rate Initiative*, SACRAMENTO BEE, Feb. 26, 2012, <http://blogs.sacbee.com/capitolalertlatest/2012/02/california-republican-party-endorses-auto-rate-initiative.html>.

⁶⁷ *CA Democratic Convention Wraps up Downtown*, CBS8.COM, Feb. 12, 2012, <http://www.cbs8.com/story/16918993/ca-democratic-convention-wraps-up-downtown>.

⁶⁸ Text of Proposition 28, *supra* note 1 (caps included).

system.⁶⁹ In this case, an assemblymembers' stay in office will actually be doubled, instead of reduced. A newly elected state senator's time in office would also be extended under Proposition 28 to twelve years, as opposed to the eight years currently allowed.

Also, legislators who would ordinarily be termed out of office in one house under the current system could benefit from Proposition 28 because they would not need to change houses and could remain in their same districts for longer.⁷⁰ For example, a state assemblyman who has reached the six-year limit under the current system would need to run for a Senate seat (that is open or filled by an incumbent) if they wanted to remain in the Capitol. In doing so, that assemblyman must run a competitive election race in a larger district with an unfamiliar voter base.⁷¹ As a result, the former assemblyman would likely have a more difficult time seeking election to the Senate.⁷²

Other opponents argue that Proposition 28 doesn't go far enough to repair the damage done under the current system. As the non-partisan group Center for Governmental Studies recommends, "the life-time ban on allowing termed out members to return to the legislature [should] be eliminated, and . . . termed out members [should] be allowed to run for office again after passage of a reasonable period of time (e.g. four years)."⁷³

VIII. CONCLUSION

If California voters pass Proposition 28, the maximum time a California legislator can serve in the state legislature will be reduced from fourteen years to twelve years.⁷⁴ A legislator can serve these years in either the California State Senate, the California State Assembly, or a combination of both.⁷⁵ Proponents claim that by approving this proposition, the frequent changes in the membership and leadership of legislative committees will decrease.⁷⁶ Thus, legislators will gain expertise in significant policy areas, as well as a greater institutional knowledge within their respective house.⁷⁷ However, opponents argue that the ballot title is misleading and legislators could benefit from Proposition 28 by allowing them to stay in one house and remain in their districts for longer.⁷⁸ If Proposition 28 fails, the current law limiting assemblymembers to three two-year terms and senators to two four-year terms will remain in place.

⁶⁹ Jon Fleischman, *Proposition 28: The Term Limits Scam is Back!*, FOX & HOUNDS, (Feb. 22, 2012), <http://www.foxandhoundsdaily.com/2012/02/no-on-28-the-term-limits-scam-is-back/> [hereinafter Fleischman]; Philip Blumel, *Vote NO on Prop. 28, California's Anti-Term Limits SCAM*, NO UNCERTAIN TERMS, (Feb. 22, 2012, 8:31 AM), <http://www.pblumel.blogspot.com>.

⁷⁰ Fleischman, *supra* note 69.

⁷¹ California is divided into 80 Assembly Districts and 40 State Senate Districts. A State Senate District is twice the size of an Assembly district, where each State Senator represents about 840,000 people compared with an Assemblymember who represents 400,000 people. California Online Voter Guide, California Voter Foundation (2000), <http://www.calvoter.org/voter/elections/archive/2000/general/legislature/index.html>.

⁷² As Phillip Blumel writes, "Jumping from one house to the other is not automatic like running for one's own seat. The politician has to win a competitive open seat election in a differently configured district With this amendment, over 80% of politicians will have their terms lengthened, not shortened." Philip Blumel, *Vote NO on Prop. 28, California's Anti-Term Limits SCAM*, NO UNCERTAIN TERMS, (Feb. 22, 2012, 8:31 AM), <http://www.pblumel.blogspot.com>.

⁷³ AVA ALEXANDER, CENTER FOR GOVERNMENTAL STUDIES, CITIZEN LEGISLATORS OR POLITICAL MUSICAL CHAIRS: TERM LIMITS IN CALIFORNIA 50 (2011).

⁷⁴ Text of Proposition 28, *supra* note 1.

⁷⁵ *Id.*

⁷⁶ *How Have Term Limits Affected the California Legislature?*, *supra* note 52.

⁷⁷ *Id.*

⁷⁸ Fleischman, *supra* note 69.