

## Constitutional Challenge to Wyoming's Term Limit Statute

By: Harriet M. Hageman and Timothy M. Stubson

### **INTRODUCTION**

On January 7, 2004 we filed a "Complaint for Declaratory Judgment and Injunctive Relief" in the First Judicial District (Laramie County) requesting the Court to declare Wyoming's term limit law – Wyo.Stat. § 22-5-103 – unconstitutional. That Complaint was filed on behalf of two members of the Wyoming Legislature, Rich Cathcart, Rodney "Pete" Anderson, and two of their constituents. Because the Secretary of State is responsible for enforcing the requirements of the term limit law, Joseph B. Meyer was named (in his official capacity) as the defendant.

In 1995, the United States Supreme Court in *U.S. Term Limits, Inc., v. Thornton*, 514 U.S. 779 (1995), struck down as unconstitutional all term limit statutes that sought to preclude persons who had served a certain number of terms in the United States Congress from having their names placed on the ballot for reelection. The Supreme Court held that states have no authority to impose any qualifications for the offices of the United States Representative or Senator that are in addition to those described in the United States Constitution. That decision had the effect of nullifying Wyoming's term limit law (Wyo.Stat. § 22-5-104) as it applied to our United States congressional delegation. In this case, we are seeking a determination that term limits are unconstitutional as applied to all State Senators, Representatives, and the five elected officials (Governor, Secretary of State, Treasurer, Auditor, and the Superintendent of Public Instruction).

### **CONSTITUTIONAL INFRINGEMENT**

The issues raised in this action implicate matters of tremendous public importance. At issue are the rights of Wyoming's citizens to vote for the candidate of their choice, the rights of all citizens who meet the constitutional qualifications to run for office if they so choose and the integrity of Wyoming's Constitution. The basis for the term limit law, that we are not wise enough to choose those who will serve us in elected office, institutionalizes a distrust of the voters without recognizing important constitutional protections.

The right to vote for the person of our choosing, and the right for all of us to seek public office, are fundamental rights that lie at the heart of our concept of self-governance. Because those rights are fundamental, the qualifications that a person must meet to serve as a candidate are defined in the Wyoming Constitution. Like its Federal counterpart, the Wyoming Constitution is specific in terms of the age and residency qualifications that must be met to run for elected office. Those qualifications may be changed only by amending the Constitution.

Term limits promise to have an enormous impact on Wyoming, where we have a true citizen's legislature that is in session for a short time each year. The issues facing Wyoming are complicated. It is imperative that we are able to address those issues by allowing the individuals to run who have the most experience, the most knowledge, and the most desire to tackle them. We should not automatically disqualify the very individuals who believe in pursuing Wyoming's best interests, who are willing to dedicate an enormous amount of time to do so, and are willing

to stay around long enough to make sure that the job is done right. It is ironic that we seek to penalize, through term limits, those individuals who are willing to work long-term on some of our most challenging issues. It is also ironic that the term limit law disqualifies anyone who is willing to stick around long enough to answer for their previous decisions and votes.

## **STATUTORY AND CONSTITUTIONAL CONSIDERATIONS**

When the validity of a statute is challenged, the level of scrutiny applied depends upon the nature of the right that is impacted. If a fundamental interest is affected, the statute is subjected to “strict scrutiny” to determine whether it achieves a compelling State interest and to determine whether there is a less onerous means of achieving that compelling interest. *Washakie County School District One v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980). The Wyoming Supreme Court has held that the right to vote and the right of a qualified candidate to seek office are fundamental rights:

... [i]t is the basic and universally accepted rule that statutory and constitutional provisions which tend to limit the candidacy of any person for public office or exclude any citizen from participation in the elective process must be construed in favor of the right of voters to exercise their choice. . . .

*Brimmer v. Thomson*, 521 P.2d 574, 580 (Wyo. 1974).

The effect of term limits is to bar otherwise qualified individuals from seeking nomination and election to any affected office in which that individual has already served the requisite number of years. Wyo.Stat. § 22-5-103(a)(ii) and (iii) limits State Representatives and State Senators to twelve (12) years in any twenty-four (24) year period. Wyo.Stat. 22-5-103(a)(I) limits the five elected officials to eight (8) years in any sixteen (16) year period.

The Wyoming Constitution defines the qualifications that a person must meet in order to run for state office. It imposes certain age and residence requirements for anyone wanting to run for State Legislature, Governor, State Auditor, Secretary of State, State Treasurer and Superintendent of Public Instruction. Wyoming Constitution, Article 3, § 2, Article 4 § 2, Article 4 § 11. While the enumerated qualifications are limited, nowhere in the Constitution is there authority for the Legislature or the people (via initiatives), to enact laws that would add to the qualifications enumerated. That is exactly what the term limit law does.

Nowhere in the Constitution is there authority for the Legislature or the people (via initiatives), to enact laws that would add to the qualifications quoted above. That is exactly what the term limit law does. Those who support term limits contend that because a majority of the people who voted in 1992 supported term limits, they are somehow sacrosanct and not subject to challenge. That argument is insupportable. “The initiative shall not . . . enact that prohibited by the constitution for enactment by the legislature.” Wyoming Constitution, Article 3, § 52.

Many people have argued that because term limits were first adopted by a citizens initiative, and because a majority of the people who voted in 1992 supported term limits, they are somehow sacrosanct and not subject to challenge. The Wyoming Constitution states otherwise. “The

initiative shall not . . . enact that prohibited by the constitution for enactment by the legislature.” Wyoming Constitution, Article 3, § 52. Because the qualifications for office are constitutionally-defined, they can be altered only through the amendment procedure dictated in the Constitution. Wyoming Constitution, Article 20, § 3.

### **STATUS**

We will be filing a motion with the District Court to certify this matter directly to the Supreme Court. We expect to request expedited consideration, in the hopes that the questions raised can be resolved prior to May 28, 2004, the deadline for candidates to file for office.

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