Council Comments:

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STATEWIDE BALLOT PROPOSALS -- I

PROPOSAL B: TERM LIMITATIONS

Several proposals have been placed on the November 3rd statewide ballot. Proposal B, which is discussed below, would amend several articles of the Michigan Constitution to limit the number of terms that could be served by United States congressional representatives and senators, members of the state Legislature, and elected officials of the executive branch of state government. The remaining ballot proposals will be discussed in subsequent **Council Comments.**

THE ISSUE IN BRIEF

Proposal B was placed on the November 3rd statewide ballot by initiative petition and, if approved by voters, would:

1. add a Section 10 to Article 2 of the state Constitution limiting

-- United States congressional representatives elected from Michigan to no more than three two-year terms during any 12-year period;

-- United States senators elected from Michigan to no more than two six-year terms during any 24-year period.

2. add a section 54 to Article 4 of the state Constitution limiting

-- state representatives to three two-year terms in total; and

-- state senators to two four-year terms in total;

3. add a Section 30 to Article 5 of the state Constitution limiting

-- the governor, lieutenant governor, secretary of state, and attorney general to two four-year terms in total.

4. add a Section 4 to Article 12 of the state Constitution stating

-- that the foregoing provisions are severable.

Proposal B would apply to terms of office that commence on or after January 1, 1993. The proposal would deem persons appointed or elected to fill a vacancy for a period longer than one-half of a term to have served one full term.

Part I. Legal Considerations

Existing Qualifications for Office under the Federal and Michigan Constitutions

Six of the eight elected offices that would be affected by Proposal B are currently governed by certain general qualifications contained in either the federal Constitution or Michigan Constitution.

United States Congressional Representatives and Senators

Sections 2 and 3 of Article I of the United States Constitution currently set forth certain qualifications that must be met by congressional representatives and United States senators. Section 2 requires a congressional representative to be at least 25 years of age and to have been a citizen of the United States for at least seven years. Section 3 requires a United States senator to be at least 30 years of age and to have been a citizen of the United States for nine years. Both congressional representatives and United States senators must be, at the time of election, a resident of the state they are chosen to represent.

State Representatives and Senators

Section 7 of Article 4 of the Michigan Constitution requires each state senator and representative to be a citizen of the United States, at least 21 years of age, and an elector of the district he or she represents. In addition, no person "convicted of subversion or of a felony involving a breach of the public trust during the preceding 20 years" is eligible to be a state senator or representative.

Governor and Lieutenant Governor

Section 22 of Article 5 of the Michigan Constitution requires both the governor and lieutenant governor be at least 30 years of age and a registered elector in the state for at least four years preceding his or her election. (The Michigan Constitution does not set forth any particular qualifications for the offices of attorney general or secretary of state.)

State Constitutional Questions

If adopted by voters, Proposal B might be challenged on several legal grounds, about the merits of which no opinion is here expressed. It is sufficient here to observe that any such challenge would likely be based upon the federal, and not the Michigan, Constitution. This is so since Proposal B, if adopted, would become part of the Michigan Constitution, and a constitution cannot be deemed in violation of itself.

Federal Constitutional Questions

A legal challenge based upon the federal Constitution would likely involve either of two arguments. The first is that the application of term limitations to state legislators violates the guarantee to each state of a republican form of government found in Section 4 of Article IV of the federal Constitution, as well as the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In a decision that will likely be influential to other state courts confronting the is-

sue, the California Supreme Court rejected similar arguments to a term limitation proposal adopted by California voters in 1990. **Legislature** v **Eu,** (54 Cal3d 492; 1991). The California high court concluded that neither the rights of officeholders nor those of voters were violated by term limitations.

A second basis for a legal challenge of Proposal B might be its application to congressional representatives and United States senators. Since those offices are set forth in the United States Constitution, the question naturally arises whether, and to what extent, limitations may be placed upon them by amendment to a state constitution.

Authority of States to Limit Federal Office

As noted above, the federal Constitution sets forth general qualifications for congressional representatives and United States senators. One argument is that those qualifications are the only ones that need be satisfied in order to hold the respective offices and that those qualifications may not be added to other than by amending the federal Constitution. In additions Section 5 of Article I of the federal Constitution authorizes each house to be the "the Judge of the Elections, Returns and Qualifications of its own Members,,"

The foregoing view is supported by substantial case law. The constitutions of many states, including Michigan, have traditionally contained provisions prohibiting judges from being candidates for any office other than a judicial one during a term for which they were elected -- and in the case of Michigan, for one year thereafter. In construing such a provision in the Washington Constitution, that state's high court in **State** v **Howell,** (175 P 569, 570; 1918), employed reasoning directly relevant to the question of whether term limitations may be imposed upon federal office by amending a state constitution:

> The office of a member of congress is created by the federal constitution, and that instrument is the only one which attempts in terms to specify the qualifications necessary to be possessed by an occupant of the office. To allow the several states to add to or vary the qualifications set forth in the Federal constitution would be to allow the several states to determine the qualifications of the members of Congress, which power, by the Federal constitutions is expressly delegated to the respective houses of Congress. So long as a candidate for membership in Congress meets the requirements set forth in the constitution which created the offices no state has the right or authority to prevent his candidacy, either by provisions in its constitution or in its statutes. (Capitalization in original.)

The contrary argument is that the powers of the federal government are limited to those expressly enumerated in the federal Constitution, together with those arising by necessary implications and that nothing in the federal Constitution expressly prohibits term limitations. Furthermore, although greatly eroded by judicial interpretation, the Tenth Amendment to the federal Constitution does provide that "[t]he powers not delegated to the United States by this Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It cannot be predicted which legal arguments would prevail if Proposal B were adopted and a lawsuit filed challenging its application to congressional representatives and United States senators. (To date, only Colorado has adopted a term limitation proposal which attempts to bind its

congressional delegation.) However, Proposal B provides that if any portion of it is declared invalid or unconstitutional, the remaining provisions are to remain unaffected.

Part II. Practical Considerations

The legal considerations presented in **Part I** are important because the fate of Proposal Bo if adopted by voters, may ultimately be determined by the courts. However, since none of the legal arguments have to do with the merits, or lack thereof, of term limitations they will not likely be decisive in determining the disposition of voters to adopt or reject such a proposal. Voters are more likely to be swayed by such practical considerations as whether term limitations would improve the quality of government and leave legal questions to the courts.*

Arguments in Support of Term Limitations

Restoration of Accountability

Term-limitation proponents argue that unlimited eligibility for elected office has established what amounts to a professional ruling class. It is said that over time, as incumbents see their office as a permanent career rather than as temporary service, they may become less discerning of the problems of ordinary citizens and eventually become inclined to pursue interests which are distinct from those of the people. The result is an absence of accountability to voters that should guide the conduct of elected officials.

Proponents argue that term limitations would "return government to the people" in two ways. First, existing incumbents would be retired from office resulting in an infusion of new talent and ideas at regular intervals. Second, the types of individuals induced to serve would be more likely ones not interested in public office as a career.

Restoration of Electoral Competition

A second argument supporting term limitations is that they will increase electoral competition by requiring incumbents who have served the allowable number of terms to retire or succeed to other office. Under the present system, the advantages that accrue to incumbency, such as monetary support and perquisites of office, often stifle effective competition. (This is a rejoinder to the argument that term limitations are unnecessary because citizens may simply vote incumbents out of office.)

While considerable turnover is expected this November, due to reapportionment and other factors, in the November 1990 congressional elections, for examples approximately 96 percent of incumbents who sought reelection were victorious. Such success rates have prompted the observation that the attrition rate in the U. S. House of Representatives is lower than that of the upper house of British Parliament, where members hold their seats by hereditary right. While a lack of

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* Term limitations were adopted in California, Colorado, and Oklahoma in 1990; defeated in Washington in 1991; and have been certified for the November 1992 ballot in California (congressional), Florida, Michigan, Montana, Nebraska, Nevada, Oregon, South Dakota, Washington, and Wyoming. Proposals are awaiting certification in Arizona, Arkansas, Missouri, North Dakota, and Ohio.

electoral competition might also be addressed through campaign finance reforms term-limitation proponents contend that it is unrealistic to expect incumbent legislators to enact genuine campaign finance reform since the primary beneficiaries of such reform would be their potential challengers.

Reduction of Special-Interest Influence

Third, proponents argue that term limitations will eliminate the symbiotic relationship that so often exists between elected officials and special interest groups. The argument appears to be two-fold: firsts that periodic turnover in office resulting from term limitations would prevent lobbyists from establishing long-term relationships with elected officials; second, that the type of individual attracted to an office that is subject to term limitations -- presumably an individual not interested in holding office as a career -- would be less susceptible to special-interest enticement.

Arguments in Opposition to Term Limitations

Lack of Necessity

One argument raised by opponents of term limitations is that they are unnecessary. It is said that should voters not be satisfied with an elected official, they may exercise their existing right to not reelect that official. In other words, the franchise is the ultimate form of term limitation. From this perspective, term limitations are a solution in search of a problem. In addition to being unnecessary it has been argued that term limitations would be detrimental since they do not distinguish between those elected officials who merit reelection and those who do not. Furthermore, it is argued that the presumed advantages of incumbency could be alleviated by campaign finance and other reforms.

Separation of Powers and Diminished Legislative Expertise

A second argument leveled against term limitations is that they would increase the power of the executive branch at the expense of the legislative branch and thereby undermine the doctrine of separation of powers according to which governmental authority is dispersed among the three branches of government: legislative, executive and judicial. This argument rests upon the view that one of the primary responsibilities discharged by legislators is oversight of the executive branch. Opponents of term limitations argue that limiting the number of terms that legislators may serve will render them unduly dependent upon unelected, executive-branch bureaucrats and legislative staff because the short tenure prescribed by term limitations will prevent legislators from developing the requisite expertise to deal with complex issues.

Comparative Disadvantage Relative to Non-Term Limitation States

A third argument has to do with term limitations for congressional representatives. Given the causal relationship in Congress between length of service and influence opponents argue that any state which would limit its congressional delegation would suffer a self-inflicted disadvantage relative to other states without such a limitation. This particular argument appears to have been instrumental in the 1991 rejection of a term limitation proposal in the state of Washington, although that particular proposal (unlike Proposal B) would have applied <u>retroactively</u> to that state's congressional delegation, including the current Speaker of the United States House of

Representatives. Opponents of the proposal pointed out that Washington residents would have lost political clout to neighboring California whose congressional delegation was not subject to term limitations.

Number and Percent of Current Incumbents in Michigan Who Have Served More Terms than Proposal B Would Allow

					Limitations of Proposal B
U. S. Representatives	15	of	18	83%	three 2-year terms in 12 years
U.S. Senators	2	of	2	100%	two 6-year terms in 24 years
State Representatives	71	of	109**	65%	three 2-year terms
State Senators	20	of	38	53%	two 4-year terms
Governor	0			0%	two 4-year terms
Lieutenant Governor	0			0%	two 4-year terms
Secretary of State	1			100%	two 4-year terms
Attorney General	1			100%	two 4-year terms

Source: Legislative Directory, Michigan State Chamber of Commerce; CRC calculations.
*Proposal B would apply only to terms commencing on or after January 1, 1993.
**The 110-member Michigan House of Representatives presently has one vacancy.