

**Restoring U.S. Democracy: Enacting Nine-Year Term Limits for SCOTUS**

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When the Framers of the U.S. Constitution created the three branches of the federal government, they assumed that the judiciary would be “the least dangerous branch”.<sup>1</sup> After nearly 250 years of decisions, however, few Americans view the courts, especially the Supreme Court, as a powerless institution. Instead, every year it creates controversy by issuing decisions on critically important issues related to individual rights and government power. Due to the controversies that the Supreme Court has created each year, many critics of the Court have proposed a series of reforms, particularly geared toward ensuring that the Court reflects the values of the American people. Chief among these reforms is expanding the size of the Supreme Court and requiring term limits for justices. Expanding the Supreme Court of the United States (SCOTUS), however, would not necessarily bring its decisions in line with public opinion and would be highly controversial among conservatives if presented in Congress. If justices can still serve for life, having more of them will not do anything to bring the Court majority to reflect the majority opinion of the American public. While this approach may seem appealing, it fails to address the underlying issues of presidential overreach and the need for a more balanced distribution of power within the judiciary. In contrast, many scholars and politicians put forth the stance that term limits are the necessary reform to ensure that the appointed SCOTUS justices revolve around the public interest and who they support. The ongoing debate for what reform is necessary for the SCOTUS begs the question: In what ways might the introduction of nine-year term limits for Supreme Court Justices address concerns about presidential overreach in the appointment process and contribute to a more balanced distribution of power within the judiciary? Implementing nine-year term limits for Supreme Court Justices would mitigate the longstanding issue of Presidential overreach in the appointment process and ensure a rotation of quality justices. This legislation would uphold the fundamental principles of checks and balances by reducing the ability of individual presidents to shape the Court’s decisions and trajectories. Thus, the Court will become a more independent branch of the U.S. government and will not become obsolete.

When the Founding Fathers were creating the Supreme Court, they decided to implement lifelong tenure, as outlined in Article III of the Constitution, which has proven to be a constant source of debate throughout U.S. history. In the Federal Judiciary Act of 1789, the Supreme Court was established for the 13 states of the United States.<sup>2</sup> From then on, SCOTUS was subject to many changes in the subsequent years. Alexander Hamilton, in Federalist No. 78, argued that “all the judges

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<sup>1</sup> The Federalist Papers(78), Misc. Doc. No. 78 (May 28, 1788).  
<https://founders.archives.gov/documents/Hamilton/01-04-02-0241>.

<sup>2</sup> An Act to Establish the Judicial Courts of the United States, 73 U.S.C. (Supp. 1789).  
<https://www.archives.gov/milestone-documents/federal-judiciary-act#transcript>.

who may be appointed by the United States are to hold their offices during good behavior," defending the principle of lifetime appointments for federal judges.<sup>3</sup> He believed that the judiciary "will always be the least dangerous to the political rights of the constitution" due to its limited powers compared to the legislative and executive branches.<sup>4</sup> However, the Supreme Court has invited controversy ever since it was created. Many of its decisions have led critics to question its legitimacy. The notorious Dred Scott decision of 1857 ruled that African Americans, whether free or enslaved, could not be considered U.S. citizens, effectively perpetuating slavery and setting the stage for the Civil War.<sup>5</sup> More recently, the reversal of *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, which ended federal protections for abortion rights, has sparked intense controversy and led many to wonder whether the SCOTUS is in need of major reform.<sup>6</sup> Accusations of impropriety, such as Justice Clarence Thomas allegedly accepting gifts from individuals with interests before the Supreme Court, have further eroded public trust in the institution.<sup>7</sup> Obviously, the SCOTUS is not acting in "good behavior," as Hamilton requested of them in order to deserve their life tenure. The mishandling of major court cases and the corruption have led to mistrust in the SCOTUS. As of July 2022, only 17% of all Americans have high confidence in the SCOTUS.<sup>8</sup> This declining faith in the Court, particularly along partisan lines, suggests that its decisions are becoming increasingly divisive and out of step with public sentiment.

With public trust in the Supreme Court at an all-time low due to controversial decisions in cases like *Dobbs v. Jackson's Women's Health Organization* and heightened political polarization surrounding recent appointees, many politicians and citizens are debating whether the Supreme Court should undergo significant judicial reforms, such as term limits, while others contest that the Supreme Court should not change because the existing system has worked for over 200 years. However, esteemed liberal lawyers Alicia Bannon and Micahel Milov-Cordoba of the Brennan Center for Justice argue that term limits are critical in order to keep fresh ideals among justices and to uphold our status as a positive democratic example. They assert that the term limit "system would enhance the democratic link between the Court and the public, making the institution more reflective of changing

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<sup>3</sup> The Federalist Papers were published in New York newspapers between 1787 and 1788 to promote the ratification of the proposed United States Constitution. In Federalist 78, Alexander Hamilton dives into the details surrounding the future of the judicial branch. Hamilton argues that the judiciary must be independent and each justice should only act in the best interests of the U.S.

<sup>4</sup> The Federalist Papers(78), Misc. Doc. No. 78 (May 28, 1788)

<sup>5</sup> Casey C. Sullivan, "The Worst Supreme Court Decisions of All Time," *Find Law*, January 1, 2024, accessed May 5, 2024, <https://www.findlaw.com/legalblogs/supreme-court/13-worst-supreme-court-decisions-of-all-time/>.

<sup>6</sup> Sullivan, "The Worst Supreme Court Decisions of All Time,"

<sup>7</sup> Dustin Jones, "What to Know about the Supreme Court and Ethical Concerns," *NPR*, May 5, 2023, <https://www.npr.org/2023/05/05/1174057179/supreme-court-congress-ethical-hearing>.

<sup>8</sup> "Americans Have Lost Confidence in the Supreme Court," chart, NORC at the University of Chicago, July 25, 2022, <https://apnorc.org/projects/americans-have-lost-confidence-in-the-supreme-court/>.

public values while preserving judicial independence.”<sup>9</sup> Bannon and Milov-Cordoba point to the increasing average age of Supreme Court justices and the lengthening tenures in recent decades, which they argue can lead to a disconnect between the Court and the evolving values and needs of American society. In the Report of the Presidential Commission on the Supreme Court, Co-Chair, and former White House Counsel Bob Bauer explains that term limits are critical in eliminating strategic retirements and creating a heightened balance of power between each presidential administration. Bauer suggests that term limits would prevent justices from timing their retirements to coincide with the election of a president who shares ideological views, thus reducing the politicization of the court and ensuring a more equitable distribution of power among presidents.<sup>10</sup> On the contrary, lawyer Anthony Marcum of the conservative R-street Institute argues that term limits for Supreme Court Justices are unnecessary because the system has worked well for 230 years and adding term limits would only increase political polarization. Marcum contends that the current system of lifetime appointments ensures judicial independence and stability, allowing justices to make decisions based on the law rather than political pressure. He believes that implementing term limits would lead to a more politicized appointment process, as presidents and senators would focus on nominating and confirming justices who align with their short-term political goals rather than selecting individuals with a deep understanding of the law and a commitment to impartiality.<sup>11</sup> This issue has become particularly relevant in light of the recent appointments of conservative justices during the Trump administration, which some argue has led to a significant ideological shift on the court that could have long-lasting consequences for American jurisprudence.

Opponents such as Anthony Marcum from the R-Street Institute argue that term limits for Supreme Court Justices would increase political polarization by intensifying partisan battles over each nomination and would undermine the stability of the Court due to the constant turnover of justices.<sup>12</sup> At the base level, the arguments presented against term limits are that they are simply unconstitutional and that the Supreme Court does not need to undergo institutional change because it has worked for the last 250 years. That is the basic argument opponents have employed, but the more credible argument that Anthony Marcum notes is that because there would be more Supreme Court justice appointments, it would normalize the appointment process and lead to justices with similar ideological values to the presidents who appointed them, which means that the Supreme Court will become more

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<sup>9</sup> Alicia Bannon and Michael Milov-Cordoba, "Supreme Court Term Limits," in *Supreme Court Term Limits*, previously published in Brennan Center, June 20, 2023, <https://www.brennancenter.org/our-work/policy-solutions/supreme-court-term-limits>.

<sup>10</sup> Bob Bauer and Christina Rodriguez, *Presidential Commission on the Supreme Court of the United States*, December 8, 2021, accessed April 28, 2024, <https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf>.

<sup>11</sup> Anthony Marcum, "Supreme Court Term Limits Would Increase Political Tensions around Justices, Not Ease Them," in *R Street Institute*, previously published in *USA Today*, October 13, 2020, accessed May 1, 2024.

<sup>12</sup> Marcum, "Supreme Court," in *R Street Institute*

politicized. Marcum argues that the Supreme Court should not be a political entity, but rather an independent observer that is not as easily swayed by the current political climate.<sup>13</sup> Thus, he maintains that adding term limits would only increase the political control over the Supreme Court, which would lead to the Supreme Court becoming less respectable and more reliant on the current political climate. His stance is furthered by Vanderbilt Professors Suzanna Sherry and Christopher Sundby, who claim: "Term limits are likely to have a substantial detrimental effect on doctrinal stability. A case could go from being a sure winner to a sure loser over the course of a single election...further politicizing the Court."<sup>14</sup> They assert that changing justices so often makes the SCOTUS less reliable and more dependent on individual presidencies. Moreover, the authors of the report of the Presidential Commission of the Supreme Court claim that opponents of term limits argue that they are not the solution; instead, they add to the problem. The commission asserts that "prescribing yet more regular confirmation hearings, as term limits would, simply worsens an already bad situation."<sup>15</sup> This statement suggests that the frequent confirmation hearings resulting from term limits would exacerbate the existing issues surrounding the politicization of the Supreme Court. Opponents contend that the heightened frequency of nominations would further polarize the process, as political parties would vie for control over the court's composition, leading to more ideologically-driven appointments. This, in turn, could erode public trust in the impartiality and integrity of the Supreme Court. Hence, the opponents of term limits in the SCOTUS Commission admit that adding term limits is not the solution to the SCOTUS's problems and may even contribute to the erosion of the Court's independence and credibility in the eyes of the American public.

Although term limits may initially lead to increased political polarization, this short-term consequence is ultimately worthwhile to maintain the Supreme Court's long-term relevance and legitimacy in the eyes of the public and to ensure that the Court remains above politics. Marcum maintains that the Supreme Court will become increasingly involved in politics; however, that is not necessarily a problem if the Court's composition reflects the evolving values and perspectives of the American people. The current system of lifetime appointments has led to a Supreme Court that is increasingly out of touch with the general public, as justices often serve for several decades and may not be responsive to societal changes. By implementing term limits, the Court's composition would be more regularly updated, allowing for a better balance between stability and adaptability. Although Justices on the Supreme Court are appointed for life, this feature of the Constitution has been controversial since it was enacted.<sup>16</sup> In fact, the concept of judicial term limits has been discussed since the early days of the republic, with several Founding Fathers, including Thomas Jefferson and John

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<sup>13</sup> Marcum, "Supreme Court," in *R Street Institute*

<sup>14</sup> Suzanna Sherry and Christopher Sundby, "The Risks of Supreme Court Term Limits," *Vanderbilt Faculty Publications*, 2019, <https://scholarship.law.vanderbilt.edu/faculty-publications/1091/>.

<sup>15</sup> Bauer and Rodriguez, *Presidential Commission*,

<sup>16</sup> An Act to Establish the Judicial Courts of the United States, 73 U.S.C. (Supp. 1789)..

Adams, expressing support for the idea. In his letter to William T. Barry, Thomas Jefferson requested that “the future appointments of judges be for four or six years.”<sup>17</sup> If the third President of the U.S. declares that shorter term limits are the natural course of action for SCOTUS, it seems ridiculous to claim that lifelong tenure is the way that SCOTUS was designed. Moreover, the Presidential Commission on the Supreme Court’s statement that term limits would worsen the confirmation process is not a foregone conclusion. If term limits were implemented, then the frequency of appointments would increase and force bipartisanship to ensure that the SCOTUS has justices that everyone supports and trusts. Ultimately, the benefits of term limits, such as ensuring a more representative and responsive court, outweigh the potential drawbacks. By promoting a regular infusion of new perspectives and reducing the likelihood of strategic retirements, term limits would help to restore public trust in the Supreme Court as an institution that upholds the principles of justice and equality for all Americans.

The proposed staggered nine-year term limits for Supreme Court Justices are more beneficial than 18-year terms because they allow for more frequent turnover of fresh perspectives and ensure that the Supreme Court’s makeup is not due to arbitrary deaths of sitting justices that allow the sitting President to appoint more than other Presidents. Politicians who support term limits propose 18-year term limits because “18-year terms would give each president 2 appointments per term, while 12-year terms would give 3 appointments per term, putting the court at the center of politics too frequently.”<sup>18</sup> Furthermore, Senators Sheldon Whitehouse (D-RI), Cory Booker (D-NJ), Richard Blumenthal (D-CT), and Alex Padilla (D-CA) introduced new legislation, the Supreme Court Biennial Appointments and Term Limits Act, in 2021 to enact 18-year term limits.<sup>19</sup> Essentially, those pushing for 18-year term limits are worried about the initial implementation of term limits and how the presidents would appoint the Supreme Court justices. However, my proposal for implementing term limits would mitigate the initial issue of presidential overreach in the appointment process by starting the system of term limits after each one of the current Supreme Court justices serves their life tenure or passes away. By starting term limits after the current system slowly comes to an end, the new appointees will be staggered and the issue of initial implementation will be resolved. Many other countries, such as Spain, Italy, and France, have already implemented nine-year term limits in their highest court.<sup>20</sup> Furthermore, the specific number of nine is particularly beneficial for the United States because presidents can only serve for a maximum of 8 years, which means that with nine-year term

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<sup>17</sup> Thomas Jefferson to William T. Barry, July 18, 1822, <https://founders.archives.gov/documents/Jefferson/03-18-02-0449..>

<sup>18</sup> Bauer and Rodriguez, *Presidential Commission*

<sup>19</sup> Meaghan McCabe, “Whitehouse, Booker, Blumenthal, Padilla Introduce New Supreme Court Term Limits Bill,” news release, October 19, 2023, <https://shorturl.at/hCHLQ>

<sup>20</sup> *Testimony for the Presidential Commission on the Supreme Court*, 2021st Judicial (D.C. July 20, 2021) (statement of Tom Ginsberg).

limits, a president should not be able to appoint a justice and then reappoint another one in their presidential term. Moreover, shorter tenures for Supreme Court justices have already been highly valuable in other countries: “Judges on the United Kingdom Supreme Court... leave office after 5.3 years of service on average; justices in the Philippines average a tenure of 5.5 years.”<sup>21</sup> Hence, a short-term limit of nine years has been implemented in other democratic countries. Additionally, when SCOTUS was established, shorer tenure for Supreme Court justices was more common; “since 1789, 40 of the 106 justices who have left the Court served for ten years or less, but none in the last 50 years.”<sup>22</sup> This demonstrates that there is a long-standing precedent in the United States for shorter terms, and instituting a nine-year term limit would simply be a return to the historical norm that prevailed for most of the Court’s history. Nine-year term limits strike the optimal balance between allowing for fresh perspectives and preventing undue influence from any single president while aligning with both international practices and the original traditions of the Supreme Court.

Enforcing nine-year term limits for Supreme Court Justices is consistent with the principles of checks and balances, as it prevents the Supreme Court from becoming dominated by the ideological preferences of any single president or political party, thus maintaining its role as an independent branch of government. When the Founding Fathers envisioned the Supreme Court, they intended it to serve as an impartial arbiter of justice. The Judiciary Act of 1789 emphasizes this, stating that the SCOTUS justices must take an oath stating: “I will faithfully and impartially discharge and perform all the duties incumbent on me.”<sup>23</sup> The Founding Fathers empowered the Supreme Court to render judgments based on principles of fairness and equity to reflect the public’s best interests. It establishes the Court as an independent check on the legislative and executive branches, ensuring that individual rights are protected even when doing so may go against the desires of Congress or the President. As stated in the opinion from *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*,<sup>24</sup> “The Federal Judiciary was therefore designed by the Framers to stand independent of the Executive and Legislature... to guarantee that the process of adjudication itself remained impartial.”<sup>25</sup> This independence is crucial for maintaining the system of checks and balances. However, the current system of life tenure has allowed the Court to misrepresent public opinion and become archaic,

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<sup>21</sup> *Testimony for the Presidential Commission on the Supreme Court*, 2021st Judicial (D.C. July 20, 2021) (statement of Tom Ginsberg).

<sup>22</sup> Steven G. Calabresi and James Lindgren, “Term Limits for the Supreme Court: Life Tenure Reconsidered,” *Harvard Journal of Law and Public Policy* 29, no. 3 (2006) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=701121](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=701121).

<sup>23</sup> An Act to Establish the Judicial Courts of the United States, 73 U.S.C. (Supp. 1789).

<sup>24</sup> In *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), former SCOTUS Justices Brennan, Marshall, Blackmun, and Stevens concluded that Congress gave too much power to bankruptcy judges who were not appointed under Article III of the Constitution. The Bankruptcy Act of 1978 allowed these judges to hear cases involving state laws, like contract disputes between companies. The Court revealed that this took away important judicial powers from regular federal courts and gave them to judges with less independence.

<sup>25</sup> *Northern Pipeline v. Marathon Pipe Line*, 458 S. Ct. (June 28, 1982). <https://supreme.justia.com/cases/federal/us/458/50/>.

threatening its ability to function as a neutral arbiter. The Brookings Institution notes, "The Supreme Court should be a body that is independent and insulated from partisanship. Instead, it has become a battleground for political infighting."<sup>26</sup> When justices serve for extended periods, often spanning multiple presidencies, it increases the likelihood that the Court's composition and decisions will give individual justices too much influence to further their own and appointing presidents' agendas. This undermines the Supreme Court's independence and its role as a check on the other branches. Implementing nine-year term limits would help restore the Supreme Court's intended role as a neutral arbiter and check on the other branches by ensuring regular turnover and preventing any single political faction from exerting undue influence over the Supreme Court's composition and decisions for extended periods.

A regular rotation of justices would bring fresh perspectives and ideas to the Court, helping to prevent stagnation and ensuring that the Court's decisions reflect evolving societal values and norms. In his testimony to the Supreme Court commission, University of Chicago Professor Tom Ginsburg voices: "The epistemic diversity of the Court would benefit from greater rotation, in which a broader range of experiences could be reflected in its work."<sup>27</sup> Essentially, Ginsberg states that there is a disconnect between the Supreme Court and the common public. Furthermore, in an article from the *Harvard Journal of Law & Public Policy*, conservative law professors Steven G. Calabresi and James Lindgren deliver, "Each time the public elects a President, that President will make at least two nominations to the Supreme Court, leading to a more direct link between the will of the people and the tenor of the Court."<sup>28</sup> Hence, the professors argue that with term limits for SCOTUS, the public will be more involved in the general appointment process. In fact, 67% of the U.S. public would be in favor of adding some version of term limits to SCOTUS.<sup>29</sup> The U.S. is a democratic nation for the people and run by the people; thus, adding term limits would further enhance the U.S.'s commitment to democracy by getting the general public more involved in the appointment process so that the Supreme Court reflects its values.

Many states have implemented term limits for their highest courts, recognizing the benefits of regular turnover and the need to maintain public trust in the judiciary. The Supreme Court should follow suit and adopt term limits so that the judicial system can be consistent at the state and federal levels. It is clear that U.S. citizens are supportive of term limits in their state courts and thus would also want term limits in the Supreme Court. The Brennan Center adds, "Forty-seven states require that

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<sup>26</sup> Norman Eisen and Sasha Matsuki, "Term Limits—a Way to Tackle the Supreme Court's Crisis of Legitimacy," *Brookings Institute*, September 26, 2022, <https://www.brookings.edu/articles/term-limits-a-way-to-tackle-the-supreme-courts-crisis-of-legitimacy/>.

<sup>27</sup> *Testimony for the Presidential Commission on the Supreme Court*, 2021st Judicial (D.C. July 20, 2021) (statement of Tom Ginsberg).

<sup>28</sup> Calabresi and Lindgren, "Term Limits,"

<sup>29</sup> Americans Have" NORC chart.



their supreme court justices serve for fixed terms, subject to reelection or reappointment processes... Only Rhode Island grants its high court justices life tenure without an age limit."<sup>30</sup> Therefore, it seems that our states do not match the federal courts in terms of term limits.<sup>31</sup> Moreover, the Supreme Court ought to undergo the same change as the state courts so that they can better represent the evolving views of the citizens of the United States. Progressive change should not be exclusive to states, as Tom Ginsburg mentions: "Most states have mandatory retirement ages. Only three provide justices with indefinite terms, but two of them — Massachusetts and New Hampshire — impose age limits. Only Rhode Island grants its high court justices life tenure without an age limit."<sup>32</sup> Hence, states have gone through progressive change to better reflect the public's opinion on their highest courts, while the Supreme Court has not. In fact, roughly 43% of U.S. citizens have little to no confidence in the Supreme Court and do not feel represented.<sup>33</sup> One might say that the Supreme Court is different and thus should be held to the same standards as the state courts. However, the Supreme Court is the last resort for many of the cases that go through the states, and therefore it should be held to the same standard and regulations regarding term limits.

Nine-year term limits would encourage the sitting presidents to nominate highly qualified candidates who can make significant contributions during their tenure, rather than focusing on younger nominees who can express the same political views for multiple decades. Recently, Brett Kavanaugh (59 years old), Amy Conney Barret (52 years old), Neil Gorsuch (56 years old), and Kentaji Brown Jackson (53 years old) have been appointed by Presidents Trump and Biden; these appointees are all relatively young and can serve for an extended period of time. These justices were swiftly appointed by Trump and Biden to ensure that their ideology would be represented on the Supreme Court for many years to come.<sup>34</sup> This new system of appointing younger justices is a recent development in the average tenure of a SCOTUS justice: "Up until the late 1960s, the average term of service was around fifteen years. By contrast, the average tenure of the Justices who have left the Court since 1970 has been roughly twenty-six years."<sup>35</sup> Hence, the politically polarized landscape of modern-day America has made it so SCOTUS justices stay on longer to preserve their respective party's power. The Brennan Center reveals that lifelong tenure "heightens the risk that justices will stay on the Court after their capacity as jurists begins to decline"; thereby, many justices are solely staying on the SCOTUS because it benefits their political party. Accordingly, if term limits are added to the

<sup>30</sup> Bannon and Milov-Cordoba, "Supreme Court," in *Supreme Court*,

<sup>31</sup> Some states, such as Alabama and California, even allow their citizens to vote on their judges in their Supreme Courts. It is clear that the Federal Government is becoming increasingly less progressive than individual state governments when it comes to handling the judiciary.

<sup>32</sup> *Testimony for the Presidential Commission on the Supreme Court*, 2021st Judicial (D.C. July 20, 2021) (statement of Tom Ginsburg)

<sup>33</sup> "Americans Have" NORC chart.

<sup>34</sup> "Supreme Court Nominations (1789-Present)," chart, accessed May 8, 2024, <https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm>.

<sup>35</sup> Bauer and Rodriguez, *Presidential Commission*,

Constitution, then sitting presidents will be forced to appoint justices who can contribute during their nine-year tenure. Recently, many presidents have rushed their appointments of Supreme Court Justices so that they can make sure the newly appointed justice is affiliated with their political party. The Brennan Center adds: "President Barack Obama's March 2016 nomination of Merrick Garland was denied by the Republicans, claiming that it was too close to the presidential election, only to rush through a vote for Amy Coney Barrett in October 2020, when early voting in that year's presidential election had already started."<sup>36</sup> This recent example underscores how the appointment process has become increasingly politicized in the absence of term limits, with each party seeking to capitalize on any opportunity to secure a long-term ideological ally on the Supreme Court. Implementing nine-year term limits would help to reduce these partisan pressures and refocus the nomination process on a candidate's qualifications and ability to serve effectively during their limited tenure.

Implementing nine-year term limits would discourage justices from engaging in strategic retirements based on political alignments with the sitting president.<sup>37</sup> Term limits would promote a more focused and fair judiciary, as justices would be less likely to time their retirements to ensure a successor with similar ideological leanings. Members of both Republicans and Democrats vehemently oppose strategic retirements when they do not benefit them. For example, when Justice Breyer retired in 2022, many claimed that his retirement was strategically done to keep a Democrat in power. Furthermore, many Democrats wanted Justice Ginsburg to strategically retire so that another Democrat could take her place.<sup>38</sup> In this increasingly politically polarized age, "Strategic retirements have become the norm... The last time a justice retired when a vacancy would likely result in the appointment of a justice with an opposing ideology was more than 30 years ago, when Justice Thurgood Marshall stepped down due to declining health."<sup>39</sup> However, if nine-year term limits were implemented, then the incentive for justices to retire strategically would be eliminated because their future successor would only be able to serve for the rest of their term and thus not have much influence over the Supreme Court's future. As former federal judge Michael McConnell observed in testimony before the Presidential Commission on the Supreme Court, the current system "puts unseemly pressure on sitting justices to time their retirement to permit a president of their political party to name the replacement."<sup>40</sup> Under a nine-year term limit system, even if a justice chose to retire early for

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<sup>36</sup> Bannon and Milov-Cordoba, "Supreme Court," in *Supreme Court*,

<sup>37</sup> Strategic retirements in the Supreme Court are when a justice retires at a time when the sitting president shares their ideological views, allowing them to influence the selection of their successor. The successor of the recently retired Supreme Court justice will be appointed swiftly to ensure that the new justice can spread their particular party's agenda over many years.

<sup>38</sup> Scott Lemieux, "When Do Supreme Court Justices Retire? When the Politics Are Right," *The Washington Post*, August 28, 2019, <https://www.washingtonpost.com/outlook/2019/08/28/when-do-supreme-court-justices-retire-when-politics-are-right/>.

<sup>39</sup> Eisen and Matsuki, "Term Limits—a,"

<sup>40</sup> Bannon and Milov-Cordoba, "Supreme Court," in *Supreme Court*

political reasons, his or her successor would only be appointed for the remainder of the fixed term, negating any long-term strategic advantage. As stated by Ross M. Stolzenberg and James Lindgren, "Our...term limit, however, would make it impossible for a Justice to time his resignation strategically... Under our proposal, the Justices would lose the power they now have to keep a Supreme Court seat in the hands of their own political party by retiring strategically."<sup>41</sup> By eliminating the practice of strategically timed resignations, nine-year term limits would bolster the independence and impartiality of the Supreme Court in the eyes of the public.

So long as the United States continues to have lifelong tenure, the U.S. Supreme Court risks falling behind other democratic nations in terms of expressing democracy's core values, as many other nations have already adopted measures to ensure regular turnover in their highest courts. The United States has been the pinnacle and example of democracy since its founding in 1776. From creating a system of checks and balances to enabling all citizens to be represented in government, the U.S. has prided itself on its status as a preserver of democratic values. However, the U.S. has since fallen off its once legendary status as many archaic reforms, such as lifelong tenure, plague the U.S. and keep it entrenched in the past.<sup>42</sup> Now, countries around the world have gone one step further than the U.S. in their highest courts by adopting term limits. As stated by Bannon and Milov-Cordoba of the Brennan Center, "No other country, and few other institutions of any kind, have adopted the rule of true lifetime appointment."<sup>43</sup> They mention that only a few major figures, such as the Pope, have lifelong tenures in their jobs, so it seems outdated to continue to use such old legislation for an ever-growing country. Furthermore, Professor Ginsburg elaborates that common law countries such as "Ireland, New Zealand, and South Africa, and civil law countries, such as France, Germany, and Spain,"<sup>44</sup> as well as former U.S. territories like the "Philippines" and even countries that previously granted life tenure like "Australia, Canada, and the United Kingdom, have since abandoned this practice."<sup>45</sup> The fact that so many of America's peer democracies have recognized the importance of imposing limits on judicial tenure underscores how the U.S. Supreme Court's adherence to life tenure has become increasingly

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<sup>41</sup> Ross M. Stolzenberg and James Lindgren, "Retirement and Death in Office of U.S. Supreme Court Justices," *Demography* 47 (May 2010): <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3000028/>.

<sup>42</sup> Issues related to immigration, abortion, and allegations of voter fraud have greatly damaged the U.S.'s global reputation, and many countries around the world are no longer looking at the U.S. as the democratic example to follow. For example, Finland has a robust and highly effective criminal justice system that is now the gold standard; comparatively, the U.S.'s prisons are overpopulated and viewed in a negative light. Many institutions in the U.S. are failing, which in turn has led the U.S. to be dethroned as a beacon of democracy.

<sup>43</sup> Bannon and Milov-Cordoba, "Supreme Court," in *Supreme Court*

<sup>44</sup> The Spanish Supreme Court (Tribunal Supremo) was established under the Constitution of 1978, which aimed to create a superior court with jurisdiction throughout Spain located in its capital, Madrid. This model of a high court resembles the role of the Supreme Court of the United States. Both courts serve as the ultimate judicial authority in their respective countries. However, the Spanish Supreme Court has 21 members, and each member has a term limit of nine years. Thus, the Spanish Supreme Court marks a country with a much more progressive judicial system.

<sup>45</sup> *Testimony for the Presidential Commission on the Supreme Court*, 2021st Judicial (D.C. July 20, 2021) (statement of Tom Ginsburg).

outdated and out of step with evolving global norms. To maintain its status as a beacon of democracy, the United States must modernize its Supreme Court to align with the practices adopted by other leading democratic nations.

The introduction of nine-year term limits for Supreme Court Justices would serve as a vital reform to address the critical issues of a Court out of step with the American public, the unfair power that lifetime appointments give to Presidents with the good luck of having judicial resignations or deaths occur during their term, and the arbitrariness of deaths and the antidemocratic nature of strategic retirements by Justices. This change would ensure regular turnover and reduce the ability of individual presidents to shape the court's composition for extended periods, thereby helping to restore public trust in the Supreme Court as an independent and impartial institution. Furthermore, implementing term limits would align the United States with other democratic nations' Supreme Courts, which have already recognized the benefits of regular judicial turnover in their highest courts. Given the Supreme Court's crucial role in shaping American society through its decisions on contentious issues such as abortion rights, gun control, and voting rights, it is increasingly important to ensure that the Court reflects the evolving values and perspectives of the American people. The adoption of nine-year term limits would mark a significant step towards achieving this goal and strengthening the foundations of American democracy. After the recent release of Justice Alito's damning recordings, SCOTUS has become further out of step with the American public. Elizabeth Warren even remarked, "Alito is an extremist who is out of touch with mainstream America. His rising power on the Supreme Court is a threat to our democracy."<sup>46</sup> While implementing nine-year term limits would prove to be quite challenging with the current political landscape, it would greatly behoove both Republicans and Democrats to approve this legislation to ensure that the principles of judicial independence, accountability, and representativeness are preserved in our nation's highest court.

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<sup>46</sup> Basu, Zachary. "Alito Denies Allegation of Leaked Supreme Court Ruling in 2014." The Hill, February 19, 2023. <https://thehill.com/homenews/senate/4716684-alito-recording-supreme-court/>

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