

Channel 5 reporting is full of mistakes

A recent KGWN-TV story about whether or not Dave Freudenthal would seek a third term was incomplete and lacked a factual basis for much of the story.

Other than Robert Geha, none of the other anchors or reporters on Channel 5 were here when term limits were successfully challenged in 2004. But a little research could have brought most of the missing facts to light.

In 2004, the first time that term limits imposed by a vote of Wyoming voters in 1992 would have come into play, they were challenged in litigation known as:

Rich Cathcart, Rodney "Pete" Anderson, Scott Zimmerman and Keith Kennedy,
Appellants (Plaintiffs)

v.

Joseph B. Meyer,
Wyoming Secretary of State,
in his official capacity,
Appellee (Defendant)

and

Jack Adsit and U.S. Term Limits Foundation,
Appellees (Intervenors / Defendants)

**2004 WY 49
88 P.3d 1050
Decided May 4, 2004**

Principal attorneys for the various litigants were Harriet Hageman (Plaintiffs), Patrick Crank, Wyoming Attorney General (Defendant) and Sasha Johnson / Dan White (Intervenors). Pat Crank assigned a poorly prepared attorney from his staff to make the oral arguments at the Supreme Court. It was a disaster.

The Supreme Court condensed the argument to this: **"Two incumbent state legislators and two electors challenge the constitutionality of Wyoming's initiative-engendered term limit statute."**

Cathcart and Anderson were the state legislators, Zimmerman and Kennedy were the electors (voters).

The argument was not about whether it is constitutional to impose term limits. It was about the means used to do so in Wyoming. In spite of having several attorneys in the state legislature and several more in the Attorney General's office, a referendum was presented to voters in which they were asked to approve term limits as a statutory change, rather than as a constitutional amendment. Not knowing they were voting on an improper question, 77% of those who voted on the question in 1992 voted in favor of term limits. Voters also approved term limits for Wyoming's U.S. Senators and U.S House of Representative's member.

Term limits on the federal offices could only be enacted through a constitutional amendment to the U.S. Constitution and

that will never be allowed - there will never be a vote on such term limits.

The argument against imposing term limits in the fashion approved by 77% of Wyoming voters was that term limits was an additional "qualification of office" not specifically enumerated in the Wyoming Constitution. While that may be true, other states with similar constitutions have had their term limits (that were statutorily imposed) upheld by that state's Supreme Court. Ours was different.

This writer was invited by the Federalist Society to participate in a forum in Casper on the issue of term limits. I support term limits and believe they can be imposed as was done in Wyoming - by a vote of the People to make a statutory change.

I attended oral arguments at the Supreme Court and have always believed that Pat Crank "tanked" it for the People of Wyoming. In other words, being an appointee of an elected official, he did not argue as knowledgably and ably as he could have on the constitutionality of term limits as imposed in Wyoming because it could impact his boss. In fact, he chose not to make oral arguments personally.

Then, in Casper, he presented an articulate argument in support of term limits.

It may be confusing to some - whether term limits can be imposed in Wyoming or not. They can be. They are in several states and they have been upheld as constitutional. The issue in Wyoming was *how* it was accomplished, not whether it *could* be accomplished.

No state legislator challenges the term limits statute until the last minute. They claimed they could not challenge term limits until they were "aggrieved" and they could not be aggrieved until they attempted to file for that office a seventh time and the Secretary of State refused to accept their filing. That should be no different for Dave Freudenthal.

So, all the hand wringing on the part of potential Freudenthal opponents in the Democrat or Republican Party is for naught if Dave intends to run for a third term. If, on the other hand, he does not intend to seek a third term, he could announce that at any time and potential candidates in the Democratic Party could begin organizing and fundraising for a campaign for Governor in the 2010 election.

Electors only become "aggrieved" if their candidate of choice is not allowed to file as a candidate for the office they want to vote for him/her.

The 2010 election filing window will be May 13 - May 28. Should Dave Freudenthal choose to seek a third term, he will attempt to file for re-election early in that window and be refused. He will bring suit on the basis that term limits are unconstitutional as enacted. It will be expedited to the Wyoming Supreme Court, and he will prevail. Simple as that.



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5 miles east of Cheyenne - Hwy 30 / Pershing / I-80 at Archer (Exit 370) / 634-8750

Channel 5 errors:

Channel 5: *There is still no word as to whether Governor Freudenthal will seek a third term, but he does know that time is ticking to allow enough time for the Supreme Court to overturn the term limits and a fair campaign for potential candidates.*

The clock is not ticking on the Supreme Court. They will not get a challenge to rule about term limits on the five elected state offices (Governor, Secretary of State, Treasurer, Auditor and Superintendent of Public Instruction) unless Freudenthal attempts to file for that office for a third term. And, there is no such thing as "a fair campaign" period for candidates. Like Dave has said, they can start to campaign now.

Channel 5: *If he decides to run [for] a third term, he will face a bit of a roadblock with term limits.*

Not really. It is a minor speed bump, not a roadblock. The Supreme Court made it clear in 2004 that, had they been asked to rule on term limits for the five state officials, they would have overturned those term limits as well. It is but a formality, and a quickly resolved one at that, for Dave Freudenthal to seek a third term if he chooses.

Channel 5: *A few years ago the Wyoming Supreme Court ruled term limits unconstitutional for legislators after a few of them challenged term limits.*

Not so. Two legislators, not a few, were the "named" plaintiffs. Others may have wanted term limits struck down but they were not plaintiffs in the litigation. And term limits are not unconstitutional for legislators. They are unconstitutional when imposed statutorily but would not be unconstitutional had they been approved as a constitutional amendment. There were 12 years after the 1992 vote for legislators to have corrected the action of 1992 and put it up to another vote of the people in the proper way (as it was subsequently determined by the Wyoming Supreme Court).

Channel 5: *If Freudenthal decided to run, he would have to sue to overturn term limits for his office. That could take four or five months.*

Not so. Don't know where the Channel 5 reporter got that erroneous information. As explained here, a lawsuit by the Governor would go through the Supreme Court much faster than the City of Cheyenne cell phone ban went through the mayor's office. The ruling is a slam dunk and the question would be certified to the High Court and a ruling would beat the Governor back to his state-provided vehicle.

Channel 5: *Governor Freudenthal says he hopes to have a decision sometime before the legislature wraps up in early March.*

The Governor very likely knows already what his future political plans are. To announce that he does not intend to seek a third term would make him a "lame duck" and neuter him (render him ineffective) in that office. As a good Party man, he would make his decision known sooner. As a savvy politician, which Dave Freudenthal is, he will not make a public announcement until he has to - after the legislative session. He is a stand-alone Democrat. He did not offer significant help to Gary Trauner in either of Gary's races and he did not even endorse Michelle Hoffman, who was a much superior choice to Jim McBride in the 2006 Superintendent of Public Instruction race.