

Term limits for the Supreme Court?

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Term limits are among the reforms being proposed by advocates of curbing federal government abuses through the Constitution's Article V amendment process.

The idea of congressional term limits has been around for some time. But more recent discussion centers on term limits for the judiciary, especially for the Supreme Court.

In fact, one application for an amendments convention now making the rounds – [the Convention of States Application sponsored by Citizens for Self-Governance](#) – is broad enough to include judicial term limits. Although a fairly new offering, it already has been approved by the legislatures of four of the necessary 34 states.

Part of what is driving the talk of judicial term limits is the Supreme Court's continued failure to honor important parts of the U.S. Constitution. Admittedly, the Court does a pretty good job interpreting some parts of the document. The [Intellectual Property Clause](#) is one example. Moreover, the current Court is certainly more conscientious in constitutional cases than the rogue justices who dominated the bench throughout much of the 20th century, who re-wrote critical portions of the Constitution to suit themselves.

Nevertheless, the present justices are to blame for [failing to correct the constitutional fictions of their 20th-century](#) predecessors – and for sometimes writing fiction of their own.

Another factor justifying term limits has little to do with specific case outcomes. This is the enormous increase in life expectancy since the Constitution was written. Extended life expectancy is generally a good thing. But when it is coupled with lifetime appointments, the effect is to skew the balance of powers the Founders created.

When the Constitution was ratified, a newly appointed justice might expect to serve less than 12 years. In fact, the average tenure of the first ten justices was about eight and a half years. By contrast, the average tenure of the latest ten to retire was twenty-one and a half years. [An article by Adrienne LaFrance](#) provides additional statistics.

The Constitution's checks and balances were crafted with 18th-century life expectancies in mind. Although the Founders understood that the Supreme Court would void laws it found unconstitutional, the Founders also expected much more turnover than we now have. When judicial tenure is shorter, the president can nominate, and Senate can approve, more replacements. During the Founding Era, if the Court issued an irresponsible or clearly wrong opinion, citizens could take comfort from the fact that a majority of the Court would be replaced in a few years. That is no longer the case.

The strongest argument in favor of lifetime appointment is that it protects judicial independence.

Proposals for short terms with possibilities for reappointment or retention, such as [that advanced recently by Sen. Ted Cruz](#) (R-Texas) are defective because they do not protect judicial independence.

But we can increase turnover and preserve independence through a constitutional amendment instituting a single long term (e.g., 12 to 20 years) without possibility of reappointment. Such an amendment would have other advantages, too:

First, it would end the presidential game of appointing young and relatively inexperienced justices in the hope that they will continue to influence the Court decades after the appointing president is gone. Of

course, in the real world, younger justices often do not have an adequate track record and may be more readily corrupted by influences in the nation's capital. If a nominee could serve only, say, 12 years, a president might feel freer to nominate a person in his 60s rather than one in his 40s or early 50s.

Additionally, a younger nominee would have to consider a future career as a private citizen, living under the decisions he made as a justice.

Finally, more rotation on the Court would reboot the system toward the balance set by the Founders, rendering mistaken decisions more amenable to ultimate correction by the people themselves, acting through the political process.

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