



BGR Report

A Report and Recommendation from the Bureau of Governmental Research

September 2001

Third Term Charter Amendment

On October 20, 2001 voters in the City of New Orleans will be asked to vote on a proposition to amend the term limits contained in Section 4-201 of the City's Home Rule Charter. The proposition has been presented to the public as a mechanism for allowing the mayor to seek a third term of office.

The Home Rule Charter currently limits mayors to two consecutive terms. Specifically, it provides that "[a] person who has served as Mayor for more than one and one-half terms in two consecutive terms shall not be eligible for election as Mayor for the succeeding term."

The proposed amendment does not simply provide that a mayor who has served two consecutive terms will be eligible for the succeeding term. Rather, it provides that a person who has served as mayor for more than one and one-half terms in two consecutive terms will not be eligible for the succeeding term unless the voters approve a proposition declaring the person to be eligible for a third consecutive term.

The election for that purpose is to be held no sooner than 18 months before nor later than ten days before the opening of the qualifying period for the next mayoral election. The current incumbent is specifically made eligible for election in the term that begins in 2002.

History

A provision limiting the mayor to two consecutive terms was adopted as part of the Home Rule Charter in 1952 and went into effect in 1954. The provision made a mayor who had been elected for two full consecutive terms ineligible to succeed himself. It was later amended to make a mayor who had served for more than one and one-half terms in two consecutive terms ineligible to succeed himself.

Two mayors tried to repeal or loosen the limitation on term limits. Mayors de Lesseps S. Morrison and Ernest N. Morial each tried to repeal term limits completely, in 1961 and 1983 respectively. In 1985 Ernest Morial attempted to pass a more



limited charter amendment restricting the mayor to three terms. All three attempts to change the mayoral term limit failed.

Trends

Term limits were relatively rare when they were first adopted in New Orleans. By 1985, six of the 22 mayor-council governed cities closest in size to New Orleans had mayoral term limits (27%).

A February 2000 study of the 50 largest mayor-council cities, conducted by Richard Engstrom of the University of New Orleans, indicated that 28 of those cities have no term limits. Of the 22 that do have term limits (44%), five have limits on the mayor only and 17 have limits on both the mayor and council members. In one of these cases, council members are allowed a longer term than the mayor. In all others the limitations are for an equal number of years.

Most recent attempts to repeal term limits at the municipal level have failed. New York voters rejected a repeal of term limits in 1996. Nashville voters did the same in 1996 and 1998. Tampa in 2000 retained term limits for its mayor and councilmembers.

Pros and Cons of the Charter Amendment

1. The Balance of Power

In 1991 New Orleans amended the charter to restrict council members representing districts, who had served more than one and one-half of two terms, to two consecutive terms in office as district council members. A similar limitation prevents persons who have served as council members-at-large for more than one and one-half of two terms from serving more than two consecutive terms in that position.

Thus, under the current charter the mayor and the seven council members are generally subject to similar limits. A limited number of council members can extend their tenure on the council by moving from a district seat to one of the two at-large seats, and vice versa. The maximum number of council members who can continue on the council by swapping at-large and district seats is four.

The proposed amendment would upset the existing balance of power between the executive and legislative branch by allowing a longer term of office for the executive. Given that the power of individual council members is diluted by the power of the others, the incongruity of term limits could be quite significant. BGR notes that, of the 50 largest cities,

none has a term limit arrangement that allows a mayor a longer term of office than the council members.

2. Entrenchment of Public Officials

Opponents of the third term amendment assert that the two-term limit prevents the entrenchment of politicians and their associates. They view the limit as a protection against any one incumbent amassing enough power through patronage, favors, and campaign contributions to remain in office indefinitely. They also view the two-term limit as an important institutional check on the power of a mayor, one that serves as a brake should an officeholder's integrity and the voters' vigilance fail.

Proponents respond that the likelihood of entrenchment is exaggerated. They point out that the mayors of most major cities, even those without term limits, are in their first or second terms. Those opposed to term limits believe that the potential for abuse can be curbed through campaign finance reform.

Fears of entrenchment are not unfounded in New Orleans. The City's Charter vests the mayor with strong executive powers. He has the power to propose and administer city operating and capital budgets and to veto ordinances. In addition, he selects the contractors for all professional service contracts let by the City, other than the few contracts let by the City Council for its business.

In addition, through appointments and his participation on numerous boards and commissions, the mayor has the ability to influence the disposition of additional contracts worth large sums of money. Mayoral appointees dominate boards with a wide range of interests, including the Economic Development Advisory Committee, the Public Library Board, the Vieux Carre Commission, the Downtown Development District Board, and the Board of Liquidation, City Debt. Some, like the Aviation Board and the Sewerage and Water Board, control projects worth hundreds of millions of dollars. Mayoral appointees also control boards, such as the City Planning Commission, the Board of Zoning Adjustments, and the Historic Districts Landmarks Commission, that make decisions with significant economic or quality-of-life impact for property owners and neighborhoods.

Members of most boards and commissions serve staggered terms. Thus, during the early years of a mayor's term, the boards have members appointed by the previous administration. As time goes by, the mayor is able to replace these members with his own appointees. A third term would extend by a significant number of years the period during which the then-current mayor's appointees are dominant.

3. Freedom of Choice

Freedom of choice for voters is one of the most frequently cited arguments against term limits. Those opposed to term limits maintain that such limits are fundamentally undemocratic and underestimate the intelligence of the electorate.

Advocates of the charter amendment point out that allowing the mayor to run for a third term does not guarantee him such a term. It merely allows the voters to decide whether he should continue in office.

Opponents of the charter change respond that the argument ignores reality. The incumbent's ability to reward and punish provides him with a tremendous advantage over challengers. That power enables him to raise funds in amounts far exceeding those available to challengers. Money, in turn, helps to fund advertising and turn-out-the-vote efforts. This can be important in elections with a low turn-out of voters.

4. Impact on the Mayor's Effectiveness

It is frequently asserted that term limits unnecessarily deprive citizens of the services of public officials with demonstrated abilities. In the case of the proposed charter amendment, supporters of the amendment argue that a mayor with unfinished business should be given more time to implement his programs.

Those opposed to the charter amendment respond to the plea by pointing out that each mayor needs to set his priorities

within a fixed amount of time. A good mayor provides a foundation on which others can build. Term limits encourage new individuals to come forward with their ideas.

Opponents of term limits argue that eliminating term limits increases a mayor's effectiveness by allowing him to avoid "lame duck" status for a longer period of time. They also maintain that a mayor with the potential to remain in office will be more inclined to opt for long-term solutions rather than quick fixes. Advocates of term limits take the opposite view, arguing that term limits can encourage officeholders to make tough decisions that they might avoid if they were seeking reelection.

5. The Qualifications and Aspirations of the Current Mayor

Most of the arguments put forth by the proponents of the charter amendment focus on the qualifications and aspirations of the current mayor. Proponents assert that Mayor Morial is the best qualified person to lead the City and that there are no other qualified candidates. Needless to say, not everyone in the community agrees with the first statement. Opponents take umbrage at the suggestion that the City lacks qualified, intelligent, and creative individuals to lead it.

Proponents of the charter amendment also claim that, because African-Americans, as a practical matter, cannot be elected to statewide office in Louisiana, it is unfair to force the incumbent out of his current

political position. Opponents of the charter amendment point out that a barrier to advancement at the state level is not relevant to the issue of a third term. They state that changing the two-term limit will merely allow the incumbent to hold onto his existing power, thus blocking the political aspirations of other African-Americans. Opponents of the charter amendment point out that without term limits the City's voters might not have elected their first black mayor in the 1970s.

6. Issues Created by the Procedural Hoops

The proposed charter amendment could change the dynamics of the mayoral election in ways that would not occur if the amendment simply allowed the incumbent to seek a third term. For example, the pre-election referendum provides the incumbent with an opportunity to receive a vote of approval without having to stand against other candidates. Early affirmation of the incumbent could dampen competition, since potential challengers would be understandably reluctant to invest the time and energy needed to defeat an incumbent who has the additional advantage of a first-round win. The referendum on the incumbent also raises questions of fairness, since challengers are not afforded a similar opportunity to make an early show of strength.

In addition, the procedural hoops are likely to create new burdens for taxpayers, voters, potential challengers, and incumbents. By adding a qualifying round for the incumbent, the proposed amendment

increases the cost of mayoral elections to the public. It is estimated that a special election on a stand-alone proposition would cost the City approximately \$325,000, although the cost would decrease greatly if a state issue were also on the ballot.

In addition, both incumbents and potential challengers face the prospect of raising money to wage two election campaigns. Given the traditional advantage of incumbents and the handicaps faced by challengers in raising funds, the two-step election could disproportionately exacerbate the financial burden on challengers.

7. Mayor for Life?

The charter amendment has been presented to voters as a limited exception to the existing two-term limit, allowing a candidate who overcomes certain hurdles to run for a third term. A careful reading of the amendment indicates that the exception might not be so limited. The language could be interpreted as allowing a mayor who is elected to a third term to seek an unlimited number of additional, sequential terms.

As noted above, the current charter clearly limits a mayor to two consecutive full terms by making a person who has served as mayor for more than one and one-half terms in two consecutive terms ineligible to run for the succeeding term. There is no prohibition on a person running for additional terms after sitting out a term. Thus, under the current charter provision, a person can serve as mayor for two terms, sit out what would have been his third term,

and serve for two additional terms thereafter.

The proposed charter amendment would repeal the absolute prohibition on a consecutive third term. It would substitute a provision specifying that a person who has served as mayor for more than one and one-half terms in two consecutive terms would not be eligible for *the succeeding term* unless the voters approve a proposition declaring the person to be eligible as a candidate for a *third consecutive term* (emphases added).

As noted above, proponents of the charter amendment describe it as allowing a third term only. This would clearly be the case if the amendment stated that a mayor is ineligible to serve a fourth consecutive term. It does not. It merely makes a two-term mayor ineligible for "the succeeding term" unless the voters declare him eligible for a third consecutive term. If the voters declare him eligible, he can run for office.

The amendment's restriction on eligibility can be interpreted in a number of ways. If the phrase "the succeeding term" is interpreted as referring only to the third term, the limitation on eligibility and the procedural hoops apply only to that specific term. Since there are no stated restrictions or prohibitions on terms other than that one, a candidate who has qualified for and been elected to a third term would be free to run for an unlimited number of terms.

The phrase "the succeeding term" could also be interpreted as applying to *all* succeeding terms. Under this less technical interpretation, a mayor who qualified for a third term would be eligible for additional terms, provided he complied in each case with the qualifying procedures. In either case, a third-term mayor would be eligible for additional, sequential terms.

Given the way that the proposition has been presented to the public, it may be difficult for the current mayor to avail himself of these technical interpretations. Ultimately, the interpretation could be a matter for the courts.

8. Eligibility of the Incumbent

A charter amendment loosening term limits should not apply to the incumbent. Allowing the incumbent to take advantage of the amendment distorts the issue by introducing personalities and extraneous issues into a debate that should be focused on systems and safeguards.

Recommendation

The Bureau of Governmental Research recommends a vote **against** the proposition for the following reasons:

1. The amendment would upset the existing balance of power between the legislative and executive branches of New Orleans government by allowing the mayor to serve for a longer term than district or at-large council members.
2. The proposed amendment would allow the executive to further consolidate power through appointments to boards and commissions and selection of professional service contractors, thus increasing the opportunity for undue influence and abuse.
3. By calling for a pre-election referendum on the incumbent, the amendment provides him with an opportunity to receive a vote of approval without having to stand against other candidates.
4. The procedural hoops increase the cost to taxpayers and create new burdens for voters, challengers, and the incumbent.
5. The proposed amendment is ambiguous as to whether a mayor elected to a third term is prohibited from running for additional terms.
6. A charter amendment loosening term limits should not apply to the incumbent holding office at the time the amendment is submitted to voters.

BGR's position is based on its appraisal of the proposition before the voters. It should not be interpreted as a position in favor of or against the current mayor or any other candidate.

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Chairman, BGR Board of Directors

The Bureau of Governmental Research (BGR) is a private, non-profit, independent research organization dedicated to informed public policy making and the effective use of public resources for the improvement of government in the Greater New Orleans metropolitan area.

PROPOSED CHARTER AMENDMENT
October 20, 2001

AN AMENDMENT TO SECTION 4-201 OF THE HOME RULE CHARTER OF THE CITY OF NEW ORLEANS RELATIVE TO THE NUMBER OF SUCCESSIVE TERMS A MAYOR MAY SERVE.

A person who has served as Mayor for more than one and one-half terms in two consecutive terms shall not be eligible for election as Mayor for the succeeding term unless a majority of the electors of the City voting in a citywide election approve a proposition declaring the person to be eligible as a candidate for a third consecutive term. An election for this purpose may be called by the Council only upon petition of not less than ten percent or ten thousand, whichever is fewer, of the duly qualified registered voters of the City, which shall be filed with the Council and processed in accordance with the procedures in Article IX, Chapter 2 of this Charter. The election may be held no sooner than eighteen months nor later than ten days prior to the opening of the qualifying period for the next mayoral election. The Mayor in office in the year 2001 is eligible to be a candidate for election to the office of Mayor for the succeeding term that begins in 2002.