

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

OPINION NO. 95-17 ELECTED OFFICIALS; ELECTIONS; FEDERAL GOVERNMENT; SECRETARY OF STATE: Question 8 (federal term limits) may not be placed on the general election ballot in 1996.

Carson City, August 30, 1995

The Honorable Dean Heller, Secretary of State, Capitol Complex, Carson City, Nevada 89710

Dear Mr. Heller:

You have requested an opinion from this office regarding the ballot question limiting terms of office of congressional representatives.

QUESTION

May Question 8 be placed on the general election ballot in 1996?

ANALYSIS

Question 8 qualified for the general election ballot in 1994 as a result of an initiative petition to amend the Nevada Constitution to limit terms of office for U.S. senators and representatives. The measure passed in 1994 and would normally be placed on the general election ballot in 1996 pursuant to Nev. Const. art. 19, § 2 ¶ 4. The Secretary of State has the duty of providing copies of ballot questions to the county clerks. NRS 293.253(1).

On May 22, 1995, the U.S. Supreme Court decided *U.S. Term Limits, Inc. v. Thornton*, 63 U.S.L.W. 4413 (1995) and held that the states did not have the authority to adopt term limits for congressional service.

The question then is whether the Secretary of State should place this question on the ballot in 1996 in light of the U.S. Supreme Court's decision.

In 1992 the Nevada Supreme Court decided *Stumpf v. Lau*, 108 Nev. 826, 839 P.2d 120 (1992). That case also involved federal terms limits. Granting a permanent writ of mandamus, the court ordered the Secretary of

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State to remove from the November 1992 ballot an initiative proposal which sought to place limits on the number of terms a U.S. senator or representative from Nevada could serve.

The court in a 3-2 decision stated: "The term limits initiative clearly and 'palpably' violates the qualifications clauses of Article I of the United States Constitution." *Id.* at 830 (footnote omitted). The court went on to state: "The question here cannot be implemented in a constitutional manner, and we envision no political utility in burdening an already strapped public fisc with the expense that would inevitably be incurred by placing a meaningless question on the ballot, conducting the election, and tallying the votes." *Id.* at 831.

The court distinguished *Las Vegas Chamber of Commerce v. Del Papa*, 106 Nev. 910, 802 P.2d 1280 (1990) for the reason that the ballot question in that case, arguably, "might have been applied in a constitutional manner." *Stumpf*, 108 Nev. at 831. The court instead relied on *Caine v. Robbins*, 61 Nev. 416, 131, P.2d 516 (1942), a case involving the constitutionality of an initiative petition.

In *Caine* the court affirmed the district court's order enjoining the county clerk "from proceeding in any manner toward submitting the proposed measure to the electorate of said Elko County at the next general election or any subsequent election to be voted upon as to its adoption or rejection." *Id.* at 418. The court reasoned: "The initiative measure proposed by the petition would, if enacted by the vote of the electors, be clearly unconstitutional for lack of enacting clause required by the state constitution in initiative proceedings." *Id.* at 420.

The Court in *Thorton* concluded that the United States Constitution prohibits the states from imposing additional congressional qualifications.

We are, however, firmly convinced that allowing the several States to adopt term limits for congressional service would effect a fundamental change in the constitutional framework. Any such change must come not by legislation adopted either by Congress or by an individual State, but rather—as have other important changes

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in the electoral process—through the Amendment procedures set forth in Article V.

Thorton, 63 U.S.L.W. at 4430 (footnote omitted).

Following the reasoning in *Stumpf* and *Caine*, since the United States Supreme Court has determined that state-imposed term limits on congressional representatives violate the United States Constitution, the Secretary of State may not proceed with placing Question 8 on the general election ballot in 1996.

CONCLUSION

Question 8 may not be placed on the general election ballot in 1996.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Deputy Attorney General
