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Resolved: The United States should impose term limits on Supreme Court Justices.

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General & Background Evidence

A review of current international policies on term limits

Zachary D. **Kaufmanrr 2016**, Zachary D. Kaufmanrr of Center for Human Rights Policy, Harvard Kennedy School. "Term Limits at Home and Abroad" June 30, 2016, Belfer Center for Science and International Affairs, https://www.belfercenter.org/publication/term-limits-home-and-abroad

Leaders seeking to extend their hold on power are generating controversy and conflict around the globe. Several foreign presidents have recently sought to remain in office beyond formal limits. Washington has condemned these term extensions as undemocratic and corrupt. But **the passing of Associate Justice Antonin Scalia in February after serving for nearly three decades on the U.S. Supreme Court has raised the issue of tenure length in the United States as well**. **The absence of term limits for over 1,000 members of all three of the U.S. government's branches as well as for hundreds of officials at the state and local levels underscores the degree to which critical offices in the United States can often be held for life. Recent foreign efforts to cling to power have faced mixed results, with successful attempts in Belarus, Djibouti, Tajikistan, and Uganda, and unsuccessful ones in Bolivia and Burkina Faso. Two countries, coincidentally both in the Great Lakes region of Africa, currently illustrate different approaches to—and consequences of—bucking previously established presidential term limits. In December, Rwanda held a referendum, which the public reportedly supported by 98 percent, to amend its constitution to allow President Paul Kagame to run for re-election after his second term concludes next year. No civil unrest followed. In the adjacent country of Burundi, despite a constitution that stipulates a two-term limit, President Pierre Nkurunziza ran for and won a third term last July, triggering violent protests that continue to this day and that so far have left at least 500 people dead and 270,000 as refugees.** The Barack Obama administration has criticized both heads of state. The State Department announced that it is "deeply disappointed" that President Kagame is seeking a third term, expressing the belief that "constitutional transitions of power are essential for strong democracies and that efforts by incumbents to change rules to stay in power weaken democratic institutions." Of Rwanda's neighbor to the south, President Obama himself stated: "When a leader tries to change the rules in the middle of the game just to stay in office, it risks instability and strife, as we've seen in Burundi." In a speech before representatives of the African Union last July, President Obama declared that "your country is better off if you have new blood and new ideas." While the Obama administration is correct to express concern over the corrupting influence and stagnating impact of long-held power, the United States should also examine its own policies on official tenures. Some U.S. leaders have recently tried—sometimes successfully—to change the rules in the middle of the game, exactly what the Obama administration denounced in Rwanda and Burundi. For example, in 2008, the majority of New York City Council members voted to extend term limits for all elected city officials, including themselves. The new law allowed, among others, incumbent mayor Michael Bloomberg to successfully seek re-election. Quite the opposite of Rwanda's popularly supported constitutional amendment, the New York City Council's revision defied not just one but two referendums. The federal government did not criticize the New York City Council or Mayor Bloomberg, nor has President Obama explained why, in

the case of Rwanda, a democratic process of constitutional amendment supported by almost the entire public, assuming it was free and fair, is condemnable. And some U.S. officials serve for life, a phenomenon President Obama denounced for African officials. The passing of Justice Scalia on February 13 has rekindled a debate about whether lifetime appointments for federal judgeships—of which there are currently 860—are wise. America's Founding Fathers devised these appointments nearly 230 years ago, when life expectancy was significantly shorter. Moreover, long, not life, tenure is essential for judicial independence, and lifetime appointments may increase politicking by giving justices some control over the timing and political persuasion of a successor. Lifetime judicial appointments can also lead to mental debilitation, unaccountability, and, as is currently the case with the vacancy left by Justice Scalia, high-stakes confirmation battles. For all of these reasons, lifetime appointments are unpopular in peer countries. **According to two legal scholars, the United States is alone among major democratic nations in providing life tenure for the members of its highest court**. **Rather, these other countries—including Australia, Canada, England, France, Germany, Italy, Portugal, Russia, South Africa, and Spain—impose term limits or mandatory retirement ages.** Other U.S. officials can potentially serve for life through unlimited re-election. These officials include the vice president, the 535 members of the U.S. Congress, the governors of 13 states (Connecticut, Idaho, Illinois, Iowa, Massachusetts, Minnesota, New York, North Dakota, Texas, Washington, and Wisconsin), the legislators of 35 states, and approximately 90 percent of mayors throughout the country (including the one for the nation's capital). The absence of term limits in these cases has led to some extremely lengthy tenures. For example, seven U.S. Congresspeople—Robert Byrd, John Conyers, John Dingell, Carl Hayden, Daniel Inouye, Carl Vinson, and Jamie Whitten—each served (or, in the case of Congressman Conyers, continue to serve) for over half a century, two of whom (Senators Byrd and Inouye) were stopped only by death. Of course, the role and responsibilities of presidents are different from those of other members of state and federal executive, legislative, and judicial branches. The U.S. government itself recognizes that distinction. George Washington established a "two-term tradition" for U.S. presidents. And, after Franklin Delano Roosevelt's unprecedented four terms in office, the twenty-second amendment to the U.S. Constitution, ratified in 1951, officially cemented that tenure limit. But many of the same arguments the Obama administration has made about foreign leaders extending their own tenures apply domestically as well. So far, the Obama administration has not articulated why, despite the president's concern over the need for "new blood and new ideas" abroad, lifetime appointments and unlimited re-election are acceptable at home. **While the U.S. government critiques the tenures of foreign officials, it should consider whether the principles it espouses are reflected in our country's own procedures. Where inconsistent, the United States should either reconcile what it practices and preaches or refrain from hypocrisy.**

House Democrats introduced bill in July 2022 for term limits

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A group of seven House Democrats introduced a bill Tuesday that seeks to end lifetime service on the Supreme Court. The proposal is "an effort to restore legitimacy and independence" to the court, according to its lead sponsor, Rep. Hank Johnson of Georgia. **The proposal would create a much faster rotation of justices in two ways: by guaranteeing two new appointments in each presidency and creating absolute term limits of 18 years.** The idea faces very long odds: neither Congress nor the White House has demonstrated an appetite for even mild reform of the court. But it shows the desire among some Democrats to push back after the court reversed decades of universal access to abortions in the US by overturning Roe v. Wade. **Under the Democratic proposal, new appointments to the court no longer come only when a justice dies. Instead, each president could appoint two justices per term, in their first and third years of office.** Existing justices would leave the court in the order they joined. Per the bill, they would keep their pay and status but no longer actively serve unless another justice was incapacitated. The bill comes in the wake of what Rep. Jerry Nadler called "harmful and out-of-touch rulings." Since news of the Roe v.Wade ruling was leaked, there has been widespread discussion in the Democratic Party about how to deal with the reality of a Supreme Court with a 6-3 majority of conservative justices, three of which were appointed by President Donald Trump and likely have decades still to serve. Johnson, the bill's proposer, said: "America is alone among modern constitutional democracies in allowing its high-court justices to serve for decades without term or age limits, resulting in some Presidents appointing no justices and others appointing as much as a third of the Court." The idea of term limits has some popular support. **A May YouGov poll of 6,868 US adults found that 72% of Democratic voters and 54% of Republican support the idea.** The length of the term itself was not specified. **A bipartisan group commissioned by President Joe Biden also concluded in December that term limits would be a viable method of reform.** Democrats like Rep. Alexandria Ocasio-Cortez have called for less far-reaching methods of reform such as expanding the court — a move that Biden opposed in June. The bill is co-sponsored by Reps. Jerry Nadler (NY), David Cicilline (RI), Shelia Jackson Lee (TX), Steve Cohen (TN) Karen Bass (CA) and Ro Khanna (CA). Cicilline said in a statement: "We must address the crisis currently facing the Court in terms of its legitimacy and the public's confidence in it. This legislation is an important step to restoring the Court's important role in our constitutional system." A June poll — conducted by Gallup before the court overturned Roe v. Wade, but **after the draft opinion was leaked – found that a record low of 25% of Americans trust the Supreme Court**. The reasons for that lack of confidence were not specified.

Biden commission study shows bi-partisan support for Supreme Court term limits

Seung **Min Kim and** Robert **Barnes 2021,** Seung Min Kim is a White House reporter for The Washington Post, and Robert Barnes has been a Washington Post reporter and editor since 1987. He has covered the Supreme Court since November 2006," Supreme Court term limits are popular — and appear to be going nowhere, December 28, 2021, https://www.washingtonpost.com/nation/2021/12/28/supreme-court-term-limits/

President Biden's **commission to study structural revisions to the Supreme Court found one potential change both Democrats and Republicans have said they could support**: **implementing term limits for the justices, who currently have lifetime tenure.** Yet the **bipartisan support among legal experts** and

the public for term limits isn't catching on among elected officials on Capitol Hill who would be the starting point on any alterations to the makeup of the Supreme Court. Impatient liberals clamoring for change say enacting term limits would take far too long, while Republican lawmakers are loath to endorse changes they are characterizing as part of a broader effort from Democrats to politicize the judiciary. **The opposition from both corners adds another layer of doubt that proposals laid out and debated by Biden's Supreme Court commission will translate into tangible action in the near future.** The chief argument against term limits among Democratic lawmakers and others who have endorsed structural changes is that doing so may require a constitutional amendment — a process that is long, cumbersome and has not been successfully executed since 1992.

A history of Supreme Court imbalance, with a simulation of how term limits would affect the courts composition

Chilton et. al 2021, Adam Chilton is a Professor of Law, University of Chicago, Daniel Epps is a Treiman Professor of Law, Washington University in St. Louis, Kyle Rozema is a Associate Professor of Law, Washington University in St. Louis, and Maya Sen is a Professor of Public Policy, Harvard Kennedy School. "Designing Supreme Court Term Limits", 2021, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2196&context=public_law_and_legal_theory

Since the Founding, Supreme Court Justices have enjoyed life tenure.1 Although a system of life tenure helps insulate the Justices from political pressures, it also comes with costs. It can lead to Justices serving into very old age, sometimes when they are no longer able to serve effectively.2 And as Justices live longer and remain on the Court, it makes appointments infrequent. This reduces the democratic check on the Court provided by the appointments process, 3 and it raises the political stakes for appointments that do occur. Perhaps most importantly, life tenure and the fact that Congress has not changed the Court's size in more than a century4 means that unpredictable deaths and strategic retirements determine the timing of Court vacancies. **This results in an unequal influence that presidential elections have on the composition of the Court, which in turn has created disparities in the influence of political parties on the Court. As an example of differences in the influence of presidential elections, no Justices were appointed during President Jimmy Carter's single term, but three Justices were appointed during President Donald Trump's single term**.5 **In terms of the disparities across political parties, Republican presidents held the White House for thirty-two out of the fifty-two yearsfrom 1969 to 2021, over which time they made fifteen out of nineteen appointments to the Supreme Court**.6 Due to the costs associated with life tenure, at least a half dozen distinct proposals have been put forward to institute term limits for Supreme Court Justices. These proposals differ in important ways, such as how the transition to the new system would work, but the most prominent proposals all would have Justices serve for eighteen years with their tenures staggered so that two appointments would be made each presidential term.7 In addition to equalizing the influence presidents have on the Court, proponents argue that term limits and regularized appointments would have additional advantages such as discouraging presidents from choosing particularly young nominees and making the appointments process less contentious. **Many have found the case for term**

limits persuasive: commentators,8 politicians across the political spectrum,9 and even the American public10 have all expressed support for term limits. Despite this growing support for adopting term limits, **there are at least three shortcomings with prior advocacy for their adoption. First, the proposals reformers have put forward have often been silent on many key design decisions. For instance, many proposals have not specified what would occur if the Senate simply refused to hold hearings on a president's nominee to the Court, perhaps because that outcome seemed unthinkable prior to the Senate's failure to act on President Barack Obama's nomination of Merrick Garland. Second, there has been little effort to comparatively assess how the design decisions made by different proposals would affect the composition of the Supreme Court. Third, there has been almost no effort to document whether the empirical claims made by advocates of term limits would actually be realized. Instead, as Professor Stephen Burbank put it, "the work of many engaged in the debate [over term limits] is quite relentlessly normative and replete with unsupported causal assertions."11** This Article provides a framework outlining the features of a complete term-limits proposal and develops an empirical strategy to assess the effects of instituting term limits. 12 **The design framework we introduce specifically outlines the key design features that any term-limits proposal must make. These include decisions made in all past term-limits proposals like how long each term should be, when appointments will be made, and whether "legacy" Justices already serving at the time of a reform's enactment would be subject to the term limit**. **But we show that a complete term-limits proposal would also need to address the rules governing a hold-out scenario of Senate inaction on a president's nominee and how to designate a Chief Justice.** By outlining all the features that must be included in a complete reform plan, we provide a blueprint for the design of any future term-limits proposal. **The empirical strategy we develop uses simulations to assess how termlimits proposals would have shaped the Court if they had been in place over the last eighty years of American history.**13 The simulations use data on the lifespans of federal judges and the historical occupants of the White House, the Supreme Court, and the Senate. We simulate how existing proposals would have shaped the Court's membership while varying when the plan was adopted and when unexpected vacancies occur**. These simulations enable us to make comparative assessments of the drawbacks and upsides of term-limits proposals relative to each other and to the historical status quo of life tenure.** We use this empirical strategy to assess how five prominent term-limits proposals would have shaped the composition of the Supreme Court. Although all these plans would help to regularize the appointments of Justices to the Supreme Court, our simulations reveal that there are two important design features that result in significantly different outcomes. The first of these design features is how the proposals would handle the transition to term limits. Proposals that commence appointing term-limited Justices immediately could complete the transition to each of nine active Justices serving an eighteen-year term in an average of just sixteen years. In contrast, proposals that delay appointing term-limited Justices until after the sitting Justices leave the Court take an average of fifty-two years (and as long as sixty-nine years) for the transition to be complete. The plans that delay transition continue to allow for unequal influence on the Court across presidential terms during the transition period, which is one of the key issues term limits are intended to address. These results highlight why the details of the transition process should not be viewed as minor; instead, they will shape the composition of the Court for a generation and therefore should be at the forefront of discussions of any proposal. The second design feature that produces considerable differences across proposals is how the plans respond to

unexpected vacancies. Some proposals would fill unexpected vacancies with senior Justices until the regularly scheduled appointment of a new Justice. In contrast, other proposals would require the appointment of a new Justice to fill the remainder of the unexpectedly vacant term. We find evidence that a nontrivial share of temporary appointments would require confirmations that may be politically difficult. In some of the proposals, for instance, eleven percent of such appointments would occur in exactly the conditions that resulted in Merrick Garland's ignored nomination to the Supreme Court (when it is both the last year of a presidential term and the Senate is controlled by the opposite party). Beyond the effects of these two important design features, **our results show that any of the major term-limits proposals are likely to produce similar, dramatic changes in the ideological composition of the Supreme Court.** Most significantly, **the Supreme Court had extreme ideological imbalance—which we define as seventy-five percent or more of the Justices appointed by presidents of the same party—for sixty percent of the time since President Franklin Roosevelt's effort to pack the Court. Although there are notable differences between each of the major term-limits proposals, they all would have reduced extreme imbalance over the same time period by almost half. This finding is explained by the fact that term limits prevent Justices from using strategic retirement to maintain their party's ideological advantages on the Court.**

Polls show 2/3 of Americans support term limits for the Supreme Court

Paul **Collins and** Artemus **Ward 22,** Paul M. Collins is a Jr. Professor of Legal Studies and Political Science, UMass Amherst. Artemus Ward is a Professor of Political Science, Northern Illinois University "After Roe's overturning, Americans are demanding Supreme Court term limits" July 28, 2022, The Conversation, https://theconversation.com/after-roes-overturning-americans-are-demanding-supreme-court-term-limits-187040

Following the Supreme Court's landmark ruling in Dobbs v. Jackson Women's Health Organization overturning half a century of abortion rights under Roe v. Wade, nearly two-thirds of Americans want fundamental court reform, specifically term limits for Supreme Court justices. Indeed, on July 25, 2022, Democrats introduced a bill that would allow a new justice to take the bench every two years and spend 18 years in active service. The majority that overturned Roe was possible only because of the current system in which justices serve for life and are therefore able to choose when and whether to step down. Justice Amy Coney Barrett owes her seat to Justice Ruth Bader Ginsburg's refusal to retire under a Democratic president and her subsequent death under a Republican. Justice Brett Kavanaugh is on the court because of Reagan appointee Justice Anthony Kennedy's decision to step down under a GOP administration. Justice Neil Gorsuch was appointed after conservative Justice Antonin Scalia happened to die and President Donald Trump took office. The author of the opinion in Dobbs, Justice Samuel Alito, took his seat when Republican Justice Sandra Day O'Connor chose to leave under President George W. Bush. Justice Clarence Thomas – the leader of the court's conservative majority – has served on the high court for over three decades and is there only because liberal icon Justice Thurgood Marshall refused to retire under a Democratic president and subsequently died with a Republican in office. **All federal judges in the U.S., including Supreme Court justices, enjoy life tenure. Under Article 3 of the Constitution, justices cannot be forced out of office against their will, barring impeachment.** This provision, which followed the precedent of Great Britain, is meant to ensure judicial independence that allows judges to render decisions based on their understandings of the law – free from political, social

and electoral influences. **Our extensive research on the Supreme Court shows life tenure, while well intended, has had unforeseen consequences. It skews how the confirmation process and judicial decision-making work and causes justices who want to retire to behave like political operatives.**

Why the founding fathers designated lifetime appointments for justices

Lauren **Cahn 2022,** Lauren Cahn is a New York-based writer whose work has appeared regularly on Reader's Digest, The Huffington Post, and a variety of other publications since 2008., "Why Do Supreme Court Justices Serve for Life?" Mar. 01, 2022, Readers Digest, https://www.rd.com/article/why-do-supreme-court-justices-serve-for-life/

It's a question many have about the U.S.'s highest court—and the rationale dates back to America's founding. There's a lot of attention on the Supreme Court lately, with President Joe Biden nominating Ketanji Brown Jackson to succeed retiring Justice Stephen Breyer. If confirmed, Judge Jackson will be the first Black woman to sit on America's highest court. It's an exciting—and historic—time for the Supreme Court, and as such, **you may be curious about its history and rules**. In addition to questions like "How many justices are on the Supreme Court?" and "Why do justices wear black robes?", you may also wonder, **"Why do Supreme Court justices serve for life?" Turns out, our founding fathers had a very good reason for it.** Read on to learn why Supreme Court justices serve for life, and what those lifetime appointments entail. **Lifetime appointment flows from the Constitution The idea of lifetime appointment comes from Article III of the U.S. Constitution**, explains Burt Neuborne, Norman Dorsen Professor of Civil Liberties and founding Legal Director of NYU Law School's Brennan Center for Justice. **Article III established the judicial branch of the U.S. government by vesting the judicial power of the United States in "one supreme Court" and any lower courts Congress decides to establish over the course of time.** In other words, the U.S. Supreme Court is the highest court and ultimate authority for deciding all controversies arising under U.S. law, including controversies regarding the constitutional validity of existing laws, both state and federal. **Although Article III leaves it to Congress to decide how to organize and staff its courts, it does specify that its judges "shall hold their office during good behavior." The meaning of "good behavior" for a Supreme Court justice The meaning of "good behavior" has long been debated. Some suggest it refers to the opposite of "high crimes and misdemeanors"** (behavior that can give rise to the impeachment of a federal officeholder). "All federal judges, including Supreme Court justices, can be removed through impeachment," explains Nora V. Demleitner, Roy L. Steinheimer Jr. Professor of Law at Washington and Lee University, "and the standard is set forth in Article III as good behavior." Only one Supreme Court justice has ever been impeached. In 1804, Samuel Chase, who had been appointed by President George Washington, was impeached by the House of Representatives for his allegedly partisan rulings. However, the Senate failed to convict him, and Chase served until his death in 1811. When it comes to the executive branch, here are the things people get wrong about impeachment. Other Supreme Court justices have also been targeted for impeachment, albeit unsuccessfully. That includes Chief Justice Earl Warren, who was appointed in 1953 under Republican President Dwight D. Eisenhower. Warren came to disappoint the Republican party with decisions such as 1954's Brown v. Board of Education of Topeka (putting an end to segregation in schools), but the resulting "Impeach Earl Warren" movement failed to gain steam. **What "good behavior" cannot mean is "right" versus "wrong" decisions, Neuborne points out. Why? This "would defeat the reason for having lifetime tenure," which is the goal of shielding federal judges from outside pressure. The reasoning behind lifetime appointment of Supreme Court justices The pressure** Neuborne **is referring to includes political pressure and popular opinion. "The framers believed it important to separate the legislative, executive, and judicial powers of government, and they believed**

it was particularly important to create a judiciary that would be independent of popular opinion," according to Ryan Vacca, Professor of Law at the University of New Hampshire School of Law. "**If they had to be reappointed or reelected,"** suggests Michael R. Dimino Sr., Professor of Law at Widener University Commonwealth Law School, **"they would have to worry that unpopular decisions could cost them their jobs."** Can Supreme Court justices retire? "A lifetime appointment does not require that a justice serves till death," points out Demleitner. "A host of Supreme Court justices chose to retire over the years." Chief Justice Warren retired voluntarily in 1969. Other retirements include Sandra Day O'Connor, John Paul Stevens, David Souter, and most recently, Stephen Breyer. Other countries impose term limits and/or mandatory retirement ages. Although constitutionally these options are not available in the United States, Demleitner argues that longer life expectancy (compared with the late 18th century) may lead to an increase in voluntary retirements in the future. **What's at stake because of lifetime appointments In addition to life expectancies increasing since the drafting of the Constitution, the age at which judges are appointed to the Supreme Court has been decreasing in recent years, with John Roberts and Elena Kagan appointed at 50, Clarence Thomas at 43, Stephen Breyer, Sonia Sotomayor, and Samuel Alito at 55, Neil Gorsuch at 49, Brett Kavanaugh at 53, and Amy Coney Barrett at 48. As a result, someone appointed to the Supreme Court today might reasonably be expected to still be sitting on the bench in two, three, or even four decades.** If Supreme Court nominations have become increasingly acrimonious in recent years, which Demleitner suggests, the potential length of lifetime tenure may be a factor. The appointment imperative **The president is vested with the power to nominate Supreme Court justices, subject to the advice and consent of the U.S. Senate. However, Article III says nothing about the number of justices that must be active at any given time**, points out Neuborne. **The first Judiciary Act, passed in 1789, provided that the Supreme Court was to consist of six justices: a "chief justice" and five "associate justices." Historically, the number of active Supreme Court justices has run the gamut, with Congress having amended the number six times. "We started with six, went down to five in 1801, back to six in 1802, and then added more justices as the country expanded," Neuborne says. "During the Civil War, we went briefly to 10, but quickly back to 9, where it has remained." Next, learn another 50 facts about America that most Americans don't know.**

Poll shows majority of judges support term limits for the Supreme Court

Autumn **King 2021,** Autumn King of the Community Foundation of Northern Nevada,"Most judges appear to support term limits for Supreme Court justices" October 08, 2021, The National Judicial College, https://www.judges.org/news-and-info/most-judges-appear-to-support-term-limits-for-supreme-court-justices/

About 6 in 10 judges surveyed think there should be term limits for the U.S. Supreme Court. The other 40 percent favor keeping the current lifetime appointments. **Those were the results from the NJC's Question of the Month for October, which asked alumni if there should be term limits for SCOTUS service and, if so, how long.** Three potential term ranges were given. Of the 632 judges who responded, one-third (33 percent) favored the middle range (11 to 19 years); 18 percent chose 20 years or longer, and 10 percent voted for 10 years or less. In interviews related to his new book, "The Authority of the Court and the Peril of Politics," **Justice Stephen Breyer has reaffirmed his support for term limits. He said he could favor an 18-year limit.** Breyer is 83 and has been on the court for 27 years. Of the 40 percent plurality in the poll that favored keeping lifetime appointments, some said term limits would create the potential for age discrimination. "A justice appointed in their 50s should be able to hold that position for 20 years or longer," wrote one anonymous judge. "Forcing them to retire before they are ready isn't fair or in line with the Constitution." One anonymous judge argued that term limits would actually provide more stability. "Knowing when a Justice's term is ending would allow some

predictability and consistency in the appointment process. Abrupt ideological shifts in the court do an enormous disservice to us all." Another judge said that applying term limits could reinforce the Constitution's envisioned checks and balances. If a justice truly remained loyal to the president who appointed him or her, at least that power would not persist for the entire lifetime of the appointed justice. "The pressure would be off for a president to feel that they can change the course of history…," wrote Senior Judge Mary M. James of Salem, Oregon. **Among the 194 judges who left comments, many offered suggestions that fell outside of the poll question. These included staggering justices' terms or allowing past justices to continue to advise the court after their terms expire.**

The founding fathers and the constitution do not support term limits; a brief history

Lyle **Denniston 15,** Lyle Denniston is the National Constitution Center's constitutional literacy adviser "Constitution Check: Did the Founders want term limits for Supreme Court Justices?" March 31, 2015, Constitution Center, https://constitutioncenter.org/blog/constitution-check-did-the-founders-want-term-limits-for-supreme-court-just

Lyle Denniston, the National Constitution Center's constitutional literacy adviser, looks at comments from Mike Huckabee **about the Founders' intentions for a Supreme Court with term limits** and what Alexander Hamilton said about the issue. ahamilton1792THE STATEMENT AT ISSUE: "Prospective presidential nominee Mike Huckabee **called Saturday for the imposition of term limits on U.S. Supreme Court justices, saying that the nation's founders never intended to create lifetime, irrevocable posts.** 'Nobody should be in an unelected position for life,' the former Arkansas governor said in an interview, expanding on remarks he made during an hour-long speech at the Nixon Presidential Library in Yorba Linda. 'If the president who appoints them can only serve eight years, the person they appoint should never serve 40. That has never made sense to me; it defies that sense of public service.' Huckabee said the Federalist Papers, written by Alexander Hamilton, James Madison and John Jay, supported his view that the nation's founders came close to imposing judicial term limits in the Constitution; they never could have imagined people would want to serve in government for decades, he said." – Story in The Los Angeles Times, on March 28, describing an interview with the ex-governor, who is expected to announce soon that he will again seek the presidency. **WE CHECKED THE CONSTITUTION, AND…** Much of the American Constitution endures, after more than two centuries, in its original form, and that is a testament to the wisdom of the founding generation that put it together. But it is sometimes true that a commentator here and there will treat the original Constitution as if it said something different from what it actually says, something more agreeable to that person. Politicians on the stump may indulge themselves in that kind of revisionism because it better suits an aspiration they may have for America. One perhaps can expect, as America moves more deeply into the next round of presidential politics, that the Constitution will take on new meanings on the stump. Given that it is so easy to disprove such rewriting, it is surprising that even politicians eager for votes would allow themselves to be shown to be wrong. That, however, seems not to be much of a deterrent. **One constitutional fantasy is that the Supreme Court should not really have members who can serve for their lifetimes, a choice left entirely to them personally so long as they behave themselves and do not give reasons to seek to unseat them involuntarily. The opening words of the Constitution's Article III, describing the judiciary that the original document created at the national level, reads this way (with emphasis added): "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior…" The phrase "good behavior" obviously implies that there is no limit on how long a Justice may serve, once approved for serving on the court.** That

implication is supported by the impeachment provision of the Constitution, contained in Article II. Just as the president and vice president may be removed from office by impeachment, so, too, can federal judges, including Justices of the Supreme Court. But that can only happen if they are convicted of "treason, bribery, or other high crimes and misdemeanors." Those, surely, are words that describe the opposite of "good behavior" for a judge, so they give meaning to the question of Justices' right to continue in office indefinitely. **If former Arkansas Governor Mike Huckabee has been quoted accurately by the Los Angeles Times, he has a perception of what the founding generation wanted regarding judicial tenure that seems to run counter to Article III and to the history of the founding years. There is nothing in Article III, or in the impeachment provision, that supports the notion that "the nation's founders never intended to create lifetime, irrevocable posts" for Supreme Court Justices, or for other federal judges.** That part of Article III has never been revised, and the prospects that it will be – say, for example, by an amendment to impose term limits – seem quite remote if not non-existent. But Huckabee's quarrel is not only with constitutional language, but **with what that very influential document of the founding era – the Federalist Papers – has to say on the subject of the terms of service on the Supreme Court. The most authoritative and thorough Federalist Paper on "the judicial department" is No. 78, published on May 28, 1788.** Like all other papers, it was published under the pen name "Publius," but this one was actually written by Alexander Hamilton. **To suggest, as Gov. Huckabee does, that Hamilton and the other authors of the Federalist "came close to imposing judicial term limits" does not take account of Paper No. 78**. Here is some of what Hamilton wrote there, describing the sense of the Philadelphia Convention that drafted the original Constitution: "According to the plan of the convention, all judges who may be appointed by the United Sttews are to hold their offices during good behavior; which is conformable to the most approved of the state constittions….Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government….It is the best expedient which can be devised in any government to secure a steady, upright and impartial administrations of the laws….**This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community."** There is in those sentiments not the slightest hint that Hamilton, or Madison or Jay, "came close to imposing judicial term limits in the Constitution" or that "they never could have imagined people would want to serve in government for decades." The Huckabee musings on this subject run into another logical barrier in the structure of the Constitution.. He was quoted as saying that, if presidents who appoint members of the court can only serve eight years, the person they name should not serve 40 years. But, until the Twenty-Second Amendment was written into the Constitution in 1951, there were no term limits for those who served as president. So, for 163 years after Article III was put into the Constitution, there was no potential inconsistency between the tenure of presidents and of Supreme Court Justices. Franklin Roosevelt, the last president not affected by the Twenty-Second Amendment, served for three full terms, plus 83 days into a fourth term. One of the eight Justices he named to the Court set the record for the longest service on the court: William O. Douglas, who served more than 36 years. While the nation turned out to be uncomfortable with a presidential term of the length of Franklin Roosevelt's, there has been no serious effort to curb the service of the Justices. **And that seems to reflect the founders' true wishes.**

A review of a constitutional amendment proposal

Steven **Calabresi and** James **Lindgren 06**, Steven G. Calabresi and James Lindgren of Northwestern University - Pritzker School of Law "Term Limits for the Supreme Court: Life Tenure Reconsidered", 26 May 2006, Harvard Journal of Law and Public Policy, Vol. 29, No. 3 & Northwestern Public Law Research Paper No. 07-24, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=701121

In June 2005, at the end of its October 2004 Term, the U.S. Supreme Court's nine members had served together for almost eleven years, longer than any other group of nine Justices in the nation's history. **Although the average tenure of a Supreme Court Justice from 1789 through 1970 was 14.9 years, for those Justices who have retired since 1970, the average tenure has jumped to 26.1 years.** Because of the long tenure of recent members of the Court, there were no vacancies on the high Court from 1994 to the middle of 2005. **We believe the American constitutional rule granting life tenure to Supreme Court Justices is fundamentally flawed, resulting now in Justices remaining on the Court for longer periods and to a later age than ever before in American history.** This trend has led to significantly less frequent vacancies on the Court, which reduces the efficacy of the democratic check that the appointment process provides on the Court's membership. The increase in the longevity of Justices' tenure means that life tenure now guarantees a much longer tenure on the Court than was the case in 1789 or over most of our constitutional history. Moreover, the combination of less frequent vacancies and longer tenures of office means that when vacancies do arise, there is so much at stake that confirmation battles have become much more intense. Finally, as was detailed in a recent article by Professor David Garrow, the advanced age of some Supreme Court Justices has at times led to a problem of "mental decrepitude" on the Court, whereby some Justices have become physically or mentally unable to fulfill their duties during the final stages of their careers. **In this Article, we call for a change to the life tenure rule for Supreme Court Justices. To resolve the problems of life tenure, we propose that lawmakers pass a constitutional amendment pursuant to Article V of the Constitution instituting a system of staggered, eighteen-year term limits for Supreme Court Justices. The Court's membership would be constitutionally fixed at nine Justices, whose terms would be staggered such that a vacancy would occur on the Court every two years at the end of the term in every odd-numbered calendar year. Every one-term President would thus get to appoint two Justices and every two-term President would get to appoint four.** Our proposal would not apply to any of the nine sitting Justices or to any nominee of the President in office when the constitutional amendment is ratified. Moving to a system of eighteen-year terms for Supreme Court Justices would restore the norms in this country that prevailed on the Court between 1789 and 1970, when vacancies occurred about once every two years, and Justices served an average of 14.9 years on the Court. **We recommend that the country recommit itself to the tenure practices that held for Supreme Court Justices for most of our history.**

Supporters of term limits are significant and diverse – even most state supreme courts and constitutional democracies impose term limits

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Because Article 3 of the Constitution confers life tenure upon all federal judges, term limits would likely require a constitutional amendment. Yes, constitutional amendments are hard to enact. We have not amended our Constitution since 1992, and we have done so only once in the past half-century. **But**

there is reason — even in these politically polarized times — to believe that constitutional reform is possible. To start, multiple voices from across the ideological spectrum have endorsed the concept of term limits on Supreme Court justices. One of the earliest proponents of the concept was Northwestern **professor Steven Calabresi, one of the co-founders of the conservative Federalist Society**. Other academics of all stripes — **from conservative luminary Michael McConnell (a former federal judge and my colleague at Stanford) to Erwin Chemerinsky, a leading liberal and dean of Berkeley Law School — have since joined the chorus. Various think tanks and their scholars — from Norm Ornstein of the American Enterprise Institute to Ilya Shapiro, now of the Manhattan Institute, to the Center for American Progress — have also backed the notion. And three justices themselves — Chief Justice Roberts, Justice Elena Kagan and former Justice Stephen Breyer — have suggested at various points in their careers that they see potential benefits in the idea. What is more, almost every state in the union imposes term limits on its state supreme court justices, a mandatory retirement age, or both.** Only Rhode Island has a system of life tenure akin to the federal model. It should come as no surprise, therefore, that when the National Constitution Center held an exercise in 2020 for drafting new constitutions, both the conservative and progressive teams adopted 18-year limits. A preference for term limits prevails beyond our shores as well. **Most constitutional democracies impose term limits, and other major democracies (such as the United Kingdom) impose age limits. The United States, in fact, is the only major constitutional democracy in the world to impose neither term nor age limits.**

Large scale judicial reform is possible, and pressure for substantive change is rapidly growing

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And Dobbs is just the begin-ning. **As a clear pattern of radical rulings emerge across cases and issue areas, trust in the Court is likely to fall further**. This unsus-tain-able situ-ation has led polit-ical scient-ists to predict decreased approval of the Court and **increased calls for reform measures such as Court expansion, term limits, and limits to the Court's jurisdiction or its discretion over the cases it gets to hear**. Some schol-ars have also recom-men-ded reforms to constrain the Supreme Court's abil-ity to inval-id-ate certain types of legis-la-tion, or regu-lar-ize Supreme Court appoint-ments and judi-cial turnover. Proponents argue that such reforms would push back against extreme conser-vat-ive court-capture by foster-ing a judi-ciary that's more repres-ent-at-ive of demo-cratic pref-er-ences and better reflects the diversity of the public that courts are supposed to serve. **Structural changes like these would require congressional action, and some could require a constitutional amendment. Large-scale reforms to the Court were inconceivable as recently as a few years ago. But court reform movements have a long history at the state and federal level – and have often seemed impossible until changes in the political environment made them all but inevitable.** The U.S. Supreme Court is an inter-na-tional outlier in many respects when compared to the high courts of other coun-tries, includ-ing how much author-ity justices wield–and for how long–and how narrowly they view guar-an-tees of equal-ity and social and economic rights. **Federal lawmakers have made some proposals to begin to reorient the wayward Court**. **Congressional legislation has been introduced that would increase the number of Supreme Court justices from nine to thir-teen. Another bill would establish term limits of 18 years for Supreme Court justices. There is also pending legislation to establish protec-tions for**

federal judiciary employees from discrimination and whistleblower retaliation, and consequences for judicial misconduct. And several bills would strengthen ethical requirements, such as by facilitating the creation of a new code of conduct for the Court or urging justices to formally subject themselves to the code that exists for other judges, prescribing what circumstances warrant recusal, and more. A demo-crat-ized judi-ciary is possible, and it's not what we have now. The present processes by which people ascend to the Court, stay on the Court, and wield power once on the Court are deeply and trans-par-ently flawed. And the Dobbs draft provides a stark example of how the Court is increas-ingly both a product and a source of anti-demo-cracy in the United States. There is no single solu-tion to repair our broken demo-cracy, and many ideas warrant further invest-ig-a-tion. **Given the Court's extremist behavior, the pressure for such investigation and substantive reform may come sooner rather than later-—as it should.**

An overview of the term limits debate and an outline of proposal supporters and opposers

Mike **Bebernes 2020**, Mike Bebernes is a 360 writer/senior editor for Yahoo News. "Should the Supreme Court have term limits?" September 29, 2020, Yahoo News, https://yhoo.it/3pCRJEF

What's happening **The death of Supreme Court Justice Ruth Bader Ginsburg has spurred a partisan fight over her replacement and sparked a larger discussion about the structure of the court itself and whether major changes should be made to protect the legitimacy of the judiciary branch**. Some Democrats have floated the idea of "packing the court" (adding additional seats to offset the influence of conservative judges) if they take control of the Senate in 2021. **The unexpected vacancy has also brought renewed attention to a long-simmering debate over whether Supreme Court justices should have term limits rather than lifelong appointments.** Progressive Democrats are reportedly planning to introduce a bill in the House of Representatives that would set 18-year term limits for justices and stagger the schedule of appointments so every president would get two nominations in a four-year term. **Completely eliminating lifetime appointments would likely require a Constitutional amendment.** This proposal, and others like it, get around that by allowing long-serving justices to hold a "senior" status in which they officially remain on the court but have limited duties. Why there's debate **Supporters of term limits believe it would decrease the intensity of the Supreme Court confirmation process, which has become a brutal political slugfest in recent years.** In turn, **justices would be less likely to allow partisanship to color their rulings once they're on the court, they say. A more regular schedule of appointments would also prevent what some consider antidemocratic tactics, like Republicans' refusal to consider Barack Obama's nominee in 2016, that in some views have undermined the public's trust in the nation's highest court. The Supreme Court is far too important, some argue, for its membership to be determined by whichever party happens to hold the White House and Senate when a sitting justice dies, especially since increasing life expectancy means that will happen less often. This randomness means some presidents have disproportionate influence over the court's makeup, which can skew the balance of power in the country long after they've left office. No other democracy in the world gives lifetime appointments to members of its highest court. Others fear the court is on the brink of a legitimacy crisis**. If Trump's nominee, Amy Coney Barrett, is confirmed, a majority of the Supreme Court will have been appointed by presidents who lost the popular vote. **Opponents of term limits say regular vacancies would worsen, not reduce, partisan bickering about the court. A new seat coming available every two years would mean Congress would always have an upcoming confirmation battle on the horizon. The Founding Fathers intended lifetime appointments to free Supreme Court justices of the day-to-day influence of politics, and critics say**

term limits would spoil that. There are also practical questions about how the limits might be implemented, since any plan would have to consider what to do with current justices, who were all named to lifetime seats. **Depending on the proposal, it could be decades before a plan for term limits has any real influence on the makeup of the court.** What's next The Senate Judiciary Committee is scheduled to begin hearings on Barrett's nomination in mid-October. It's unclear at this time whether a confirmation vote will be held before or after the presidential election on Nov. 3. In the short term, the odds of any bill imposing term limits passing would almost certainly depend on Democrats taking back the Senate next year. **Perspectives Supporters** The stakes of a court vacancy are too high with lifetime **appointments "Implementing term limits for the Supreme Court would be a step toward repairing and normalizing a process that raises the stakes of vacancies beyond what our politics, or the human beings who serve on the Court, can comfortably bear. It would be one important way we could deescalate the stakes of American politics, and protect the system from total breakdown." — Ezra Klein, Vox** Life expectancy has improved so much that lifetime appointments don't make sense "**It's time to end the unseemly position that the anachronism of life tenure for Supreme Court justices has put the country in. It's a good thing that modern medicine is extending the lives of everyone, including Supreme Court justices. But the time has come to remove the incentives that make justices serve until they drop dead or are gaga." — John Fund, National Review** A president's opportunities to name justices shouldn't be left up to chance **"Staggered term limits would ensure that electoral winners shaped the Supreme Court, not the Grim Reaper." — Elie Mystal**, **The Nation Term** limits would mean a greater diversity of thought on the Supreme Court **"Over time, more justices would have impact, preventing the idiosyncratic preferences of one or two individuals from determining U.S. jurisprudence for decades. This plan would also eliminate the incentive for presidents to pick young and relatively inexperienced judges merely because they are likely to live longer." — Editorial, Washington Post** Taking politics out of the process would protect court rulings from partisanship **"This approach would end what has become a poisonous process of picking a Supreme Court justice. It would depoliticize the court and judicial selection, and thus promote the rule of law." — Steven G. Calabresi, New York Times** Major steps need to be made to restore public trust in the court **"More than any other branch of government, the courts — and the Supreme Court in particular — gain their power from the public trust. Yet today, lifetime tenure for justices, and the strange and morbid circumstances that result, threaten to undermine that trust." — David Litt, Boston Globe** Opponents Term limits could make political fights over court seats even more intense **"Term limits and regularly recurring vacancies might tone down the epic Supreme Court confirmation battles that have occurred roughly twice every eight years. But they might instead make knock-down, drag-outs a recurring part of the political landscape. An election preceding the end of a swing justice's 18-year term could thrust the court into election year battles more intense than we've already seen." — Russell Wheeler, Brookings** The transition to term limits would be too complicated **"There are also transition problems. Since term limits wouldn't apply to sitting justices, for decades we would have term-limited justices serving alongside life-tenured ones. … Fixes could be put in place to prevent all this, but at some point the complications become more trouble than they're worth." — Ilya Shapiro, Atlantic Lifetime** appointments protect judges from having their decisions colored by the ebbs and flows of public opinion **"[Term limits] undermine the primary function of the judiciary, especially the Supreme Court: preventing political majorities from trampling on others' constitutional rights. … Judges without life tenure are less likely to act independently of the political branches or of public opinion, and thus cannot serve the purpose of holding the tyranny of the majority in check." — Suzanna Sherry, Philadelphia Inquirer** Term limits could lead to worse antidemocratic maneuvering **"If Congress can impose an 18 year term, they can also impose one that is 3 years or 6 years, and use that power to get rid of Supreme Court justices whose decisions they dislike. When the opposing party comes to power, they can make the terms still shorter, and thereby get rid of justices they dislike." — Ilya Somin,**

Reason Democrats only want term limits because conservatives control the court "**Wait, why is it that once the court could go 6–3 in favor of strict-constructionist originalist 'conservative' judges that we see this concern over lowering the temperature over fights for the Court?... I guess the legitimacy of the court is never at risk when it's ruling in your favor." — Jim Geraghty, National Review**

An overview of the problems with life tenure

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A vacancy sign hangs above the Supreme Court bench following reports this week that long-serving liberal justice Stephen Breyer will retire. Names are already being thrown around in the media as to who will replace him, aided by helpful hints from President Joe Biden himself. But whoever it is can, depending on their age, expect a lengthy spell on the bench of the highest court in the land. Precedent shows us that justices tend to grow old in the position. Breyer is one such example. When he joined the Supreme Court in 1994, he was an already very accomplished 55-year-old former law professor and appeals court judge. Now, at age 83, he is set to retire from the court at the end of the current term in June. **Supreme Court justices in the U.S. enjoy life tenure. Under Article 3 of the Constitution, justices cannot be forced out of office against their will, barring impeachment.** This provision, which followed the precedent of Great Britain, is meant to ensure judicial independence, allowing judges to render decisions based on their best understandings of the law — free from political, social and electoral influences. **Our extensive research on the Supreme Court shows life tenure, while well-intended, has had unforeseen consequences**. **It skews how the confirmation process and judicial decision-making work, and causes justices who want to retire to behave like political operatives.** Problems with lifetime tenure **Life tenure has motivated presidents to pick younger and younger justices.** In the post-World War II era, **presidents generally forgo appointing jurists in their 60s, who would bring a great deal of experience, and instead nominate judges in their 40s or 50s**, who could serve on the court for many decades. And they do. Justice Clarence Thomas was appointed by President George H.W. Bush at age 43 in 1991 and famously said he would serve for 43 years. There's another 12 years until his promise is met. The court's newest member, Donald Trump's nominee Amy Coney Barrett, was 48 when she took her seat in late 2020 after the death of 87-year-old Justice Ruth Bader Ginsburg. Ginsburg, a Clinton appointee who joined the court at age 60 in 1993, refused to retire. When liberals pressed her to step down during the presidency of Democrat Barack Obama to ensure a like-minded replacement, she protested, "So tell me who the president could have nominated this spring that you would rather see on the court than me?" Partisanship problems **Justices change during their decades on the bench, research shows. Justices who at the time of their confirmation espoused views that reflected the general public, the Senate and the president who appointed them tend to move away from those preferences over time. They become more ideological, focused on putting their own policy preferences into law. For example, Ginsburg grew more liberal over time, while Thomas has become more conservative.** Other Americans' political preferences tend to be stable throughout their lives. The consequence is that Supreme Court justices may no longer reflect the America they preside over. This can be problematic. If the court were to routinely stray too far from the public's values, the public could reject its dictates. The Supreme Court relies on public confidence to maintain its legitimacy. **Life tenure has also turned staffing the Supreme Court into an increasingly partisan process, politicizing one of the nation's most powerful institutions. In the 1980s and 1990s, Supreme Court nominees could**

generally expect large, bipartisan support in the Senate. Today, judicial confirmation votes are almost strictly down party lines. Public support for judicial nominees also shows large differences between Democrats and Republicans. **Life tenure can turn supposedly independent judges into political players who attempt to time their departures to secure their preferred successors, as Justice Anthony Kennedy did in 2018.** Trump appointed Brett Kavanaugh, one of Kennedy's former clerks, to replace him. A similar turn of events may occur if President Biden nominates Judge Ketanji Brown Jackson, a former Breyer clerk, to the current vacancy on the court. **The proposed solution Many Supreme Court experts have coalesced around a solution to these problems: staggered, 18-year terms with a vacancy automatically occurring every two years in nonelection years. This system would promote judicial legitimacy, they argue, by taking departure decisions out of the justices' hands. It would help insulate the court from becoming a campaign issue because vacancies would no longer arise during election years. And it would preserve judicial independence by shielding the court from political calls to fundamentally alter the institution.**

The politicization of the nomination and confirmation process for SCOTUS is undemocratic

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The success of the conservative pipeline to the Supreme Court has also been dependent on strident constitutional hardball during the Senate's judicial confirmation hearings that has politicized the process to the break-ing point. The most glar-ing example is the stone-walled Supreme Court nomin-a-tion of then-Judge Merrick Garland—-fol-lowed by the fast-tracked confirm-a-tion of Justice Amy Coney Barrett. Garland did not even receive a hear-ing after Senate repub-lic-ans inven-ted an "elec-tion year rule" and effect-ively changed the number of seats on the Court for over a year—the longest Supreme Court vacancy since Congress settled on a nine-justice Court. But as soon as it was polit-ic-ally advant-age-ous to do so, Senate Repub-lic-ans aban-doned their made-up rule. Repub-lic-ans who feigned concern that Garland's appoint-ment was too close to an elec-tion had no reser-va-tions about Barrett's appoint-ment during an elec-tion. It didn't matter that 2020 was also an elec-tion year or that millions of Amer-ic-ans had already voted by mail. All that mattered was that Barrett is a reli-able arch-conser-vat-ive, so the Repub-lican-controlled Congress began Barrett's hear-ings a mere 13 days after her nomin-a-tion—the fast-est period since 1975. This allowed the far right to clinch an extrem-ist 6–3 super-ma-jor-ity on the Supreme Court. Trump's Feder-al-ist Soci-ety-approved nomin-ees to the coun-try's thir-teen federal appeals courts (which provide the final word on the vast major-ity of federal cases) were also confirmed at break-neck speed: Trump appoin-ted nearly as many appel-late judges in four years as Obama appoin-ted in eight. **The increasing polarization of judicial confirmations has magnified the impact of other dysfunctions in our democratic system. Three sitting Justices—Barrett, Kavanaugh, and Gorsuch—were appointed during the term of a president who lost the popular vote. And the conservative bloc prepared to ove-turn Roe—Justices Alito, Thomas, Gorsuch, Kavanaugh, and Barrett—were each confirmed by senators who represent a smaller share of the coun-try than the senators who voted against them.** Senate hear-ings have also not played a product-ive role in allow-ing for mean-ing-ful vetting of judi-cial nomin-ees. Justices Alito, Thomas, Gorsuch, Kavanaugh, and Barrett all gave assur-ances during their confirm-a-tion hear-ings that Roe and Casey are import-ant consti-tu-tional preced-ents that have been repeatedly reaf-firmed, thereby strength-en-ing the cases'

value, and that they have no agenda to over-turn the cases protect-ing this funda-mental right – assur-ances that are now demon-strably worth-less. And the Senate failed to call several witnesses prepared to testify under oath and corrob-or-ate alleg-a-tions of sexual miscon-duct by Justices Thomas and Kavanaugh during their respect-ive confirm-a-tion hear-ings. Comment-at-ors have observed that two men cred-ibly accused of viol-at-ing women's bodily autonomy are now poised to issue a Supreme Court decision that will viol-ate the bodily autonomy of millions. **The lack of structural democratic accountability is much of the reason why we ended up with a Court so out of step with the public and with mainstream legal thought. But it could also spell a crisis for the Court's own legitimacy, spurring new attention to the broken system that gave us today's radical supermajority and garnering momentum for efforts at Court reform.** Abor-tion rights are over-whelm-ingly popu-lar. Pew Research Center data indic-ates that 61% of Amer-ic-ans think abor-tion should be legal in all or most circum-stances, and only 8% of U.S. adults think abor-tion should always be illegal. Politico data simil-arly shows that a clear major-ity of the coun-try would disap-prove of the Court over-turn-ing Roe v. Wade. Opin-ions on the Supreme Court are a closer call, with only 54% of U.S. adults saying they have a favor-able opin-ion of the Court while 44% have an unfa-vor-able view. **Strikingly, only 17 percent of adults say the justices are doing a good job keeping their own political views out of their decisions. That's dangerously low for an institution that derives its power from the public's confidence that its decisions are based on what the law requires and not political agendas.**

An overview of the problems with term limits

Jorge **Gomez 2021**, Jorge Gomez is the Senior Manager of Content Strategy for First Liberty Institute. He holds a degree in political science from the University of Central Florida and a master's degree in public policy from Liberty University. "3 Reasons Term Limits for Supreme Court Justices are a Dangerous "Reform", December 10, 2021, First Liberty, https://firstliberty.org/news/3-reasons-term-limits-are-dangerous/

President Biden's Commission on the U.S. Supreme Court presented a final draft of its findings this week, including the dangerous possibility of packing the nation's highest court. Though much attention has been given to court-packing—arguably the most dangerous proposal—the Commission is also considering other alarming "reforms." To be clear, this doesn't mean that court-packing has been taken off the table. The fact is, stacking the Court with a slew of liberal judges remains a very real threat. Understanding the destruction court-packing would have on our country, Americans made their voice heard. A vast majority—sixty-five percent (65%)—oppose packing the Court. It appears this overwhelming rejection caused the Commission to shift gears to focus attention on imposing term limits. Term limits—as opposed to our current system of lifetime tenure—seem like a modest change at first glance. However, Americans mustn't be deceived. **Below are three reasons why limiting tenure is a constitutionally suspect "reform" that could destroy America's revered system of justice.** 1. Term Limits Would Make the Supreme Court More Political One of the Commission's proposals calls for eighteen-year terms for Supreme Court Justices. Under this system, each President would have two regular appointments in a single presidential term and a total of four, if reelected for a second term. **But what works in legislative races does not work so well when applied to federal judges. Instead of reducing the politicization of our judicial process, this would only worsen the issue. With two seats guaranteed to open every four years, presidential candidates might have greater incentive to make promises about who they would appoint. It would only reinforce the erroneous message that appointments to the Supreme Court are the spoils of politics and the property of the President or party in power.** 2. **Term Limits Threaten Judicial Independence Term limits would destroy one of the hallmark features created by America's Founders. Life tenure for Supreme Court Justices has worked**

well for over 230 years and is an essential component to ensure judiciary independence. In Federalist No. 78, Alexander Hamilton explained that judicial independence "can certainly not be expected from judges who hold their offices by a temporary commission." **Life tenure protects judges' independence to decide cases not according to the temper of the times or political expediency, but by applying centuries-old legal traditions, relying on precedent, facts, and the intent and text of the law and the Constitution.** 3. **Term Limits Could Destabilize the Supreme Court More turnover could lead to more frequent shifts in the interpretation of the law, or even short cycles in which major precedents are discarded only to be reinstated later. Judicial instability is harmful because it reduces the stature of the Court. No longer would the Court be regarded as a bulwark protecting the rights and freedoms of Americans. Instead, it would become another element subject to the whims of those who wield political power**. **Additionally, getting rid of life tenure could reduce the wisdom judges obtain through age and experience. Think of some of the most influential justices in American history—such as Chief Justice Marshall—who impacted the rule of law in our country, because they served on the Court for decades. Imposing a system of term limits would make it very difficult—or even impossible—to produce judges who have longstanding, distinguished careers and thereby, less opportunity for them to positively impact the law in the long-term.** Looming Threat: Pending Legislation to Rig the Court in Favor of the Party in Power Even as President Biden's Judicial Commission presented its findings including term limits as a possible "reform," the party in power already has several plans in motion to rig the Court for its benefit. Earlier this year, House Democrats introduced legislation to create eighteen-year term limits for Supreme Court justices. The bill would also give presidents the ability to nominate a new justice every two years and require the Senate to act on each nomination within 120 days before the nominee is automatically seated. **This isn't the only bill aimed at "reforming" the Court, however. Recall that Democrats introduced a bill to increase the size of the Court from nine (9) to thirteen (13) members, followed by another court-packing bill to add more than 200 federal district court judgeships. Make no mistake: If court-packing, term limits or any other radical judicial changes are implemented, the result would be catastrophic for our country**. Indeed, the so-called court "reform" scheme could be the gateway to tyranny, the beginning of an America where religious liberty and all other freedom are granted not by God, but are decided by the heavy hand of government.

Empirical evidence shows that increased mean age and justice longevity has little impact on court productivity

Joshua C. **Teitelbaum 2006**, Joshua C. Teitelbaum Ph.D. student, Department of Economics, Cornell University; J.D., Harvard Law School; B.A., Williams College. "Age and Tenure of the Justices and Productivity of the Supreme Court: Are Term Limits Necessary", Fall 2006, Florida State University Law Review, https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1189&context=lr

The empirical findings of this Article may be summarized as follows. In general, the results of models 1 and 2 are consistent with the life cycle hypothesis of human capital theory and the related empirical literature. However, **the results of model 2 suggest that the Court's productivity is increasing over the relevant age range and does not decline until the mean age of Court is beyond its maximum mean age since at least 1926,** which is consistent with Posner's finding that the age-related decline in the productivity of judges does not set in until an unusually advanced age.61 The results of model 2 further **suggest that the productivity of the Court increases with the mean tenure of the Justices over the majority of the relevant tenure range**. **Finally, the results of models 3 and 4 suggest that the productivity of the Court increases with the percentage of Justices over 68 years of age and with fewer than 8 years of service. On the whole, the results of this Article do not provide clear support for the assertion that increased longevity and terms of service of the Justices have resulted in a decline in**

the productivity of the Court as measured by the number of cases accepted for review and the number of opinions issued per term. Accordingly, this Article cautions against relying too heavily on this claim to support the SCRA and other recent proposals to impose term limits for Supreme Court Justices. It is important to note, however, that this Article does not address the other reasons offered by proponents of term limits, including the increased politicization of the confirmation process, which may or may not be valid.62 Therefore, this Article does not necessarily counsel against term limits. **It simply casts doubt on one of several stated rationales for terms limits**. An interesting tangential result of this Article is that the Chief Justice appears to matter. In each model, two or more of the coefficients on the Chief Justice dummy variables are statistically and practically significant, which suggests the Chief Justice has a ceteris paribus influence on the productivity of the Court. This finding is consistent with the branch of the literature (reviewed in Part II) that suggests the leading cause of the recent decline in the Court's plenary docket is changes in the members of the Court63 and with a branch of the literature (not reviewed in Part II) that finds the Chief Justice (or his foreign counterpart) is a major determining factor of the level of consensus on the Court (or its foreign counterpart).64

Sample Pro Case

We affirm. Resolved: The United States should impose term limits on Supreme Court Justices.

Contention One: Term Limits Reduce Political Polarization

While polarization in many other democracies is declining, the United States has had the largest increase in polarization in the last 40 years

Boxell et. al 2021, Levi Boxell, Jesse Shapiro, and Matthew Gentzkow. Boxell and Gentzkow of Stanford University, Department of Economics, Shapiro of Brown University "CROSS-COUNTRY TRENDS IN AFFECTIVE POLARIZATION", NATIONAL BUREAU OF ECONOMIC RESEARCH, November 2021 https://www.nber.org/system/files/working_papers/w26669/w26669.pdf

We measure trends in affective polarization in twelve OECD countries **over the past four decades.** **According to our** baseline **estimates, the US experienced the largest increase in polarization** over this period. Five countries experienced a smaller increase in polarization. **Six countries experienced a decrease in polarization.** We relate trends in polarization to trends in potential explanatory factors.

The current Supreme Court nomination process contributes to polarization in two key ways.

First - longer tenure averages have raised the stakes for justices – making confirmation battles more intense.

Steven G. **Calabresi and** James **Lindgren 2006**, Steven G. Calabresi and James Lindgren if Northwestern University - Pritzker School of Law "Term Limits for the Supreme Court: Life Tenure Reconsidered", SSRN, 26 May 2006, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=701121

In June 2005, at the end of its October 2004 Term, the U.S. Supreme Court's nine members had served together for almost eleven years, longer than any other group of nine Justices in the nation's history. Although **the average tenure of a Supreme Court Justice from 1789 through 1970 was 14.9 years, for those Justices who have retired since 1970, the average tenure has jumped to 26.1 years.** Because of the long tenure of recent members of the Court, there were no vacancies on the high Court from 1994 to the middle of 2005. We believe the **American constitutional rule granting life tenure to Supreme Court Justices is fundamentally flawed, resulting now in Justices remaining on the Court for longer periods and to a later age than ever before in American history.** This trend has led to significantly less frequent vacancies on the Court, which reduces the efficacy of the democratic check that the appointment process provides on the Court's membership. The increase in the longevity of Justices' tenure means that life tenure now guarantees a much longer tenure on the Court than was the case in 1789 or over most of our constitutional history. Moreover, **the combination of less frequent vacancies and longer tenures of office means that when vacancies do arise, there is so much at stake that confirmation battles have become much more intense.** Finally, as was detailed in a recent article by Professor David Garrow, the advanced age of some Supreme Court Justices has at times led to a problem of "mental decrepitude" on the Court, whereby some Justices have become physically or mentally unable to fulfill their duties during the final stages of their careers. In this Article, we call for a change to the life tenure rule for Supreme Court Justices. To resolve the problems of life tenure, we propose that lawmakers pass a constitutional amendment pursuant to Article V of the Constitution instituting a system of staggered, eighteen-year term limits for Supreme Court Justices. The Court's membership

would be constitutionally fixed at nine Justices, whose terms would be staggered such that a vacancy would occur on the Court every two years at the end of the term in every odd-numbered calendar year. Every one-term President would thus get to appoint two Justices and every two-term President would get to appoint four. Our proposal would not apply to any of the nine sitting Justices or to any nominee of the President in office when the constitutional amendment is ratified. Moving to a system of eighteen-year terms for Supreme Court Justices would restore the norms in this country that prevailed on the Court between 1789 and 1970, when vacancies occurred about once every two years, and Justices served an average of 14.9 years on the Court. We recommend that the country recommit itself to the tenure practices that held for Supreme Court Justices for most of our history.

Second – judges leverage politically motivated retirements to inorganically swing the ideological balance of the courts

Daniel L. **Chen and** Eric **Reinhart 2016**, Daniel L. Chen is the Directeur de Recherche, Centre National de la Recherche Scientifique, Toulouse School of Economics. Eric Reinhart MD, Lead Health and Justice Systems Researcher, Data and Evidence for Justice Reform (DE JURE), The World Bank. "The Disavowal of Decisionism: Politically Motivated Exits from the U.S. Courts of Appeals", SSRN, 1 Aug 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2816253

Principles of apoliticality and personal disinterestedness subtend the American judiciary's claims to legitimacy and the liberal constitutional legal system it upholds. Less than 1% of U.S. Federal judges report political motivations for retirement and resignation. **Our data suggest political motivation in the judiciary is far more common.** From 1802 to 2019, 11% of retirements and 23% of resignations from the U.S. Courts of Appeals appear to have been motivated by political cycles. When the President comes from a different political party than the judge's party of appointment, judges are less likely to retire in each of the three quarters before a Presidential election. In contrast, **judges are more likely to resign in each of the four quarters after a Presidential election when the President comes from the judge's party of appointment. Politically motivated exits have increased significantly in recent years to constitute 14% of retirements since 1975, suggesting an increasingly politically interested and polarized judiciary.** Prior research has relied on self-reports or yearly analyses that have obscured political dynamics in the timing of judges' exits from the bench. By analyzing data at the quarter-to-election level, our results suggest that highly consequential decisions by Federal judges are frequently inflected by either unconscious bias or conscious partisan loyalties—either of which undermine the premise of judicial impartiality and the common law precedents for which these judges are responsible. Our findings support increasing concerns about undemocratic political power exercised via the courts—that is, the ascent of juristocracy: the practice of politics through legal dissimulations.

Term limits directly combat polarization by reducing the politicization of the appointment process and cutting through political extremism

Michael **Hiltzik 2022**, Pulitzer Prize-winning journalist Michael Hiltzik writes a daily blog appearing on latimes.com, "Column: Why we need term limits for Supreme Court justices", LA Times, May 4, 2022, https://www.latimes.com/business/story/2022-05-04/column-supreme-court-term-limit

Legal experts Nancy Gertner and Lawrence Tribe, who were members of a commission established by President Biden to weigh options, wrote last year that "the anti-democratic, anti-egalitarian direction of this court's decisions about matters such as voting rights, gerrymandering and the corrupting effects of dark money" made reshaping the court imperative. (They favored expanding the court "as soon as possible.") **A gulf** plainly **exists between what appears to be a court majority restricting abortion rights and public opinion, which overwhelmingly favors access to abortion in some or all circumstances. Only 20% of Americans think abortion should be banned entirely. The reasons for the divergence of public opinion and court actions** aren't hard to find. One **is the increasing politicization of the appointment process, in which a justice is nominated by the president and confirmed by the Senate.** As has been pointed out by Erwin Chemerinsky, a constitutional scholar and dean of the law school at UC Berkeley, from 1960 through 2021, Republicans held the White House for 32 years and Democrats for 29, almost an even split. But in that period Republicans have appointed 15 justices and Democrats only nine. That count includes conservatives Neil Gorsuch, who was the beneficiary of the Senate GOP's dishonest maneuvering to withhold consideration of Barack Obama's nomination of Merrick Garland to succeed the late Antonin Scalia, and Amy Coney Barrett, whose nomination was rushed through to confirmation to give Trump instead of Biden the opportunity to appoint a successor to Ginsburg. It also includes Ketanji Brown Jackson, appointed by Biden. Life terms for the Supreme Court have led to this uneven distribution of appointments. To some extent this is the luck of the draw. Following the 12-year tenure of Franklin Roosevelt, who appointed eight justices, Democratic presidents were consistently shortchanged — Democrats Bill Clinton and Obama got only two appointments each during their eight White House years and Jimmy Carter none, while Republican George H.W. Bush got two in his sole term and Trump three in his sole term. No Democratic president was able to

appoint a justice in the 26 years between Lyndon B. Johnson's appointment of Thurgood Marshall in 1967 and Clinton's of Ginsburg in 1993. **The prospect of open-ended service on the court encouraged justices themselves to try gaming their retirements.** Typically they tried to hang on until they could be assured that a like-minded president would appoint their successor (not that this invariably worked). The result was the continued service of justices who were plainly impaired mentally or physically. That has prompted concerns about what legal scholar David J. Garrow labeled "mental decrepitude" on the court. The best known example for Supreme Court aficionados is probably that of William O. Douglas, whose 1974 stroke left him so debilitated that his colleagues on the bench secretly agreed to hold over any cases on which Douglas would cast the deciding vote to break a 4-4 tie. Douglas retired in 1975 and died in 1980, at age 81. (As a personal aside, Douglas gave the keynote address at my college commencement the year before his stroke, and he was already incoherent.) The dangers of open-ended Supreme Court terms are illustrated by the case of Ginsburg, a liberal icon who hung on through repeated bouts of cancer until she died in 2020 at age 87, long past the point when her retirement would have allowed Democrat Obama to name her successor. "Some of us remain truly angry," Levinson wrote, that Ginsburg "chose to roll the dice with the country's future for no good reason other than her own vanity." That brings us back to the question of a term limit for Supreme Court justices. The most common version of this proposal is for a term limit of 18 years, combined with a permanent fixing of the court's size at nine. The goal would be to provide an opening on the bench every two years, or two in every presidential term. Fixed terms for justices would offer at least three virtues. It would help make the Supreme Court more reflective of contemporary political mores — justices in their 50s and 60s would surely be more attuned to the ebb and flow of social movements than those in their 80s. **It would reduce the political stakes for any nomination, because the prospect of using an appointment to affect the partisan tilt of the court into the limitless future would vanish. It would also reduce the likelihood that political extremism would take hold of the court.** At the Levinson roundtable, Lori A. Ringhand of the University of Georgia **estimated that** had the 18-year rule been in effect starting with Bill Clinton's term in 1993, **the court would comprise "four strongly liberal justices, three strongly conservative justices, a moderately conservative justice, and a moderately liberal justice" rather than today's 6-3 conservative majority. "A court so comprised might well find common ground on many issues," Ringhand speculated**. "More fundamentally, it almost certainly would better represent the constitutional preferences of the American people." To those who might object that this system would pare away extreme liberal as well as extreme conservative leanings, one can merely reply: If only. For most of American history, and particularly recent history, the court has been a bulwark of conservatism.

Polarization causes political gridlock, undermines trust in institutions, incentivizes violence against opposing parties, and more

Zaid **Jilani and** Jeremy Adam **Smith 2019,** Jeremy Adam Smith edits the GGSC's online magazine, Greater Good. He is an author and his articles and essays have appeared in The San Francisco Chronicle, Scientific American, Utne Reader, The Nation, Mindful, Wired, and many other periodicals, websites, and books, Zaid Jilani is Greater Good's Bridging Differences Writing Fellow. He has worked as a reporter for The Intercept and as a reporter-blogger for ThinkProgress, United Republic, the Progressive Change Campaign Committee, and Alternet. "What Is the True Cost of Polarization in America?", Greater Good Magazine, March 4, 2019, https://greatergood.berkeley.edu/article/item/what_is_the_true_cost_of_polarization_in_america

The longest government shutdown in history ended in January, 2019. Once rare, government shutdowns have become more frequent, as the major parties fail to compromise enough to even keep the federal government funded and open. The shutdowns are one consequence of rising social and political polarization in the United States. Polarization is not the same as disagreement about how to solve public policy problems, which is healthy and natural in a democracy. Polarization is about more than just having a different opinion than your neighbor about certain issues. Polarization occurs when we refuse to live next to a neighbor who doesn't share our politics, or when we won't send our children to a racially integrated school. The force that empowers polarization is tribalism: clustering ourselves into groups that compete against each other in a zero-sum game where negotiation and compromise are perceived as betrayal, whether those groups are political, racial, economic, religious, gender, or generational. **The impact isn't limited to politics. Research shows that polarization is affecting families, workplaces, schools, neighborhoods, and religious organizations, stressing the fabric of our society.** Antagonism might feel necessary in conditions of injustice—many Americans would agree, for example, that polarization needed to happen when the South clung to slavery. But being aware of the price we all pay for polarization might motivate us to reduce it, before the worst effects take hold. Here's a list of reasons why Americans should strive to avoid worsening social and political antagonism—and to build bridges with each other. 1. We're segregated in our own communities. Americans are increasingly segregating themselves by political party and ideology even in their residential communities. This segregation makes us more likely to demonize each other, as more and more people live alongside people who hold similar political beliefs to them. 2. Our political culture is more and more antagonistic. Our political campaigns have become increasingly negative, focused more on tearing down our opponents than building up support for our own ideas. During the 1960 presidential campaign, only around 10 percent of political advertisements aired were negative; by 2012, only around 14 percent of campaign ads were positive. 3. We judge and loathe members of other political parties. While political disagreement is normal in a

democracy, personally demonizing our opponents is not. 2016 Pew polling found that 47 percent of Republicans said that Democrats are more "immoral" than other Americans; 35 percent of Democrats held that view about Republicans. Our social network segregation may be making these feelings worse: Republicans with "few or no Democratic friends are twice as likely" to rate Democrats coldly than Republicans who have some Democratic friends. 4. Our families are being undermined. A recent study found that Thanksgiving dinners were significantly shorter in areas where Americans share meals across party lines. The effect was worse in areas with heavy political advertising. The researchers estimated that 34 million person-hours of cross-partisan discourse were eliminated in 2016 thanks to this polarization effect. 5. We're less likely to help each other out. Several studies suggest that contact across social classes seems to promote well-being and kind and helpful behaviors like gratitude and generosity. This research suggests it's bad for everyone's well-being when the rich don't have contact with the poor, or the poor with the middle class. 6. Our physical health is probably suffering. Research has shown that racism has a terrible impact on the health and well-being of its targets. Perhaps more surprisingly, studies find that individuals who harbor racial prejudices and fears experience elevated levels of stress and other physiological responses that, over time, can wear down their muscles and damage their immune systems. When racial antagonism goes up, everyone suffers. 7. We're more and more stressed out. In the two years that have passed since the 2016 election, an increasing number of Americans now say it's "stressful and frustrating" to talk about politics with people they disagree with. Among Democrats and Democratic-leaning Americans, the change is most profound, with 45 percent saying it was stressful to talk to the other side in March of 2016, but 57 percent saying so by October 2018. 8. We feel pressure to conform in our groups. Polarization doesn't just manifest as intergroup conflict. It also changes the dynamics within groups, as members feel more pressure to conform in their beliefs and actions, which makes internal dissent and diversity less likely. In a 2016 paper, "The Nature and Origins of Misperceptions," three political scientists note that in polarized situations we feel intense "social pressure to think and act in ways that are consistent with important group identities." Instead of thinking for ourselves, we tend to reason "toward conclusions that reinforce existing loyalties rather than conclusions that objective observers might deem 'correct.'" 9. Deception is more likely. Lying is often condemned when committed inside a group—but people tend to see deception as valid when in conflict with another group. These kinds of lies are called "blue lies" by researchers. "People condone lying against enemy nations, and since many people now see those on the other side of American politics as enemies, they may feel that lies, when they recognize them, are appropriate means of warfare," says George Edwards, a political scientist at Texas A&M University. 10**. Gridlock is damaging our government institutions**. In the halls of the U.S. Senate, the filibuster was once a rarely-used mechanism to force a prolonged debate about a piece of legislation (as romanticized in the film Mr. Smith Goes to Washington). But today, **even routine judicial appointments are subjects of controversy, and the filibuster is regularly invoked in a partisan way to promote gridlock, obstructing legislation that serves the public interest. Researchers have noted that the 112th Congress, for instance, passed fewer laws than any Congress stretching back to the 1800s.** 11. Our pocketbooks are hurting. The aforementioned government shutdowns are costly. The Congressional Budget Office estimated that the shutdown between December and January cost the economy $11 billion—to say nothing of the terrible impact on individuals who work for the government. 12. We're losing trust in key institutions. Some **people are losing faith in institutions** that were once trusted by a broad swath of the American public. **For instance, political parties are now polarized over whether they even trust higher education**, which provides the bedrock of educational and research support for much of American civic and business life. Even the faculty at these universities are now polarized, with little political diversity among professors. **This is also true, to different degrees, for the press, the military, libraries, and other institutions** that were once "big tents" for many kinds of Americans. 13. It's hard for us to solve problems even when we do agree. **For many of the issues we think of as most polarizing—like guns or immigration—there is actually wide consensus among the public about what sort of policies we should pursue. For instance, 90 percent of Americans support universal background checks for gun purchases**. And yet our polarized Congress, and a media environment that treats gun issues as a zero-sum game between gun owners and gun control activists, elude that consensus. **On issue after issue, Americans are closer than they appear, but our polarization prevents us from seeing that.** 14. **Violence is more likely. In polarized situations, we stop seeing people in competing groups as human beings—and that is very dangerous. Since the 2016 election, hate crimes have risen and more Americans seem to be endorsing the idea of intergroup violence. One 2018 study linked these trends to "partisan identity strength"—how much being Democrat or Republican is part of who we are. "It makes sense that as an identity grows stronger, and conflict intensifies, people will begin to approve of violence,"** says political scientist Lilliana Mason. Bridging Differences Course What are the solutions? We've already explored many here at Greater Good, from facilitating more intergroup contact to changing the way we talk to each other over social media and in real life—and we will continue to identify and promote solutions through our new Bridging Differences project. In the meantime, don't give up hope. America has been more polarized in the past than we are today, which means that a better future is possible.

Contention Two: Term Limits Improve Institutional Credibility

Trust in the Supreme Court is at a historic low

Jeffrey **Jones 2022**, effrey M. Jones, Ph.D., has served as a Gallup Senior Editor since 2000, overseeing research and conducting analysis for Gallup's U.S. polling and other public release surveys, "Confidence in U.S. Supreme Court Sinks to Historic Low", Gallup, June 23, 2022 https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx

WASHINGTON, D.C. -- With the U.S. Supreme Court expected to overturn the 1973 Roe v. Wade decision before the end of its 2021-2022 term, **Americans' confidence in the court has dropped sharply over the past year and reached a new low in Gallup's nearly 50-year trend.** Twenty-five percent of U.S. adults say they have "a great deal" or "quite a lot" of confidence in the U.S. Supreme Court, down from 36% a year ago and five percentage points lower than the previous low recorded in 2014. These results are based on a June 1-20 Gallup poll that included Gallup's annual update on confidence in U.S. institutions. The survey was completed before the end of the court's term and before it issued its major rulings for that term. **Many institutions have suffered a decline in confidence this year, but the 11-point drop in confidence in the Supreme Court is roughly double what it is for most institutions that experienced a decline.** Gallup will release the remainder of the confidence in institutions results in early July.

Institutional credibility is more important now than ever – and term limits are a key part of bolstering credibility in two ways.

First, lifetime appointments create politization that undermines the legitimacy of the court – term limits solve

Maggie Jo **Buchanan 2020**, Maggie Jo Buchanan Senior Director, Women's Initiative, "The Need for Supreme Court Term Limits" American Progress, August 3 2020, https://www.americanprogress.org/article/need-supreme-court-term-limits/

The average age at which a justice is appointed to the Supreme Court has remained relatively static throughout history, falling between the early- to mid-50s—meaning that as life expectancy has grown, so too have the terms of Supreme Court justices.3 In fact, the average justice's term is now longer than it has been at any other point in U.S. history. In addition, because the ease of the position has grown and the workload has decreased—long gone are the days of large dockets, circuit riding, and working without clerks—**justices are more likely to stay on the bench for long periods of time**. As Supreme Court justices and many legal academics have noted, **this** state of affairs **has resulted in each individual justice having more power over American life in a way that no other branch of government does.**5 For example, members of Congress, on average, are younger than the current members of the Supreme Court, and every appointee before Justice Sonia Sotomayor has been in office longer than the average senator.6 And, of course, the president is term limited by law. **This growth in power has contributed to the political nature of the confirmation process. Because there is no regularity in vacancies and each justice can now be easily expected to sit on the court for multiple decades, Senate leaders have a strong incentive to upend the confirmation process in order to secure a justice appointed by a president of their same political party**.7 **In addition, presidents are incentivized to select nominees with records that demonstrate they will likely rule in lockstep with that party's ideology.** Supreme Court selections have always been political in nature to a degree, and sitting justices themselves often contribute to this. For example, when Chief Justice Earl Warren—a noted progressive—retired after 15 years on the Supreme Court, he originally submitted his resignation to then-President Lyndon B. Johnson to avoid having a potential Republican president choose his replacement.8 More recently, **however, these problems have been so exacerbated as to weaken the legitimacy of the court itself**, culminating in Senate Majority Leader Mitch McConnell's (R-KY) move to steal a Supreme Court seat by refusing to consider a nominee from then-President Barack Obama. Sen. McConnell followed this unprecedented snub by eliminating the filibuster for a Republican nominee and confirming two controversial justices nominated by President Donald Trump.9 **Regular appointments, however, would hopefully make the confirmation process less political. For example, there would be less intense pressure on each individual pick because there would be an understanding that winning the presidency comes with the appointment of two justices. Moreover,**

creating a more regular appointment process would ensure that the court better reflects the broader public. Happenstance can result in presidents getting a greater or lesser number of appointments, potentially resulting in a court that is widely out of step with society as a whole.

Second, judicial term limits encourage democratic consent and foster the publics trust

Rosalind **Dixon 2021**, Dr. Dixon is a law professor and testified before the Supreme Court Commission in July 2021. "Why the Supreme Court Needs (Short) Term Limits?", New York Times, Dec. 31, 2021, https://www.nytimes.com/2021/12/31/opinion/supreme-court-term-limits.html

Judicial term limits are a tool widely employed by constitutional designers around the world. Some countries follow the British model of judicial age limits. Others follow the German model of fixed judicial terms, but almost all — other than the United States — reject the idea of lifetime judicial tenure. And they do so by imposing term limits shorter than 18 years. Perhaps most important, **countries with strict judicial term limits include some of the most powerful and respected constitutional courts**. In Germany, justices of the Federal Constitutional Court are appointed for a single, nonrenewable 12-year term. It is the same in South Africa. And in Colombia and Taiwan, constitutional justices are appointed for an eight-year term. Like term limits for the presidency, **judicial term limits** have several salutary benefits. They **encourage** regular turnover on a court and **the renewal of democratic consent and input into the process of judicial review. They also discourage the appointment of young, hyperideological judges who are seen as having the capacity to stay on the court for the long run and shift it in a particular predetermined ideological direction**. The Supreme Court does a lot more than call balls and strikes. It decides a range of complex legal and political questions, where legal and political philosophy inevitably play a role. But **for a court to earn and retain the public's trust, those decisions must reflect a judge's considered individual moral and political judgments, not any fixed ideological position or platform. Justices must also engage in true collective deliberation, not factional conferencing based on ideological positions.** The Supreme Court still does this in a wide range of nonconstitutional cases and cases that involve complex federal statutes like the Employee Retirement Income Security Act. But it rarely engages in that kind of thoughtful, collective deliberation in cases that involve constitutional rights and freedoms. What is good enough for employment benefits should be good enough for constitutional rights.

If the Supreme Court continues to erode its legitimacy, it risks a constitutional crisis

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The Worcester case illustrates something **vital about the Supreme Court: It only has power inasmuch as people believe it does. Constitutionally speaking, the Court does not have the hard authority of the presidency or Congress. It cannot deploy the military or cut off funding for a program.** It can order others to take actions, but these orders only hold force if the other branches and state governments believe they have to follow them. **The Court's power depends on its legitimacy — on a widespread belief, among both citizens and politicians, that following its orders is the right and necessary thing to do. That legitimacy has been slowly eroded in recent years.** The unprecedented blockade of President Barack Obama's Supreme Court nominee Merrick Garland in 2016, the bitter fight over Brett Kavanaugh's 2018 nomination, the GOP's brazen disregard of the Garland precedent in 2020 to appoint Amy Coney Barrett after Justice Ruth Bader Ginsburg's death, and the increasingly hardline conservative tilt of Court rulings have combined to do significant damage to the idea that the Court is somehow above politics. As a result, many Americans favor radical reforms to the Court: 66 percent favor term limits for justices, and a 45 percent plurality favors packing, or expanding, the Court. The Supreme Court's decision to strike down Roe v. Wade is likely to be yet another significant blow to Court legitimacy. The issue is not just that a majority of Americans disagree with the ruling, though recent polling tells us that they almost certainly do. It's that **the process that led to this outcome has repeatedly exposed the Court as a vessel for politics by other means**. In that context, Justice Samuel Alito's ruling in Dobbs v. Jackson Women's Health — a wholesale reversal of perhaps the most prominent Supreme Court ruling of the past few decades, one with longstanding majority support — will hit differently than previous controversial Court rulings. **The damage could be severe and**

lasting, worse even than nakedly political decisions like Bush v. Gore. While it may be tempting to cheer **the collapse of the Court's legitimacy** given its track record, that prospect **should give us some pause.** In the American system, for better or for worse, **the Court is supposed to serve as the final arbiter of political disagreements. If it lacks the legitimacy to play that role, it sets the stage for a constitutional crisis** — especially if former President Donald Trump runs again in 2024. How overturning Roe will damage the Court's legitimacy Political scientists who study the sources of Court legitimacy generally find that it stems from the perception that the Court is not a political body. The idea that justices are interpreting the law to the best of their abilities, rather than simply finding a justification for imposing their political preferences, is fundamental to the public's faith in the institution as a whole. AD For decades, this belief has been fairly widespread in the American public, allowing the Court to weather some very controversial rulings.

Constitutional crises cause political breakdown – risking disaster, public protests, violence, and makes politics impossible

Sanford **Levinson and** Jack **Balkin 2009,** "CONSTITUTIONAL CRISES", University of Pennsylvania Law Review, February 2009, https://web.english.upenn.edu/~cavitch/pdf-library/LevinsonandBalkin.ConsitutionalCrises.pdf

The secret, we shall argue, is to think about crisis not in terms of constitutional disagreement but in terms of constitutional design. Disagreement and conflict are natural features of politics. The goal of constitutions is to manage them within acceptable boundaries. When constitutional design functions properly—even if people strongly disagree with and threaten each other—there is no crisis. On the other hand, **when the system of constitutional design breaks down,** either because people abandon it or because it is leading them off of the proverbial cliff, **disagreements and threats take on a special urgency that deserves the name of "crisis."** In this Article, we offer a typology of constitutional crises based on this insight. We think that the differences between them should matter greatly to students of constitutional law and students of constitutional design. We argue that **a constitutional crisis refers to a turning point in the health and history of a constitutional order,** and we identify three different types of constitutional crises. The first two types were identified by Machiavelli in the quotation that begins this Article. Type one crises arise when political leaders believe that exigencies require public violation of the Constitution. Type two **crises are situations where fidelity to constitutional forms leads to ruin or disaster.** Type three crises involve situations **where publicly articulated disagreements about the Constitution lead political actors to engage in extraordinary forms of protest beyond mere legal disagreements and political protests: people take to the streets, armies mobilize, and brute force is used or threatened in order to prevail. If a central purpose of constitutions is to make politics possible, constitutional crises mark moments when constitutions threaten to fail at this task.** This definition of "crisis," which focuses on the ability of the constitutional system to channel and defuse difficulties and conflicts, is the most analytically coherent, and it makes the most sense of the origins of the word. Traditionally (and etymologically), the word "crisis" refers to a turning point or decisive moment in the health of an individual, and by metaphorical extension, the body politic.29 Crises represent a breakdown in a previous balance or equilibrium, a disturbance to important values and to the existing order that will ultimately resolve in one direction or another.30 A constitutional crisis, then, is a potentially decisive turning point in the direction of the constitutional order, a moment at which the order threatens to break down, just as the body does in a medical crisis.31 It may lead back to a slightly altered status quo, that is, a crisis averted. The fever provoking a medical crisis breaks, and the patient returns to her prior condition little the worse for wear. On the other hand, the conclusion of a crisis may indeed be an important transformation in the forms and practices of power or, in the most extreme cases, the dissolution of the existing constitutional order and the creation of a new order in its place. The ultimate medical crisis, after all, is death, as demonstrated most spectacularly in our lifetime by the demise of the Union of Soviet Socialist Republics or the dissolution of Yugoslavia.32

Answers To Pro Case

AT: Term Limits Reduce Political Polarization

1.) Term limits creating open seats every few years exacerbates the politization of the confirmation process and fails to address the root problem of power imbalance

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But there are real risks, and ways in which instituting staggered **term limits could spectacularly backfire.** Imagine a scenario in which a GOP-controlled Senate blocks a Democratic president's 2025 and 2027 nominations. A Republican president is then elected in 2028 and the Senate confirms four nominees: in 2029 and 2031, to serve the regular 18-year terms, and **for the two empty seats**, with 14 and 16 years left on their terms, respectively. This could happen **in every cycle of divided government**, and **would exacerbate, not lessen, the politicization of the confirmation process**. What's more, if these 18-year terms had been around for the past few decades, the Court's makeup would hardly be different; there would now be three George W. Bush appointees, four Barack Obama appointees, and two Donald Trump appointees. In the past 50 years, there have been 30 years of Republican presidents and 20 years of Democratic ones; if anything, liberal voices have been overrepresented on the Court. In other words, **term limits wouldn't change the ideological composition of the Court over time. Nor, for that matter, would they address the fundamental power that each justice wields, which is the reason we see such ferocious political battles every time a vacancy occurs.** There are also transition problems. Since term limits wouldn't apply to sitting justices, for decades we would have term-limited justices serving alongside life-tenured ones. Moreover, it would take decades to get each seat's 18-year term aligned with the others. Future vacancies wouldn't arise in an orderly manner, so some transitional justice could serve five or 10 years before another one arrives. At a certain point, someone could end up "limited" to 20, 25, or even 35 years. Fixes could be put in place to prevent all this, but at some point the complications become more trouble than they're worth.

2.) Term limits increase polarization for three reasons – by eliminating ideological drift, reducing incentives for compromise, and incentivizes political maneuvering for post-SCOTUS career opportunities

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Term Limits and Polarization **There are at least three reasons to doubt that term limits would have a depolarizing effect on the court** and one reason to think that they might. **First, term limits would truncate the process of ideological drift.** For the most part, Democratic appointees start out as relatively liberal (both according to everyday judgement and by quantitative measures as judged by the Martin-Quinn scores mentioned earlier), and Republican appointees begin their careers on the court as relatively conservative. But **over time, party sorting becomes considerably messier, with some Democratic appointees** (like Felix Frankfurter and Byron White) **moving in a conservative direction, and**

some Republican appointees (like Harry Blackmun and John Paul Stevens) **growing more liberal. A term-limited court would likely be a better-sorted court, because there would be less time for such drift to occur. If party sorting is a concern, term limits are likely to make it worse. Second, term limits would potentially undermine incentives for liberals and conservatives on the Supreme Court to strike compromises. When judicial careers are longer, justices know that they may cycle in and out of the majority over the course of their careers. They may expect that cooperative behavior now will be rewarded later and uncooperative behavior will be punished** (Axelrod 1984; Wahlbeck, Spriggs, and Maltzman 1999). In addition, **a justice who expects to spend many more years on the court will likely care more about public legitimacy concerns, which in turn may encourage justices to build cross-ideological coalitions—or, at least, to adopt voting patterns that do not conform to partisan stereotypes. Term limits, by shortening the shadow of the future for justices, potentially undermine these reciprocity and legitimacy-based incentives. Third, term limits**—without additional limits on justices' post-court careers— **would raise the probability of justices pursuing electoral politics after their tenures are over. Insofar as success in partisan politics depends upon clear identification as a liberal or conservative, this dynamic would potentially lead to a court even more clearly sorted along party lines**. To be sure, term limits also could cut in the opposite direction. By limiting the ability of justices to time their departures for periods in which their own party controls both the White House and the Senate, term limits could increase the frequency with which a president would have reason to nominate more moderate justices who would stand a fighting chance of confirmation in a hostile Senate. However, this scenario runs counter to the ostensible objective of reducing the contentiousness of the confirmation process: after all, the most contentious conformation fights tend to occur when the president's party holds a minority or very slim majority of Senate seats.

AT: Term Limits Improve Credibility

1.) Supreme court term limits empirically produce extreme swings in constitutional precedent – which undermines it's legitimacy

Christopher **Sundby and** Suzanna **Sherry 2019,** Christopher Sundby of Gelber Schachter & Greenberg. Former clerk for US Court of Appeals and National Institute of Justice Graduate Research Fellow and Suzanna Sherry is faculty at Vanderbilt Law, "Term Limits and Turmoil: Roe v. Wade's Whiplash", Texas Law Review, 2019, https://texaslawreview.org/wp-content/uploads/2019/11/Sherry.Printer.pdf

Proposals for term limits for Supreme Court Justices have gained renewed traction as a possible way to solve the counter majoritarian difficulty, depoliticize the Court, and reinvigorate the Court's legitimacy. While not discounting the possible benefits of term limits, this study has asked whether a term-limit regime might also lead to greater legal instability. **The study's results reveal the proposal's substantial potential to destabilize important constitutional precedents and to change the way that constitutional jurisprudence evolves by pushing it away from gradual shifts and towards more sudden jolts**. But how likely is it that term limits would in fact have such an effect? Having explored a variety of options, we can now consider the most likely scenario. As noted earlier, the trend seems to be toward nominating Justices with a high degree of loyalty and little if any willingness to defer to precedent.109109One recent study supports our assessment of these variables. The study suggests that presidential interest in the Court is increasing, the cost of finding ideologically reliable candidates is decreasing, and that the composition of the Court is therefore swinging toward Justices whose decisions reliably align with the politics of the nominating president. Assuming that we are accurate in assessing the Senate's influence as moderate—especially given the current absence of a filibuster, which does slightly decrease the Senate's influence—the model that best captures these three variables (high loyalty, no deference, moderate Senate influence) is Model 2, illustrated by Figure 2 on page 142 and reproduced below for the convenience of the reader. Figure 2. The odds of the Supreme Court overturning Roe v. Wade between 1973 and 2019 with more loyal Justices. The horizontal line marks the cutoff between the Court being more or less likely to overturn Roe v. Wade. This model has a substantial detrimental effect on doctrinal stability. **A term-limited Court not only changes its collective mind on abortion three times in forty-six years, but also produces extreme swings with a high likelihood of reversal. Such a level of constitutional zigzagging has never been seen in the Court's history.** Such instability could produce a number of deleterious effects. The lack of doctrinal stability might be replaced with a different type of predictability. Even in the absence of the typical in-between cases signaling change, outcomes may actually become more predictable. However, litigants would turn to reading the tea leaves of the Court's composition rather than looking to past precedent for

guidance. This change also affects the time horizon of predictability. A case can swing from a sure winner to a sure loser over the course of a single election. This could have a drastic effect on litigants who often have to wait years before their cases reach the Supreme Court and may affect whether they decide to bring cases at all. Perhaps most damaging, it is unclear how frequent swings would affect enforcement of Supreme Court decisions as lower courts react to sudden ideological changes in Court majorities. The lower courts' reactions might be exacerbated by the fact that instability and doctrinal swings could also open up a Pandora's box of retroactivity and legitimacy issues. In general, new constitutional rules of criminal procedure "do not apply retroactively to cases on collateral review, but new substantive rules do." If, for example, either a woman or her doctor were to be criminally convicted under a law banning abortion during an era when Roe v. Wade was not in effect, this conviction should be overturned under Montgomery following Roe's reinstatement. **If the precedent is repeatedly overturned and reinstated, however, lower courts and policy makers could decide to simply ignore the Supreme Court's decision, counting on a reversal after subsequent elections. In other words, the Supreme Court could lose** perhaps its most valuable asset**, finality, which could result in increased defiance of its decisions and reduced legitimacy.**

2.) Supreme court legitimacy has dipped before, but consistently recovers

Amelia **Thomson-DeVeaux and** Oliver **Roeder 2018,** Amelia Thomson-DeVeaux is a senior writer for FiveThirtyEight. Oliver Roeder was a senior writer for FiveThirtyEight. He holds a Ph.D. in economics from the University of Texas at Austin, where he studied game theory and political competition, "Is The Supreme Court Facing A Legitimacy Crisis?", FiveThirtyEight, 10/01/2018, https://fivethirtyeight.com/features/is-the-supreme-court-facing-a-legitimacy-crisis/

Since then, though, the nominees have grown significantly more divisive, culminating with the narrow confirmation of Justice Neil Gorsuch, who received only 54 votes last year. The rancor around Gorsuch's nomination was, of course, amplified by Senate Majority Leader Mitch McConnell's decision to block the confirmation of Merrick Garland, then-President Barack Obama's selection to fill the seat vacated by the death of Justice Antonin Scalia, leaving Democrats deeply embittered about the process. It's difficult to say that these rising tensions have caused the decline in the Supreme Court's favorability, but they have certainly stripped the nomination process of any pretense that potential Supreme Court justices' political views are secondary to their qualifications as judges or legal scholars. Meanwhile, the court itself has moved right under Roberts even without having a strong conservative majority, which means the addition of Kavanaugh or another Trump appointee could result in opinions that are significantly to the right of mainstream public opinion. **That being said, the Supreme Court has weathered serious controversies before** — including episodes that are quite similar to what we've seen with Kavanaugh. In 1991, Clarence Thomas's nomination process was brought to a screeching halt by sexual harassment allegations from law professor Anita Hill, who was called before the Senate to testify. Thomas was eventually confirmed to the court, where he continues to serve as an associate justice. **The country was deeply divided about the hearings and the outcome, and the percentage of Americans who said they had "a great deal" or "quite a lot" of confidence in the court slipped from 48 percent in February 1991 to 39 percent in October 1991. It took several years for public opinion to recover, but it was back at 50 percent in 1997.** Surprisingly, there was no dip in confidence after the court's ruling in Bush v. Gore in 2000, when the justices voted to end a recount in Florida, effectively deciding the presidential election in favor of George W. Bush. At the time, it seemed possible that the vote — which pitted five conservative-leaning justices against four liberals — would create an indelible impression of the court as a partisan body. But 50 percent of Americans still said they had "a great deal" or "quite a lot" of confidence in the court in 2001 — an increase of 2 percentage points over the year before. **These episodes might suggest that the court is fully capable of recovering from the unfolding political firestorm** over Kavanaugh, even if he is eventually confirmed and takes his seat as the ninth justice. But they also may have helped drive its long-term decline. The reality is that today, Americans' confidence in the Supreme Court is weaker than it was 20 years ago. Americans may no longer be willing to give the court the benefit of the doubt.

Sample Con Case

We negate. Resolved: The United States should impose term limits on Supreme Court Justices.

Contention One: Term Limits Undermine Doctrinal Stability

The current system of life tenure necessitates that the court changes slow, resulting in incremental changes to the constitution

Christopher **Sundby and** Suzanna **Sherry 2019,** Christopher Sundby of Gelber Schachter & Greenberg. Former clerk for US Court of Appeals and National Institute of Justice Graduate Research Fellow and Suzanna Sherry is faculty at Vanderbilt Law, "Term Limits and Turmoil: Roe v. Wade's Whiplash", Texas Law Review, 2019, https://texaslawreview.org/wp-content/uploads/2019/11/Sherry.Printer.pdf

Should we impose term limits on Supreme Court justices? Many people, of varying political views, have suggested that we should. They argue that requiring justices to step down after a fixed term – the most common suggestion is 18 years – would give all presidents an equal opportunity to nominate justices, depoliticize the confirmation process and ensure that the Supreme Court is never too far out of step with the views of the American public. Whether adopting term limits would accomplish all of these goals is, of course, disputed. But is there any reason not to try it? In "Term Limits and Turmoil: Roe v. Wade's Whiplash," forthcoming in the Texas Law Review, we argue that there is a very serious potential downside to limiting justices to 18-year terms. A Supreme Court that welcomes a new justice every two years, and turns over entirely over the course of every 18 years, could wreak havoc on doctrinal stability. **Under the current constitutionally mandated system of life tenure, the court changes slowly**. **Most justices serve at least 20 years and** many serve 30 years or more; **no new justices joined the court at all between 1994 and 2005. This longevity and stability means that doctrine changes slowly and incrementally**. A constantly changing court, on the other hand, might make sudden and radical changes in doctrine. But is this a realistic fear? Our article tries to assess just how much instability an 18-year term limit would cause. We use a computer simulation to model what is likely to have happened to abortion rights after 1973 (when Roe v. Wade was decided) if term limits had been in place from then until now.

Supreme court term limits empirically produce extreme swings in constitutional precedent – which undermines enforcement of the court's decision

Christopher **Sundby and** Suzanna **Sherry 2019,** Christopher Sundby of Gelber Schachter & Greenberg. Former clerk for US Court of Appeals and National Institute of Justice Graduate Research Fellow and Suzanna Sherry is faculty at Vanderbilt Law, "Term Limits and Turmoil: Roe v. Wade's Whiplash", Texas Law Review, 2019, https://texaslawreview.org/wp-content/uploads/2019/11/Sherry.Printer.pdf

Proposals for term limits for Supreme Court Justices have gained renewed traction as a possible way to solve the counter majoritarian difficulty, depoliticize the Court, and reinvigorate the Court's legitimacy. While not discounting the possible benefits of term limits, this study has asked whether a term-limit regime might also lead to greater legal instability. **The study's results reveal the proposal's substantial potential to destabilize important constitutional precedents and to change the way that constitutional jurisprudence evolves by pushing it away from gradual shifts and towards more sudden jolts**. But how likely is it that term limits would in fact have such an effect? Having explored a variety of options, we can now consider the most likely scenario. As noted earlier, the trend seems to be toward nominating Justices with a high degree of loyalty and little if any willingness to defer to precedent.109109One recent study supports our assessment of these variables. The study suggests that presidential interest in the Court is increasing, the cost of finding ideologically reliable candidates is decreasing, and that the composition of the Court is therefore swinging toward Justices whose decisions reliably align with the politics of the nominating president. Assuming that we are accurate in assessing the Senate's influence as moderate—especially given the current absence of a filibuster, which does slightly decrease the Senate's influence—the model that best captures these three variables (high loyalty, no deference, moderate Senate influence) is Model 2, illustrated by Figure 2 on page 142 and reproduced below for the convenience of the reader. Figure 2. The odds of the Supreme Court overturning Roe v.

Wade between 1973 and 2019 with more loyal Justices. The horizontal line marks the cutoff between the Court being more or less likely to overturn Roe v. Wade. This model has a substantial detrimental effect on doctrinal stability. **A term-limited Court not only changes its collective mind on abortion three times in forty-six years, but also produces extreme swings with a high likelihood of reversal. Such a level of constitutional zigzagging has never been seen in the Court's history.** Such instability could produce a number of deleterious effects. The lack of doctrinal stability might be replaced with a different type of predictability. Even in the absence of the typical in-between cases signaling change, outcomes may actually become more predictable. However, litigants would turn to reading the tea leaves of the Court's composition rather than looking to past precedent for guidance. This change also affects the time horizon of predictability. A case can swing from a sure winner to a sure loser over the course of a single election. This could have a drastic effect on litigants who often have to wait years before their cases reach the Supreme Court and may affect whether they decide to bring cases at all. Perhaps most damaging, it is unclear how frequent swings would affect enforcement of Supreme Court decisions as lower courts react to sudden ideological changes in Court majorities. The lower courts' reactions might be exacerbated by the fact that instability and doctrinal swings could also open up a Pandora's box of retroactivity and legitimacy issues. In general, new constitutional rules of criminal procedure "do not apply retroactively to cases on collateral review, but new substantive rules do." If, for example, either a woman or her doctor were to be criminally convicted under a law banning abortion during an era when Roe v. Wade was not in effect, this conviction should be overturned under Montgomery following Roe's reinstatement. **If the precedent is repeatedly overturned and reinstated, however, lower courts and policy makers could decide to simply ignore the Supreme Court's decision, counting on a reversal after subsequent elections. In other words, the Supreme Court could lose** perhaps its most valuable asset**, finality, which could result in increased defiance of its decisions and reduced legitimacy.**

Precedence improves judicial decision-making by allowing judges to build on their respective wisdom increasing the accuracy and fairness of each decision

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This backwater of the law is nonetheless incalculably important for the theory of adjudication as well as the practice. Precedent is important for reasons other than the desire that likes be treated alike, so that decisions can be called law. It is valuable for reasons classical liberals should approve because it is the way in which rules arise without a central authoritative decider. The stock of precedents is produced by generations of judges wrestling with hard questions. They study the problems and record their conclusions, as traders of coal study its qualities and make their bids. Like the price of coal, the system of precedent may incorporate more wisdom than any single trader or judge possesses. **Precedent decentralizes decision-making and allows each judge to build on the wisdom of others.** In a world where questions arise faster than the information necessary to supply answers, this is a boon. **Precedent** not only economizes on information but also **cuts down on idiosyncratic conclusions by subjecting each judge's work to the test of congruence with the conclusions of those confronting the same problem. This increases both the chance of the court's being right and the likelihood that similar cases arising contemporaneously will be treated the same by different judges.** Yet to express the role of precedent as one of economizing on information and of cutting down idiosyncracies is to show why it will be unstable. Although the system of precedent impounds information and wisdom greater than any judge can bring to bear, no particular decision does so. A given case may have been tossed off between sandwiches or based on a factual blunder.2 In principle, modern judges have all the information available to their forbears, plus any discoveries in the interim, and the benefit of hindsight. Judges often decide cases on the basis of predictions about the effects of the legal rule. We can examine these effects-both for other strands of doctrine and for the world at large-and improve on the treatment of the earlier case.3 This possibility of improvement makes precedent unstable. It ought to be unstable, provided we can focus judges' attention and bring to the case sufficient care to be sure that our information exceeds that of the judges who acted earlier. Yet this also means that we do not have-never can have-a comprehensive theory of precedent, any more than we can have a complete theory of the "just price" of wheat, or of when to spend more time studying the attributes of securities. There is an equilibrium degree of disequilibrium.

Contention Two: Term Limits Undermine An Independent Judiciary

Term limits threaten the courts' ability to make impartial and independent decisions

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Justices are not meant to rubber-stamp a political agenda. Term limits would only reinforce the erroneous message that appointments to the Court are the spoils of politics and the property of the President or party in power. Protecting Impartiality **Term limits undermine judicial independence.** In Federalist No. 78, Alexander Hamilton explained that judicial independence "can certainly not be expected from judges who hold their offices by a temporary commission." **Life tenure protects judges' ability to decide cases not according to the temper of the times or political expediency, but by applying centuries-old legal traditions, facts, and the intent and text of the law and the Constitution. Lifetime appointments also help ensure justices rule impartially. It is an effective tool that helps remove a judge's personal preference from the equation. Being on the bench for life makes it more likely that a judge will, first and foremost, uphold the rule of law instead of worrying about personal gain or what's best for them after they leave the Court.** This is an ingenious component of our constitutional system. **It means judges can decide cases according to principle rather than politics or preference.** The term-limits bill is dangerous. It may sound benign, but it is just another radical court "reform" scheme that threatens America's revered constitutional system. What's more, this new bill doesn't mean radicals have abandoned the idea of court-packing. In fact, virtually the same group of representatives who introduced this bill also co-sponsored the bill to add four seats to the Supreme Court. One thing is clear: These proposals would not make the judiciary better. They would not benefit our country. Whether it's court-packing, term limits or any other radical changes, the result would be catastrophic. They would destroy our courts, turn judges into an extension of the party in power and bring America one step closer to tyranny.

For example, lifetime appointments make it possible for the judiciary to make rulings on controversial issues

Bill **Cotterell 2021**, Capitol columnist for Tallahassee Democrat, "Term limits for U.S. Supreme Court judges are tempting but a bad idea", Tallahassee Democrat, October 3, 2021, https://www.tallahassee.com/story/opinion/2021/10/03/term-limits-judges-tempting-but-bad-idea-bill-cotterell/5945449001/

Presidents would appoint one justice in odd-numbered years, assuring each president two choices. After 18 years, old justices would assume "senior" status, and they could return to service if an active justice died or was otherwise disqualified. The justice most recently put on the senior list — likely the youngest of the codgers or codgeresses — would fill the seat. "There is broad support among the American people for reform, and this bill would be a meaningful step toward standardizing and democratizing the Supreme Court," Khanna said in announcing his legislation. Which is precisely what's wrong with it. Tempting as it may sound, **we don't need "democratizing" of the judiciary.** The legislative and executive branches are popularly elected; judges shouldn't be. **On race relations, gun regulation, religious freedom, capital punishment, abortion and so many other issues, judges have had to make rulings the public would never support. Sometimes they free clearly guilty criminals whose rights are violated. Lifetime appointments make that possible.** And besides, term limits have never made anything better. Have Florida laws improved because we voted for the "Eight is Enough" limit on legislators in 1992? Has the two-term cap given us better presidents than Franklin Roosevelt? FDR called the court "the nine old men" when it struck parts of his New Deal. But age and longevity weren't the problem then and term limits aren't the answer now. Throwing away a perfectly good public official just because a certain time has passed makes no more sense than keeping incompetents just because they're new.

Judicial independence is critical to protecting civil rights and liberties, ensuring a stable economy, and to the law is administered fairly

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Sugarman, Rogers, Barshak & Cohen, P.C, Jon Albano is a partner at Morgan Lewis, Hon. Robert Cordy was appointed to the Supreme Judicial Court in 2001, Lawrence Friedman teaches State and Federal Constitutional Law, Information Privacy Law, and National Security Law at New England Law, Hon. E. Susan Garsh was appointed Associate Justice of the Massachusetts Superior Court in 1993, Giselle Joffre is a partner in Foley Hoag's Litigation Department, Paul Lannon is a partner at Holland & Knight, Hon. James McHugh, III (Ret.) was appointed to the Superior Court in 1985 and to the Appeals Court in 2001, Patrick Moore is a partner at Hemenway & Barnes, Ian Roffman is chair of the Securities Enforcement and Litigation practice at Nutter McClennen & Fish "JUDICIAL INDEPENDENCE: Promoting Justice and Maintaining Democracy", BOSTON BAR ASSOCIATION JUDICIAL INDEPENDENCE WORKING GROUP, August 2019, https://bostonbar.org/app/uploads/2022/06/judicialindependence_aug2019.pdf?Status=Temp&sfvrsn=2

No matter how well-established, these concepts require constant tending. **Our governmental system, our economy, and our relationships with our fellow citizens are built on** a foundation of which **judicial independence** is an integral part. The bar has a particular responsibility to continue to highlight this foundation and the importance of judicial independence in principle and in practice. As law professor and constitutional scholar Alexander Bickel put it, "enduring values . . . do not present themselves ready-made. They have a past always, to be sure, but they must be continually derived, enunciated, and seen in relevant application."12 These words are especially true where the judiciary is concerned. Its power rests on public understanding—not just of its particular actions, but of its overall task.13 So, in that spirit, we catalogue several of the most prominent ways in which judicial independence is essential to our society. **First, judicial independence is essential to the protection of civil rights and liberties. Judges who are not beholden to popular opinion** or a political patron **are more likely to recognize that constitutional commitments to such values as free expression, due process, and equal protection of the laws require enforcement, particularly in respect to those members of the community who are not in the political majority.** Thus William Cushing, Chief Justice of the Massachusetts Supreme Judicial Court in 1783, when charging the jury in Commonwealth v. Jennison, 14 could challenge the view that slavery was compatible with the promise in Part I, Article I of the state constitution that "[a]ll men are born free and equal." And the Supreme Judicial Court, in cases decided as early as 1799, could exercise, without comment or criticism, what we today call judicial review, without which the textual protections of rights and liberties would amount to little more than examples of James Madison's "parchment" promises. Indeed, absent the independence that fuels robust judicial review in cases involving rights and liberties, the U.S. Supreme Court might not have ended the doctrine of "separate but equal" in Brown v. Board of Education in 1954, 15 and, more recently, the Supreme Judicial Court might have hesitated to enforce the protection of privacy guaranteed by Part I, article 14 of the Massachusetts Constitution in numerous cases in which that right was in tension with the interests of law enforcement.16 Of course, judicial independence does not guarantee, or even presuppose, judicial infallibility when it comes to protecting rights and liberties. There have been decisions throughout our history that today are universally viewed not only as wrong, but as wrong in fundamental ways. Those decisions have been enormously painful, but these prominent outliers can be corrected. Errors regarding interpretation or application of statutes, regulations or the other handiwork of legislatures and administrative bodies can be corrected by the legislature or the administrative agency that created them. For errors of constitutional dimension, the essential corrective forces, applied over time and often requiring enormous effort, are tied to the careful appointment of thoughtful judges who are willing to look at the impact the decisions have had, at decisions of similar issues by other judges, and at discussions of those issues by thoughtful scholars, commentators, and elected officials. As former Massachusetts Supreme Judicial Court Justice Robert Cordy has noted, "America has acted imperfectly on [matters of fundamental constitutional importance], but what is redeeming about our imperfection, and to our credit, [is that] we take those imperfections very seriously. As a civil society, we expend a great deal of energy exposing and understanding them, and then attempting to correct them."17 And in the end, the very independence that allowed the errors is the same independence that permits their correction. A **second** way in which **judicial independence is essential** for our society is the role it plays **in producing a stable economic order.** Undergirding commercial transactions is the understanding that, if necessary, our courts will fairly impose damages for a breach of an agreement's terms. **Consumer and business confidence rests, in part, on recourse to a remedy in the courts for unfair or deceptive business practices**—or for laws that transcend the authority of the state legislature, to regulate economic concerns. In construing the laws and resolving commercial disputes, independent judges have no reason to favor large companies over small, the politically-connected over the iconoclast, or the local over the outsider. **This independence supports the reliability and common trust required to promote an open and stable economy.** It is no small thing that an individual or small business taking on a large corporation, or the state itself, knows that the judge before whom they will appear has no interest in the case other than its fair and just resolution.18 Third, judicial independence means that our personal affairs, when they wind up in court—in the form of a divorce, a will contest following a death in the family, or any other dispute—will be adjudicated fairly, with results driven by the facts and the law. In 1859, Rufus Choate, the Massachusetts Senator, Congressman, Attorney General, master orator and superb trial lawyer now memorialized in the only statue erected in the John Adams Courthouse, explained that a fair judge "shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; and nothing for

his [government].”19 The same holds true today. An independent judiciary means that no case or claim shall be deemed too small to warrant attention. While subject-matter jurisdictional boundaries are drawn by legislatures, in the Massachusetts state and federal trial courts, the litigants know when they step into the courtroom that the judge will not favor one side or the other in seeking to resolve the issues surrounding the dissolution of a marriage or the administration of an estate plan. **Finally**, and not least, **the widespread recognition among the citizenry that the law will be applied and administered fairly is essential to the civic confidence that enables self-governance. That confidence is compromised if the judiciary favors particular interests, ideologies, or political parties.** In the words of former U.S. Supreme Court Justice Felix Frankfurter, **“justice must satisfy the appearance of justice.”**20 John Adams and the framers of the Massachusetts Constitution knew from their own experiences that, for government to operate optimally, checks and balances must be in place to deter tyrannical impulses. And so they created a government of multiple parts: (1) an elected, bicameral legislature to make the laws; (2) an elected governor who could veto legislation and appoint, with the advice and consent of the elected Governor’s Council, principal officers, including judges; and (3) as a check against the abuse of power by any part of the government, an independent judiciary whose members would “hold their offices during good behavior.”21 They recognized that, in order to preserve the value of an independent judiciary, judges must be protected from the vicissitudes of public opinion and the interests of lawmakers or officials seeking to stretch their authority farther than a fair reading of the constitution would allow. Those concepts, born here in Massachusetts, also animate the United States Constitution.

Answers To Con Case

AT: Term Limits & Doctrinal Stability

1.) Term limits won't cause doctrinal upheavals – several warrants

Maggie Jo **Buchanan 2020**, Maggie Jo Buchanan Senior Director, Women's Initiative, "The Need for Supreme Court Term Limits" American Progress, August 3 2020, https://www.americanprogress.org/article/need-supreme-court-term-limits/

Term limits are unlikely to bring huge upheavals in law Regular upheavals in law have long been raised as a potential negative outcome to term limits. To a certain extent, some amount of change in doctrine is an expected and even necessary aspect of jurisprudence. But regular, wild shifts in a wide range of legal issues could have negative consequences for the stability of American law. Ultimately, however, **a term limit of nearly two decades is unlikely to contribute significantly to such upheavals, especially given that a respect for stare decisis—or precedent—continues to inform judicial decision-making as well as the reality that important lines of jurisprudence experience major changes even without such a reform.** Recent research has examined how term limits could lead to more regular reversals of major decisions, particularly if individual justices largely ignore precedent.16 The recent Supreme Court term taught us, however, that precedent can still play an important role in shaping decisions. The most notable evidence of this came when Chief Justice Roberts voted to strike down the anti-choice law at issue this term in June Medical v. Russo, proving that judges can break with their previous votes on an issue when clear precedent is at stake.17 **Term-limit proposals could increase the number of justices that some presidents appoint, but not dramatically enough to lead to significantly more doctrinal upheaval.** Furthermore, it is important to keep in mind the significant changes that have occurred within Supreme Court jurisprudence. For example, major cases challenging abortion rights and the promise of Roe v. Wade are regularly brought before the court. The holding in Planned Parenthood v. Casey rewrote the constitutional standard under which abortion restrictions are tested, and Gonzales v. Carhart eliminated access to an abortion procedure in almost all cases without an exception for a woman's health.18 These **examples demonstrate that the court's interpretation of important rights can change significantly even without term limits in place**. Any new justice on the court will have an effect on how precedent is evaluated as well as how novel legal questions are decided. However, **most modern presidents have appointed between two and four justices—with the most common number being two, regardless of if the president served for one or two terms.19 Term-limit proposals could increase the number of justices that some presidents appoint, but not dramatically enough to lead to significantly more doctrinal upheaval.**

2.) Doctrinal stability is often irrelevant, substantially overstated, or provides no real world benefits

Shawn J. **Bayern 2012**, Assistant Professor, Florida State University College of Law. "Against Certainty" Hofstra Law Review, 2012, https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2688&context=hlr

In legal argumentation, appeals to certainty and predictability have enormous rhetorical power. This Article argues that their use outstrips their legitimate role in legal analysis. The Article is not literally "against certainty" in the sense that it promotes uncertainty as a good thing in itself;' it is just a skeptical consideration of the role of appeals to certainty in legal theory. The Article's principal contention is that **arguments about certainty are often mistaken, that certainty itself is often misunderstood, and that many defenses of certainty in legal rules are tautological, irrelevant, or substantively overstated.**2 There are many reasons that certainty has at least a superficial appeal in legal reasoning. For one thing, it may comport with analytical philosophers' desires for conceptual clarity; a pragmatic or pluralist mode of analysis

may appear unprincipled, intellectually incoherent, or simply unhelpful to those who promote formal argumentation. 3 For another, it appears to comport with a variety of political theories that emphasize the limited role of courts,4 the superiority of rules over human judgment,5 and formally equal treatment of equals under the law.6 It also tends to appeal to legal economists, though perhaps interestingly for multiple distinct and unrelated reasons.7 This Article surveys and critiques a variety of arguments that promote certainty. Part II briefly examines and critiques the general landscape of the jurisprudential debate in this area. Part III addresses situations-surprisingly common-where courts and commentators make appeals to certainty but neglect or ignore substantive nuance that makes the arguments irrelevant, in context, to the moral or political considerations underlying those appeals. The discussion in Part III proves nothing in general; it just demonstrates that **arguments aiming to promote certainty are often hollow, and** it serves as a call for those arguments **to be evaluated with regard to their context-that is, to the certainty or other desirable characteristics they provide in the real world.**

AT: Term Limits & Independent Judiciary

1.) Life tenure isn't necessary for judicial independence – retirement placements, salary protections grant justices stability, as shown by other countries

Wallace B. **Jefferson &** Ruth V. **McGregor 2021**. Wallace B. Jefferson served as the chief justice of the Texas Supreme Court from 2004 to 2013. He was first appointed to the court in 2001 by then-Gov. Rick Perry. Ruth V. McGregor served as the chief justice of the Arizona Supreme Court from 2005 to 2009. She was appointed to the court in 1998 by then-Gov. Jane Dee Hull, "Supreme Court justices shouldn't get lifetime appointments. It's time to impose term limits." NBC News, July 15, 2021, https://www.nbcnews.com/think/opinion/supreme-court-justices-shouldn-t-get-lifetime-appointments-it-s-ncna1273882

The unpredictability of when seats open on the Supreme Court, coupled with the smaller number of seats available compared to the rest of the federal and state judicial system, also makes each opening highly consequential. And pressure can mount for justices to strategically time their departure to align with the politics of the president, reinforcing the partisan nature of any transition. **Lifetime tenure is not essential to judicial independence or democratic governance. The justices' salaries are protected while they are in office and impeachment sets an exceedingly high bar for their removal. And the U.S. is an outlier among major democracies in giving its constitutional court judges power for life. It certainly isn't the norm in the 49 states that impose a limit on the length of judicial service — often through a mandatory retirement age or set terms of office. These limits on tenure have not led to an outpouring of concern about the courts' independence.** Given the outsize role of the Supreme Court in our system of governance, we propose limiting justices to a nonrenewable term of 18 years as a step toward balancing the competing interests of experience on the bench against the perverse incentives for administrations to appoint increasingly partisan justices, since this would lower the stakes for each appointment.

2.) Term limits promote accountability while preserving judicial independence

Doug **Bandow 2015**. Doug Bandow is a senior fellow at the Cato Institute, specializing in foreign policy and civil liberties. He worked as special assistant to President Ronald Reagan and editor of the political magazine Inquiry. He writes regularly for leading publications such as Fortune magazine, National Interest, the Wall Street Journal, and the Washington Times., "Set Judicial Terms to Balance Accountability and Independence" Cato Institute, AUGUST 4, 2015, https://www.cato.org/blog/set-judicial-terms-balance-accountability-independence

Life tenure is enshrined in the Constitution and rooted in history. The justification for lifetime appointment is to insulate the courts from transient political pressures. **Yet judicial independence does not require lack of accountability.** Judges are supposed to play a limited though vital role—interpreting, not transforming, the law. The dichotomy activism/restraint is the wrong prism for viewing judges. **They should be active in enforcing the law, including striking down legislation and vindicating**

rights when required by the Constitution. They should be restrained in substituting their policy preferences for those of elected representatives. When jurists violate this role, as do so many judges, including Republican appointees, **they should be held accountable.** Unfortunately, many of the proposed responses are more dangerous than the judges themselves. Such as Ted Cruz's idea that people should ignore the Supreme Court. After all, as originally conceived the judiciary was tasked with the critical role of holding the executive and legislative branches accountable, limiting their propensity to exceed their bounds and abuse the people. For instance, Alexander Hamilton imagined that the judiciary would "guard the Constitution and the rights of individuals" from "the people themselves." Of course, all too often the judiciary fails to fulfill this role today, illustrating how unreviewable power is always dangerous. Some 20 states have implemented Cruz's second idea, of retention elections. National judicial elections, however, would be far more problematic. Alas, Americans who today choose their president based on 30-second television spots are unlikely to pay serious attention to esoteric legal issues and make the fine legal and constitutional distinctions. There is a better alternative. The Constitution should be amended to authorize fixed terms for federal judges. Perhaps one of ten or twelve years for Supreme Court justices. Such an approach would offer several advantages. While every appointment would remain important, judicial nominations no longer would be as likely to become political Armageddon. Term limits also would ensure a steady transformation of the Court's membership. New additions at regular intervals would encourage intellectual as well as physical rejuvenation of the Court. Most important, **fixed terms would establish judicial accountability**. **Justices still would be independent, largely immune to political retaliation for their decisions. Nevertheless, abusive judges no longer would serve for life. Elective officials could reassert control over the court without destroying the judicial institution.** As I point out for The Freeman: "The Supreme Court has become as consequential as the presidency in making public policy. It is time to impose accountability while preserving independence. Appointing judges to fixed terms would simultaneously achieve both objectives."