



ELECTION

Term Limitation for Local Officials

Colorado voters approved an initiated constitutional amendment in November 1994 that imposes term limitation on local officials. State officials are also subject to term limits in the state constitution. Voters approved another initiated measure in 1996 that imposed voluntary term limits on those elected to Congress from Colorado. That provision has since been found unconstitutional.

Even though term limitation is popular with Colorado voters, the constitutional provision does give voters an opportunity to lengthen, shorten or eliminate the limitations on terms of office. A few school districts have been successful in placing a question on the ballot to modify or eliminate term limits.

Here are some of the most commonly asked questions about term limits:

Where can I find the law on term limits?

Term limitations for local elected officials were adopted pursuant to Amendment 17 of 1994, an initiated constitutional amendment approved at the November 8, 1994 general election. *Colo. Const. Art XVIII, § 11*. The relevant provisions related to local officials read as follows:

(1) In order to broaden the opportunities for public service and to assure that elected officials of governments are responsive to the citizens of those governments, no non-judicial elected official of any county, city and county, city, town, school district, service authority, or any other political subdivision of the state of Colorado, no member of the state board of education, and no elected member of the governing board of a state institution of higher education shall serve more than two consecutive terms in office, except that with respect to terms of office which are two years or shorter in duration, no

such elected official shall serve more than three consecutive terms in office. This limitation shall apply to terms of office beginning on or after January 1, 1995. For purposes of this Section 11, terms are considered consecutive unless they are at least four years apart.

(2) The voters of any such political subdivision may lengthen, shorten or eliminate the limitations on terms of office imposed by this Section 11.

To date, no state law has been enacted to implement term limits for local officials. Furthermore, there have not yet been any Colorado court cases interpreting this constitutional provision. Therefore, the language of the constitution itself is the only statement of law that we have on the subject for the time being.

How will term limits affect the board of education?

Term limits apply equally to everybody elected to office for terms that began on or after January 1, 1995.

School board directors, like other locally elected officials, may only serve two consecutive terms in office.

How do term limits affect board members who serve a partial term in office because they were either elected or appointed to fill the unexpired portion of a term?

The Constitution imposes a general limitation of "two consecutive terms in office" for those officials whose terms of office are more than two years in duration. The Colorado Attorney General, in an opinion issued February 9, 2000, concluded that the term limits provision for local officials does not apply to partial terms of office. In another opinion issued August 16, 2005, the Attorney General concluded that an official who is appointed or elected to fill a vacancy will not be deemed to have served a term in office. We believe these opinions offer guidance to a school board member who serves a partial term. Using this analysis, a school board member would be entitled to serve two consecutive four-year terms, even though he or

she was appointed or elected to fill the unexpired portion of a term prior to running for a four-year term.

Candidates with questions about term limits should seek legal counsel to determine how term limits apply to their personal circumstances. The designated school election official is not in a position to determine if a candidate complies with the term limits provisions. If there is a concern that a particular candidate may not be in compliance with term limits, there is a possibility that his qualifications for office could be challenged (within five days after being certified to the ballot) or his election to office could be contested (within 10 days after the abstract of votes is finalized).

Wasn't there a big court case challenging term limits?

The U.S. Supreme Court did indeed strike down state constitutional term limits on members of Congress. *U.S. v. Thornton*, 115 S.Ct. 1842 (1995). However, this case had nothing to do with term limitations on state and local officials. Moreover, there does not appear to be a legal challenge to state and local term limits looming in the foreseeable future in Colorado. Therefore, Colorado elected officials can expect to live with these restrictions unless local voters can be persuaded to opt out.

What are our chances of opting out of term limits?

As you can see from subsection (2) of the constitutional amendment quoted above, voters may exercise a local option on the subject of term

limits. They may choose to allow more consecutive terms of office, or eliminate term limits altogether.

Based on the results of elections in which school districts have submitted term limits questions to voters, it appears districts may have more success asking voters to modify term limits rather than eliminating them altogether. For example, the board could suggest modifying term limits to three consecutive terms.

How do I write a local option ballot question?

There is no model for writing a ballot question on this subject. As you can see, no particular wording for a term limit question is dictated by the Constitution. It is completely a matter of local choice to determine how consecutive terms of office should be modified or whether your community wishes to eliminate term limits completely.

Attached are two sample resolutions that a board of education can consider when placing a term limitation question on the ballot (Appendix A). One resolution supports elimination of term limits and the other is for a ballot question to modify term limits. Also attached are examples of ballot language (Appendix B).

When should we go to the voters with such a ballot question?

School districts can place a question on the ballot to eliminate or modify term limits at the regular biennial school election, the general election (November of even-numbered years)

or at a special election called for that purpose at other times during the year.

The constitution does not prescribe the means by which voters within the school district may alter the term limits of their elected officials. State law provides that the procedures for placing an issue or question on the ballot will follow as nearly as practicable the procedures for municipal initiatives and referred measures that are found at C.R.S. § 31-11-101 *et seq.* See C.R.S. § 22-30-104(4); § 1-40-103(4). If procedural questions arise, the designated election official for the school district is authorized to resolve those questions after consultation with the county clerk of the county in which the school district administrative office is located.

Unless the question is placed on the ballot at the regular biennial school election in November of odd numbered years, it is considered a special election. C.R.S. § 22-31-101(7). The term limit question is not subject to the election provisions of the Taxpayer's Bill of Rights (TABOR) because TABOR applies only to issues of government financing, spending and taxation and not to all other types of local issues. *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996). For this reason, the school district is not limited to a November election date for this election.

Who will conduct the election?

State law provides that the school election "shall be conducted by the county clerk and recorder if the county clerk is conducting a

coordinated election.” *C.R.S. § 22-31-103 (2)*. The clerk will conduct the election when districts place the question on the ballot in November of both odd and even-numbered years.

If the special election is called on a date when other political subdivisions are also conducting an election and the electors or boundaries overlap, there may be an opportunity to conduct a coordinated election. Under all circumstances, the school district should confer first with the county clerks of each county in which the school district has territory to discuss the special election process.

We recommend that the school district contract with the county clerk to conduct the special election. The district must notify the county clerk at least 100 days before the election to begin the process. The election timelines can be worked out in conjunction with the county clerk(s). The school director election timelines will be a good guide to follow when developing a schedule for a special election.

Fair Campaign Practices Act

The Fair Campaign Practices Act (FCPA) places significant restrictions on the use of public funds for

advocacy purposes or for dispensing information in connection with a local or statewide ballot issue. However, the school district is allowed to spend public money or make a contribution in kind to dispense a factual summary on any issue of “official concern” before the electorate. *C.R.S. § 1-45-117*. The fact sheet is to include arguments both for and against the proposal. See the attached examples of arguments supporting and opposing term limits—Appendix C.

Appendix A—CASB SAMPLE RESOLUTION**Elimination of term limits**

WHEREAS, the Colorado Constitution provides that no elected official of any school district shall serve more than two consecutive terms in office that applies to terms beginning on or after January 1, 1995; and

WHEREAS, this same constitutional provision allows the _____ School District to ask voters to lengthen, shorten or eliminate the limitations on terms of office; and

WHEREAS, the Board of Education of the _____ School District is of the opinion that it is in the best interests of the School District to eliminate the limitation on terms of office for school board directors; and

WHEREAS, the Board of Education, in submitting this question to the voters, believes that term limits are not necessary because the voters are capable of deciding who will best serve the local community on the Board of Education of the School District

THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE _____ SCHOOL DISTRICT AS FOLLOWS:

1. That on Tuesday, _____ in conjunction with the [regular school biennial election] [general election] the Board of Directors of the _____ School District will submit to the registered electors of this district

or

[the Board of Directors of the _____ School District call a special election for the purpose of submitting], the question of whether the limits on the term of office for school directors, as set by *Colo. Const. Art. XVIII, § 11* be eliminated [modified].

2. That at such election, the question appearing on the ballot shall be as follows: [INSERT TEXT]

3. That the Secretary of the Board of Education is designated as the Designated Election Official for the District to have primary responsibility for the conduct of election procedures on behalf of the District.

4. That the officers and employees of the District are hereby authorized and directed to take all action necessary as appropriate to effectuate the provisions of this resolution in accordance with Colorado law.

5. [Optional] That because this ballot issue is a matter of official concern to the _____ School District, the Board of Education authorizes an expenditure of public moneys in an amount not to exceed _____ to prepare and disseminate a factual summary on the district's request to eliminate term limits for school directors which shall include arguments both for and against the proposal in accordance with state law.

Appendix A (cont.)—CASB SAMPLE RESOLUTION**Modification of term limits**

WHEREAS, the Colorado Constitution provides that no elected official of any school district shall serve more than two consecutive terms in office which applies to terms beginning on or after January 1, 1995; and

WHEREAS, this same constitutional provision allows the _____ School District to ask voters to lengthen, shorten or eliminate the limitations on terms of office; and

WHEREAS, the Board of Education of the _____ School District is of the opinion that it is in the best interests of the _____ School District to modify the limitation on terms of office for school board directors

THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE _____ SCHOOL DISTRICT AS FOLLOWS:

1. That on Tuesday, _____ in conjunction with the [regular school biennial election] [general election] the Board of Directors of the _____ School District will submit to the registered electors of this district

or

2. [the Board of Directors of the _____ School District call a special election for the purpose of submitting],

3. The question of whether the limits on the term of office for school directors, as set by *Colo. Const. Art. XVI* § 11 be modified.

4. That at such election, the question appearing on the ballot shall be as follows: [INSERT TEXT]

5. That the Secretary of the Board of Education is designated as the Designated Election Official for the District to have primary responsibility for the conduct of election procedures on behalf of the District.

6. That the officers and employees of the District are hereby authorized and directed to take all action necessary as appropriate to effectuate the provisions of this resolution in accordance with Colorado law.

7. [Optional] That because this ballot issue is a matter of official concern to the _____ School District, the Board of Education authorizes an expenditure of public moneys in an amount not to exceed _____ to prepare and disseminate a factual summary on the district's request to eliminate term limits for school directors which shall include arguments both for and against the proposal in accordance with state law.

Appendix B—CASB Sample Ballot Questions**Examples of ballot question to eliminate or modify term limits**

As permitted by *Article XVIII § 11 of the Colorado Constitution*, shall the present and future elected school directors of the _____ School District be authorized to serve unlimited terms of office, eliminating the limitation on terms of office imposed by *Colorado Constitution Article XVIII, § 11*?

Yes No

Shall the limitations of terms of office imposed by *Article XVIII, § 11 of the Colorado Constitution*, be eliminated for the present and future elected school directors of the _____ School District?

Yes No

Shall the present and future elected directors of the _____ School District be authorized to serve more than two consecutive terms of office thereby eliminating the limitation on terms of office of *Article XVIII, § 11 of the Colorado Constitution*?

Yes No

Shall the present and future elected school directors of the _____ School District be authorized to serve more than two consecutive terms of office, notwithstanding *Article XVIII, § 11 of the Colorado Constitution*, which provides for a limitation of two consecutive terms of office for local elected officials?

Yes No

Shall the present and future elected school directors of the _____ School District be authorized to serve three consecutive terms of office, notwithstanding *Article XVIII, § 11 of the Colorado Constitution*, which provides for a limitation of two consecutive terms of office for local elected officials?

Yes No

Appendix C—CASB sample arguments for local term limits**Arguments for local term limits**

1. Term limits broaden the opportunities for public service and assure that elected officials of governments are responsive to the citizens of those governments.
2. For voters to feel they have a real choice, elections in this country must be made more competitive than they are now. Term limitation will force that competition.
3. Term limits inject new people with new ideas into the political process.
4. An officeholder with fewer re-election campaigns will be a more active and responsive candidate.
5. The forced housecleaning that term limits will provide will, by creating more competitive elections, promote a more active public dialogue. This will bring government closer to the community it serves.

Arguments against local term limits

1. Term limits are fundamentally undemocratic. People should be able to vote for whomever they want.
2. Term limits inevitably shift power away from elected officials toward bureaucrats and “insiders” who may stick around for years while a relatively unsophisticated new crop of politicians comes and goes every couple of years.
3. The political dynamics that may justify term limits at other levels of government do not exist at the local school district level. Ironically, the more pervasive problem at the local level is finding enough qualified people willing to serve.
4. Local boards of education are not rife with career politicians. It is an unpaid, voluntary position.
5. Local politics are up close and personal. Races are nonpartisan. It is relatively easy to get on the ballot and mount a challenge to an incumbent if someone chooses to do so. Local officials are subject to recall while in office, which provides a tool for a community to use to express its displeasure with a local school board member.