

Supreme Court terms?

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Terms for justices of the U.S. Supreme Court?

Since 1951 the President of the United States has been limited to two terms by the 22nd Amendment to our Constitution.

No comparable limits restrict the longevity of other federal office holders. In particular federal judges serve for life unless they resign or are impeached.

In the sections below, I will discuss the possibility of limited terms for the Supreme Court and the constitutional amendment that would be required.

Why a limited term?

As of July 2010, Justices of the Supreme Court have served an average of 15 years on the Supreme Court. Service ranges from Sonya Sotomayor who has not yet completed her 1st year on the court to John Paul Stevens who has served for 34 years and has asked to be replaced.

The number of justices who are appointed by each President is completely determined by the wishes of the sitting judges and their health.

In the era of the Warren Court (Earl Warren served as Chief Justice from 1953 to 1969), The Court took a more active role in formulating new interpretations of the Constitution. This “activist” role rankled those who felt significant changes should be debated in Congress and submitted to the states via the formal amendment process. Since that time, appointments to the Court have been more carefully scrutinized. The political fight escalated even more when Robert Bork was nominated by President Ronald Reagan in 1987. Bork was a very prominent legal scholar and advocated interpreting the Constitution as closely as possible to the intent of its authors and adopters. This threatened to discard a number of liberal nostrums that had been considered part of Constitutional law by the Warren Court.

Both conservatives and liberals in the U.S. Senate as well as the President have since tried to push the court toward their philosophy. The conservatives want a careful historical reading of the Constitution. The liberals want the Court to take a more active role in formulating new meanings for the law. This has led to horrific fights over many nominations culminating in the rejection of some Presidential nominees.

Thus we have come to an era in which the President's appointments are severely scrutinized since they have strong political effects over a period of indeterminate length.

There is motivation for a President to select justices who are young enough to serve a very long time. They may in fact become a major legacy to carry his philosophy forward into future Presidencies.

While not able to cure all these problems with the current appointment system, a limited term does introduce some predictability and yet permit the utilization of very experienced judges.

How long a term?

Life terms were provided so Justices would not be subject to the pressures of doing the currently popular thing, or to consider their next job. They could focus their attention only on the law. In the proposal below you will, therefore, find a relatively long single term, but with lifetime compensation.

Because these justices serve far longer without review than any other federal office holder, it is important to spread their appointments out across multiple Presidents. In this way, the appointment process may well permit a variety of philosophies to arrive at the Court.

A 27-year term permits a new justice to be appointed every 3 years; every President will have at least one Supreme Court appointment. A one-term President might get 2 and a two-term President might get 2 or 3 appointments. Thus no President would be able to appoint a long-term majority to the court.

Fixed terms

A term would begin every 3 years and expire 27 years later. If a vacancy occurred by death, resignation, or impeachment the sitting president would make an appointment to fill only the remainder of that term with no re-appointments permitted. It is suggested that terms start in July of years that can be divided exactly by 3 to move the appointments at least 5 months away from the political election. 2010 is such a year.

A suggested amendment

One justice of the Supreme Court shall be nominated to a single 27-year term. Terms would end on June 30 of every year exactly divisible by three. Justices completing their term may not be reappointed, but shall continue to be compensated at the same level as current justices for the remainder of their life.

The nomination shall be made by the President sitting when a term ends. Failure of the Senate to confirm shall not change this duty. Only if that President, through death or disability, is unable to make the appointment, shall this duty devolve on the next currently sitting President.

Justices of the Court at the beginning of each three-year term shall select a Chief Justice, except that justices who are in their first 3 years or last 3 years on the Court shall not be eligible.

The terms of justices who do not complete their term, may be filled by nominations of the sitting President. Those fulfilling a partial term shall not be eligible for reappointment.

In transition to the new fixed terms, the oldest existing justice would be retired as each new justice is confirmed.

If this transition rule had been in effect in 2010, Justice Stevens would have retired after 34 years service, and the remaining justices would have retired after an average of 26 years service on the Court, and none before their 77th birthday.