No. 21-1360

IN THE

Supreme Court of the United States

MIKE KOWALL, *et al.*,

Petitioners,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICUS CURIAE* U.S. TERM LIMITS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

Amicus Curiae, U.S. Term Limits ("USTL"), is a non-profit, 501(c)(4) organization that advocates for term limits at all levels of government. USTL's mission is to enact and defend term limits on elected officials via the ballot box, legislatures, and the courts with an ultimate aim of enacting a congressional term limits amendment to the United States Constitution. USTL believes citizens are best served by legislatures arising from competitive elections, rotation in office, and expanded citizen access to the electoral process. Since its inception in the early 1990s, USTL has assisted in enacting and defending term limits in more than 23 states.

Petitioners seek certiorari for this Court to answer two questions: (1) what level of First Amendment scrutiny should be applied to cases regarding candidate qualifications; and (2) whether § 54 violates the First and Fourteenth Amendments. Petitioners suggest this case presents an "ideal vehicle" for answering these questions, but their arguments are misguided and rely on unrecognized legal theories which, if accepted, would seriously erode the right of every state in the Union, long-held and jealously guarded, to structure its own government, including by regulating its own elected officials. This result would not only thwart the mission

1. Counsel for all parties were provided proper notice and have consented to the filing of this brief. Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

USTL has advanced for over three decades, it would also irrevocably distort the federal design of our Republic.

The Respondents in this case present compelling arguments which USTL does not contest. USTL adds its voice as amicus because a grant of certiorari threatens to undermine USTL's decades of work throughout the United States, and would cast a shadow over the freedom of the citizens in each individual state to choose how they are governed.

SUMMARY OF THE ARGUMENT

Petitioners' challenge to Mich. Const. art. IV, § 54[2] is unfounded and it would be a mistake for this Court to grant certiorari. First, term limits on state elected officials are a structural element of state government. As such, they are not subject to scrutiny by federal courts. Similar cases involving challenges to the structure of state legislatures have been routinely rejected.

Second, while Petitioners argue this case is an "ideal vehicle for the Court to resolve the splits underlying the questions presented," that assertion is unfounded as no actual split exists between federal circuits regarding the constitutionality of state term limits. Petitioners emphasize a manufactured circuit split by analogy to certain types of ballot access cases, but this narrow band of authority is wholly inapposite. Next, Petitioners use this claimed split to argue that this Court should stray from its long tradition of applying rational basis review

2. Section 54 limits state representatives to three terms and state senators to two terms.

in term limits cases. Petitioners, however, fail to justify a higher level of scrutiny.

Finally, this case is a particularly poor vehicle for the Court to review this issue. Even if this Court applied something other than rational basis scrutiny, such as the *Anderson-Burdick* test advocated for by Petitioners, the challenged provision would survive. Nearly every court to consider the issue has concluded that term limits, even limits as strict as § 54, are not severe restrictions on First Amendment rights. Petitioners' claim to the contrary is unfounded. This is particularly true in light of the State's compelling interests, both in effectuating its sovereignty by structuring its own government and by protecting its legislature from the pitfalls of career politicians.

For all these reasons, the Court should deny the petition for writ of certiorari and allow the decision of the Sixth Circuit to stand.

ARGUMENT

I. TERM LIMITS ARE A STRUCTURAL ELEMENT OF STATE GOVERNMENT NOT SUBJECT TO FEDERAL REVIEW

Term limits are nothing new. As early as the Articles of Confederation, members of Congress were limited by term: "no person shall be capable of being a delegate for more than three years in any term of six years…" Articles of Confederation, art. V. Though term limits were eventually left out of the Constitution, many of the delegates believed including them was unnecessary because the terms were relatively short and limited terms

were traditional in state legislatures. Petracca, M. P. (1992). "Rotation in Office: The History of an Idea." In Limiting Legislative Terms, eds. Gerald Benjamin and Michael J. Malbin. Washington, DC: CQ Press.

Even after omitting term limits and other structural elements of state government from the Constitution, the Founders still contemplated that the federal system would allow a multiplicity of structures for state governments so long as the republican form was maintained. In defense of the Guarantee Clause, James Madison wrote:

> Whenever the States may choose to substitute other republican forms, they have a right to do so[.] The only restriction imposed on them is, that they shall not exchange republican for antirepublican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

The Federalist No. 43, at 225-26 (C. Rossiter ed. 1961). Thus, there is no constitutional basis for limiting the structural elements of a state's republican form of government and no reasonable argument that the discretionary power to establish term limits, as a structural element of state government, imposes such an antirepublican rule.[3] The question remains, however, what entity is tasked with reviewing such structural elements? This question, though salient to the present discussion, is not a novel one. As Alexander Hamilton explained:

3. In fact, Petitioners made this argument and the Sixth Circuit unequivocally rejected it. *See Kowall v. Benson*, 18 F.4th 542 (6th Cir. 2021).

> [I]t will . . . not be denied that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter, and ultimately in the former.

The Federalist No. 59, at 362 (C. Rossiter ed. 1961). As this Court recently observed in *Rucho v. Common Cause*, "At no point was there a suggestion that the federal courts had a role to play. Nor was there any indication that the Framers had ever heard of courts doing such a thing." 139 S.Ct. 2484, 2496 (2019). Thus, review of structural elements of state government, like the term limits in § 54, is simply not within the scope of this Court's review.

As explained more thoroughly in the Defendants' brief opposing certiorari, Petitioners' First and Fourteenth amendment claims are meritless. Petitioners, certainly aware of this Court's trepidation in reviewing structural elements of state government, attempt to coerce review by renaming their challenge. Make no mistake, however: Petitioners' arguments solely attack the structure of state government.

Aware of Petitioners' tactic, the Sixth Circuit was correct in hesitating to review Petitioners' claims, reasoning:

> Restrictions on who may hold state elective office lie at the heart of representative government. A

> state defines itself as a sovereign by structuring its government and choosing qualifications for its officeholders. Indeed, the Guarantee Clause and the Tenth Amendment explicitly protect these rights under the Constitution. To respect states' sovereign authority, federal review must not be so demanding where we deal with matters resting firmly within a State's constitutional prerogatives.

Kowall, 18 F.4th at 548 (internal quotations and citations omitted). The Sixth Circuit's only error was in stopping its analysis there. The logic of its reasoning inexorably leads to a further conclusion: as structural elements of state government, term limits lie beyond the review of federal courts. In turn, this Court should deny certiorari for lack of jurisdiction.

A. Federal Courts Routinely Reject Challenges to the Structure of State Governments

Petitioners contend their challenges to § 54 are cognizable under the First and Fourteenth Amendments, but in doing so, they engage in legal gymnastics to avoid the appropriate and inescapable conclusion that the structure of Michigan's republican government is non-justiciable. The present challenge to § 54 is merely a thinly veiled challenge to a structural element of state government, which federal courts should reject. In truth, Petitioners' claims implicate the Guarantee Clause because they challenge structural elements of Michigan's government. This Court has, and must continue to, reject such claims as nonjusticiable.

Consistent with this position, this Court has issued one decision summarily dismissing an appeal from the West Virginia Supreme Court of Appeals. See *Moore v. McCartney*, 425 U.S. 946, 96 S.Ct. 1689, 48 L.Ed.2d 190 (1976). West Virginia's high court rejected a Fourteenth Amendment challenge to that state's restriction on a governor's service of more than two consecutive terms of office, observing that "[t]he universal authority is that restriction upon the succession of incumbents serves a rational public policy and that, while restrictions may deny qualified men an opportunity to serve, as a general rule the over-all health of the body politic is enhanced by limitations on continuous tenure." *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 517, 223 S.E.2d 607, 611 (1976). In *Moore*, decided when this Court took direct appeals from state supreme court decisions implicating federal rights, the Court dismissed precisely for "want of a substantial federal question." *Id.*, 425 U.S. at 946.

This decision—that a Fourteenth Amendment challenge to state term limits does not even present a substantial federal question—remains fully binding on all lower federal courts. *Mandel v. Bradley*, 432 U.S. 173, 176, 97 S.C.t 2238, 2240, 53 L.Ed.2d 199 (1977). True, the Sixth Circuit panel below hypothesized that this particular language in *Moore* is a mere "relic" of this Court's need before 1988 to clear its docket of frivolous appeals-by-right. *Kowall*, 18 F.4th at 546. But post-1988, in his dissent in *U.S. Term Limits v. Thornton* that was joined by three other justices, Justice Thomas cited *Moore* for the proposition that "limits on the terms of state officeholders do not even raise a substantial federal question under the First and Fourteenth Amendments." *Id.*, 514 U.S. 779, 925, 115 S.Ct. 1842, 1913 (1995). That is the correct view.

This Court's–and federal courts'—treatment of state term limits as not presenting a substantial federal question has a pedigree stretching back to cases that refuse to review state governments' structural choices. As early as 1849 in *Luther v. Borden*, this Court was tasked with determining which of two state governing bodies was constitutional based on their structure. 48 U.S. 1, 42, 12 L.Ed. 581(1849). In dismissing the question as non-justiciable, the *Luther* court observed:

> And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, ***and could not be questioned in a judicial tribunal.***

Id. (emphasis added).

Since *Luther*, this Court has reaffirmed the nonjusticiable nature of the structure of state government. In *Pacific States*, this Court, as in this case, was presented with a challenge to a provision of a state's constitution establishing the structure of ballot initiatives. 223 U.S. 118, 133, 32 S.Ct. 224, 224-25 (1912). Relying on *Luther*, this Court declined to judge whether the ballot initiative was lawful and stated, "that question has long since been determined by this court conformably to the practise [*sic*] of the Government from the beginning to be political in character, and therefore not cognizable by the judicial power, but solely committed by the Constitution to the judgment of Congress." *Id.*

For the last hundred years, this Court has uniformly dismissed Guarantee Clause claims as nonjusticiable. *See e.g.*, *Kiernan v. City of Portland*, 223 U.S. 151, 160, 32 S.Ct. 231, 56 L.Ed. 386 (1912) (dismissing challenges to two other amendments to the Oregon Constitution authorizing the use of initiative and referendum powers for lack of a justiciable question); *Marshall v. Dye*, 231 U.S. 250, 255-57, 34 S.Ct. 92, 58 L.Ed. 206 (1913) (dismissing a challenge to Indiana's amendment procedure because it "present[ed] no justiciable controversy"); *O'Neil v. Leamer*, 239 U.S. 244, 248, 36 S.Ct. 54, 60 L.Ed. 249 (1915) ("The attempt to invoke [the Guarantee Clause] . . . is obviously futile").

Notably, this same reluctance to interfere with a state's sovereignty by reviewing its chosen structure has been exercised in the face of other claims, not just those brought under the Guarantee Clause. In *Legislature v. Beens*, this Court reviewed an equal protection challenge to the number of state legislative districts in Minnesota. 406 U.S. 187, 190, 92 S.Ct. 1477 (1972). A three-judge panel of the court of appeals ultimately reapportioned the legislative districts. *Id*. In doing so, the court deviated from the applicable Minnesota statute laying out the required number of senators and representatives of the state. *Id*. at 195. This deviation drastically changed the number of districts in Minnesota, thereby altering the total number of elected officials in the houses of the state legislature. *Id*. The *Beens* court held such action offended the discretion afforded to each individual state to structure its legislature and "is not justified as an exercise of federal judicial power." *Id*. at 200. This Court went on to express its unwillingness to consider challenges to structural elements of state government:

> Our ruling here, of course is no expression of opinion on our part as to what is desirable by way of legislative size for the State of Minnesota or for any other State. It may well be that 67 senators and 135 representatives make a legislature of unwieldy size. ***That is a matter of state policy.*** We certainly are not equipped—and it is not our function and task—to effectuate policy of that kind or to evaluate it once it has been determined by the State. . . Size is for the State to determine in the exercise of its wisdom and in the light of its awareness of the needs and desires of its people.

Id. (emphasis added).

In the present case, Petitioners simply do not agree with the term limits set forth in § 54 as a matter of policy. Their arguments in the lower courts and in the petition before this Court revolve around what they believe to be "the deleterious effects of term limits." Indeed, Petitioners claim § 54 is "out of step" with the rest of the country and emphasize Michigan has the shortest term limits in the nation. These arguments peel back the veil of Petitioner's First and Fourteenth Amendment claims, revealing Petitioners' desire for this Court to rescind Michigan's chosen policy and replace it with a policy they have been unable to enact themselves.

It is not this Court's mandate, however, to meddle with the policy of state governments—especially as it relates to the structure of state legislatures. As this Court recognized in *Moore* and again in *Beens*, structural elements of state government, and the policy

determinations that states make in fashioning those structures, are left to the states.

B. Redistricting Litigation Provides Guidance on the Role of Federal Courts

This Court's recent decision in *Rucho v. Common Cause* provides a helpful template for dealing with the present challenge to § 54. 139 S.Ct. 2484, 204 L.Ed.2d 931 (2019). In *Rucho*, the plaintiffs from North Carolina and Maryland challenged their state's respective congressional districting maps as unconstitutional partisan gerrymandering. *Id.* at 2491. As in this case, the plaintiffs asserted, among other things, that gerrymandering violated the First Amendment and Equal Protection Clause of the Fourteenth Amendment. *Id.* The plaintiffs argued the new congressional maps discriminated against them because of their political speech and association, in that the maps diminished their ability to elect the candidate of their choice because of their party affiliation and voting history and prevented them from association with their chosen political party. *Id.* at 2494. Likewise, the plaintiffs claimed the new maps violated their right to equal protection by intentionally diluting the voting strength of their respective political party. *Id.* at 2492.

Though on their face the plaintiffs' challenges were rooted in the First and Fourteenth Amendments, this Court recognized their arguments were "more properly grounded in the Guarantee Clause of Article IV, § 4, which 'guarantee[s] to every State in [the] Union a Republican Form of Government[]'" and "[t]his Court has several times concluded . . . that the Guarantee Clause does not provide the basis for a justiciable claim." *Id.* at 2506.

The *Rucho* Court even went on to observe that excessively partisan districting "leads to results that reasonably seem unjust." *Id.* Not even a seemingly unjust result, however, justified the federal judiciary's involvement with such political questions. *Id.* The Court explained that "[j]udicial action must be governed by standard, by rule, and must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws. Judicial review of partisan gerrymandering does not meet those basic requirements." *Id.* at 2506-07. Though not crucial to its decision, the majority in *Rucho* also noted that the plaintiffs were not without redress for their complaints. *Id.* at 2507. To the contrary, the plaintiffs could work to enact legislation to curb gerrymandering as other states have done. *Id.*

As in *Rucho*, Petitioners would like this Court to believe their challenges are rooted in the First and Fourteenth Amendments. This Court should not be so deceived, but instead should recognize that Petitioners' challenges are rooted in the Guarantee Clause as challenges to Michigan's structure of republican government—and, thus, nonjusticiable. Even if this Court were to believe § 54 produces undesirable outcomes—which it most certainly does not—that would still not provide justification for the intrusion of federal courts into a matter of state policy.

Lastly, Petitioners do not lack a remedy for their claimed ills. The people of Michigan exercised their right to add § 54 to the Michigan Constitution by initiative. There is no reason Petitioners cannot do the same.

Petitioners wish to argue that term limits are bad policy, but their remedy is legislation, not litigation.

In fact, the Michigan legislature recently passed a joint resolution to place the issue on the ballot for this November's election. *See* Michigan House Joint Res. R., May 10, 2022. Especially given the legislative action currently underway on this issue, there is no reason this Court should deviate from its normal course to address state policy. The petition should be denied.

II. THERE IS NO ACTUAL CIRCUIT SPLIT FOR THE COURT TO RESOLVE

There is no circuit split on the issue presented here: the constitutionality of state term limits. Missing from Petitioners' brief is any acknowledgment that the only two circuit courts to reach the issue, the Sixth and Ninth, *rejected* claims that the United States Constitution prohibits state term limits, consistent with *Moore*. Instead, Petitioners try to change the subject to "candidate qualifications," a murky term when it comes to the many shapes and forms of state and local laws that relate to candidacy and ballot access. They claim that this, and not any dispute that specifically addresses term limits, is the key circuit split that must be addressed. The Court should not be tempted to resolve a split that is not real, and that, in any event, Petitioners have simply borrowed from outside of the term limits context.

On the matter at hand—the constitutionality of state term limits under the First and Fourteenth Amendments—there is no circuit split. The only two circuits to have taken up the matter, the Sixth and Ninth (*en banc*, no less), are in agreement. Below, the Sixth Circuit denied Petitioners' First and Fourteenth Amendment attacks on Michigan's lifetime term limits after applying a rational basis test.

And in *Bates v. Jones*, 131 F.3d 843, 846-847 (9th Cir. 1997), the Ninth Circuit held that "California voters apparently perceived lifetime term limits for elected state officials as a means to promote democracy by opening up the political process and restoring competitive elections. This was their choice to make." *Id.* at 847. The court first applied *Anderson-Burdick* initially to decide which level of scrutiny to apply, and—considering both the "right to vote for the candidate of one's choice" and an incumbent's right "to again run for his or her office," under the First and Fourteenth Amendments—then found that the impact of term limits "is not severe" and were not discriminatory against particular groups or viewpoints. *Id.* (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 2063, 119 L.Ed.2d 245 (1992)). It then briskly dismissed the Plaintiffs' claims under a very relaxed review.

Importantly, the mild review the Ninth Circuit applied under *Anderson-Burdick* was no more searching than that of the Sixth Circuit below, and even mirrors its analysis. *See* Appendix, pp. 8-10. The circuits only depart on the purely academic question of whether rational basis automatically applies, or whether something like rational basis applies because an initial *Anderson-Burdick* inquiry invariably finds a burden that is not "severe," *Bates*, 131 F.3d at 847, and therefore will tend to uphold the sorts of important interests that underlie term limits. *Id.* Thus, on the ultimate question, there is no circuit split at all. As Justice Thomas noted for three other justices in his *Thornton* dissent, it continues to be the law that "term limit measures have tended to survive such review without difficulty." *Thornton*, 514 U.S. at 925, 115 S.Ct. at 1913.

III. THIS CASE IS A POOR VEHICLE FOR CLARIFYING ANY PRINCIPLE OF LAW BECAUSE SECTION 54 EASILY SURVIVES REVIEW REGARDLESS OF WHETHER *ANDERSON-BURDICK* IS INITIALLY USED TO SELECT A LEVEL OF SCRUTINY.

Finally, even if the Court can wade through the fundamental issues regarding the justiciability of the questions presented, this case is a poor vehicle for the Court's review because § 54 survives scrutiny under both rational basis review and *Anderson-Burdick*'s sliding scale—which also tends to indicate rational basis review. When applying the *Anderson-Burdick* analysis, courts must weigh:

> "[T]he character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Burdick, 504 U.S. at 434, 112 S.Ct. at 2063 (quoting *Anderson*, 460 U.S. at 789). Under this analysis, courts apply heightened scrutiny only when the provision in question severely burdens the plaintiff's rights. *Id.* Whenever the provision "imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to

justify' the restrictions." *Id*. (quoting *Anderson*, 460 U.S. at 788, 103 S.Ct. at 1569).

A. Michigan's term limits do not severely restrict First or Fourteenth Amendment Rights.

This Court has set out only two factors for determining whether a restriction burdens voting rights severely or only incidentally. *See Burdick*, 504 U.S. at 437-38. First, a law severely burdens voting rights if it discriminates based on content instead of neutral factors. *Id*. at 438. "[I]t is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Anderson*, 460 U.S. at 792-93; *see also Bullock v. Carter*, 405 U.S. 134, 144, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) (striking down a high filing fee for candidates because it burdened poor candidates). Second, a law severely burdens voting rights if the burdened voters have few alternate means of access to the ballot. *Burdick*, 504 U.S. at 436. In such a situation, the law impermissibly restricts "the availability of political opportunity." *Anderson*, 460 U.S. at 793 (cleaned up). Section 54 does not give rise to either situation.

As to the first factor, Petitioners make a point to inform this Court that the challengers are made up of both Democrats and Republicans.[4] Section 54 does not burden voters or candidates based on the content of their protected expression, party affiliation, or inherently

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4. Though there is no mention of third-party candidates, Petitioners make no argument that smaller parties are somehow adversely affected by § 54.

arbitrary factors such as race, religion, or gender. *See Miller*, 144 F.3d at 922-23. In fact, the only characteristic binding the group is they are now barred from running for their prior offices—it can hardly be said § 54 is a content-based restriction.

Likewise, § 54 does not deprive voters of alternate means to access the ballot. Importantly, § 54 does not ban a candidate from holding *any* office after a certain term, only the office the candidate previously held for a period long enough to implicate the term limit. Thus, if a candidate were term-limited in one office, he could simply run again for a different office. This also lessens the burden on voters. If a voter wished to vote for experienced candidates who may now be term-limited in one office, there is nothing preventing that voter from voting for that same candidate in a different office.[5]

B. The state's interest in imposing term limits is strong and compelling.

Because Petitioners' rights under the First and Fourteenth Amendments are not severely limited, § 54 need only satisfy rational basis review. Accordingly, this Court need not even consider whether the State's interest is strong and compelling. Nonetheless, assuming *arguendo* that a court were to apply heightened scrutiny, § 54 still passes muster.

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5. Many courts have considered whether lifetime term limits for state legislators violate the First and Fourteenth Amendments and concluded they impose only an incidental, neutral burden: *Bates*, 131 F.3d 843; *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251 (Ark. 1994); *Legislature v. Eu*, 54 Cal.3d 492 (Cal. 1991); and *Miller*, 144 F.3d 916.

The state of Michigan has a compelling interest in enacting and upholding § 54. First, as a sovereign state, Michigan has a fundamental interest in structuring its own government and experimenting with structural elements as it sees fit. *See e.g.*, *Ashcroft*, 501 U.S. at 460. Term limits also accomplish several practical ends: curbing the power of incumbent "career" politicians, preventing the development of entrenched political machines, decreasing election spending, preventing partisan stalemates, and improving access to candidacy for minorities. *Id*; *see also* Adam J. McGlynn and Dari E. Sylvester. *Assessing the Effects of Municipal Term Limits on Fiscal Policy in U.S. Cities*. 42 STATE & LOCAL GOVERNMENT REVIEW 118-132 (2010).

Not only does the State possess several strong and compelling interests in this case, but term limits are uniquely successful in effectuating those interests. Most obvious is that term limits increase turnover within legislatures. Since the beginning of the 20th century, turnover declined steadily from over fifty percent in the 1930's to fewer than twenty-five percent in the 1980's and around ten percent after the turn of the 20th Century. Gary F. Moncrief et al., Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures, 29 Legis. Stud. Q. 357, 359 (2004). Increased turnover prevents the entrenchment often seen in political spheres and allows for the presentation of new and diverse ideas.

Additionally, jurisdictions with term limits experience higher voter turnout, a higher percentage of legislators attending votes and sessions, and more diverse legislative bodies. *See generally* Christopher Z. Mooney. *Term*

Limits as a Boon to Legislative Scholarship: A Review, 9 State Politics & Policy Quarterly 204 at 204, 205 (2009); Randall G. Holcombe & Robert J. Gmeiner. *Term limits and state budgets,* 34 *Journal of Public Finance and Public Choice* 21-36 (2019); Robynn Kuhlmann and Daniel C. Lewis, *Legislative Term Limits and Voter Turnout*, 17 State Politics and Policy Quarterly 372-392 (2017) (concluding, on average, voter turnout in state legislative elections in states with strict term limits increases six percent compared with states without); Stanley M. Caress et al. *Effect of Term Limits on the Election of Minority State Legislators*. 35 State & Local Government Review 183-95 (2003) (finding term limits allow state legislator demography to match more closely with the demographic makeup of the electorate).

To the extent the State must justify its term limits as advancing its interests and chosen policy, these positive outcomes surely satisfy that scrutiny.

C. Section 54 is narrowly tailored.

If a court were to apply heightened scrutiny, it must also consider the scope of the provision and whether it is "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 428. As Judge Fletcher observed in his concurrence in *Bates*, however, the "concept of 'narrow tailoring' has limited application[]" when applied to novel structural elements of state government, "for any novel governmental structure is, by definition, narrowly tailored to the goal of experimenting with that particular governmental structure." 131 F.3d at 873 (Fletcher, J., concurring).

Petitioners argue § 54 is not narrowly tailored to accomplish the State's purposes. This argument completely sidesteps the State's interest in and right to experiment with structural elements of government. As previously established, term limits like those contained in § 54 successfully effectuate the State's practical interests. Moreover, § 54 is narrowly tailored to create the structure of government with which the State seeks to experiment. Section 54's narrow tailoring satisfies even heightened scrutiny.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

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