

## The Latest On Term Limits

by Susan Reefer

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When term limits for New York City elected officials were approved by voters in the 1990s, it was hailed as a victory for voters and candidates alike. Under the new laws, passed in two separate voter referendums, city office holders could serve no more than two terms. The year 2001 marked a major change in New York City politics, as all the city wide officials and 37 of 51 city council members were term limited and unable to run again. The city council was almost entirely replaced, and a new council speaker was elected.

But now Speaker Gifford Miller and five other council members find themselves faced with the prospect of leaving office at the end of the year. And the result could set off a surprisingly involved chain of events.

The reason why these six council members are affected, and not the others, is so complicated it has challenged every political writer in the city to explain. We have tried to explain it previously in Gotham Gazette and I'll make another attempt. (Those who already understand it, or would rather be eating hot coals than try to figure it out, can skip the next paragraph).

The term limits law allows members of the City Council to serve two terms. Normally, those terms are for four years each. But every ten years they are shortened to two-year terms when council lines are redrawn with new census data. Five of the six affected council members are scheduled to have served for less than eight years because they won office in special elections in 1997. (Miller won in 1996). They will have served one four year-term, and then one two-year term, which would complete their two terms at the end of this year. (The reason why the other council members were not affected is because the law states that one of the two terms an official serves in office has to be for four years. But the elections of both 2001 and 2003 are for two-year terms. So, somebody who first got elected in 2001 can run again in 2003 and then again for a four-year term in 2005).

In order to try and give the six affected members the eligibility to run for another two years, and thus have the ability to serve for eight years total (actually in some cases it winds up being a little more than eight years), the council passed a law to change that particular portion of the term limits legislation. Local Law 27, passed in September 2002, was vetoed by Mayor Bloomberg but the city council easily overrode the mayoral objection.

Last month, on March 19th, a State Supreme Court judge in Brooklyn struck down the newly passed legislation, stating it was a violation of Municipal Home Rule Law and the City Charter. Justice Gerard Rosenberg argued that the voters had passed the law, and any changes to the law would also have to come from the voters.

The decision, which is being appealed, represented a major setback for the Speaker and a real dilemma for New York City voters. Who will be allowed to run for re-election in a few months? The petitioning process begins in June for ballot access. The uncertain outcome of the pending appeal, which is expected to come sometime in May or June, raises a number of implications for the city, in the courts, the city council, and the political scene.

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As Jonathan Hicks in the New York Times explained, "candidates who were planning for their campaigns to begin in earnest in early 2005 have to raise money and devise strategies quickly in the event the court ruling is upheld. 'It's put a lot of people into a holding pattern,' said Daniel R. Garodnick, a lawyer who is considering running for a council seat from the East Side of Manhattan."

### The Political Battle

The struggle for resolution represents more than just the balance of power between the legislative and the judicial branches of city government. The charismatic Gifford Miller, the young City Council Speaker, accomplished a major coup when he was elected to the top leadership post at the beginning of the 2002 session. He immediately became one of a handful of top tier Democratic candidates for the 2005 mayoral campaign.

Miller has already raised one million dollars in anticipation of a challenge to incumbent mayor Mike Bloomberg, who would be eligible to run for re-election. It is an impressive sum, but it becomes even more impressive when viewed against the backdrop of Miller's first sixteen months as speaker. Miller has inherited the mantle of a New York City Democratic party still largely divided over brutal primary battles in 2001 and 2002. He has led the city council in a time of tremendous financial strain for the city, and worked side by side with the mayor during the all-important budget negotiations.

He is an impressive political leader, but he is also clearly aware that his political future could depend on his ability to remain in office beyond the end of 2003. The advantages of incumbency are well known to any candidate: increased visibility, free media coverage, access to staff and organization, support of party leaders, a record of accomplishments on which to run, and even the subtle authority of a title: "former Speaker" just doesn't have the same ring to it.

There is one man who carries the title of former Speaker who might have some advice for Miller and his colleagues. In 1994, U.S. House Speaker Tom Foley found himself subject to term limits laws passed in his home state of Washington. Rather than retire, he filed suit and successfully fought the newly created laws, which were thrown out as unconstitutional. But the voters didn't appreciate the finer points of constitutional law; they didn't particularly like having their wishes thrown out in court. And when Foley ran for re-election, he made the kind of history he wasn't counting on: he became only the second sitting House Speaker in history to lose a bid for re-election, and the first since the Civil War. (The very first was a young Congressman elected to the post as a proxy in a little known and largely forgettable back room deal).

Of course, this isn't 1800 or 1994, and Gifford Miller is neither a gullible proxy nor an over-privileged, entrenched, long-term incumbent. There is a very reasonable argument to be made that the council was merely trying to correct an unintended consequence of the law (a "quirk" was how Miller described it) and restore the true spirit of the referenda.

And at any rate, New York voters may be too overwhelmed and preoccupied to pay that kind of

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vindictive attention. And understandably so.

Although the suit to strike down Local Law 27 came from Republican plaintiffs, this isn't really a battle between Democratic and Republican interests. There are virtually no scenarios in which Republicans could gain even a sizable minority in the City Council, whether or not Miller and his five colleagues are allowed to run again. Rather, the forthcoming decision in the Court of Appeals could determine whether the Democratic Party will be ruled by the young enthusiasts, or the seasoned survivalists; it could determine whether the elections are widely competitive or largely perfunctory; and it could determine whether the Democratic mayoral nomination is an insider's battle to maintain power or an outsider's struggle to regain it.

And then, after the decision comes down, it will remain to be determined whether or not the voters wanted to be saved from their own mistakes.

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