

LINCOLN-DOUGLAS DEBATE

March/April Topic Analysis

Resolved: The justices of the Supreme Court of the United States ought to be term-limited.

Disclaimer: This analysis serves as an introduction to the topic and offers guidance for areas students can explore further with independent research. It does not attempt to provide limitations on debater's interpretations of the topic

Definitions:

Justices of the Supreme Court of the United States: There are currently a total of nine justices serving on the Supreme Court. According to the Supreme Court's [website](#), "Power to nominate the Justices is vested in the President of the United States, and appointments are made with the advice and consent of the Senate." While this is not a phrase that is likely to be challenged within most rounds, additional information regarding the history of the Supreme Court can help to provide important context to the arguments on both sides of this resolution. It is worth noting that, while each state has its own Supreme Court, because the wording of the resolution is "Supreme Court of the United States," the debate will be specific to the overarching federal Supreme Court justices.

Ought: As Merriam Webster reminds us, [ought](#) is used to express duty or a moral obligation. In this resolution, ought is used in a fairly standard way. Debaters will be engaging with whether or not there is a duty or moral imperative to have term limits for Supreme Court justices.

Term-Limited: Merriam Webster notes that a term-limit is "a specified number of terms that a person in office is allowed to serve." It is important to highlight that the resolution does not specify an exact term limit but rather focuses the debate around the concept of term-limiting justices. Currently, justices that are appointed to the Supreme Court have [no fixed terms](#). According to the [Supreme Court's website](#), the average that a justice on the Supreme Court serves is 16 years. The longest term that a justice has ever served was 36 years. Several of the recommendations within the literature written by proponents of term-limits point to an 18 year term-limit for justices.

Background:

Article III of the United States Constitution outlines the powers of the Supreme Court. The Supreme Court's function is to serve as the ultimate interpreter of the United States Constitution. As a critical part of the system of checks and balances within the federal government, the court has the unique authority to overturn executive action or legislation that is challenged, if the court rules that legislation or action is in conflict with the Constitution. This power of "judicial review" has been considered to be particularly important in order to ensure that the constitution remains a living document and that the interpretations can be applied to new situations that were not imaginable when the United States was founded. Often, the Supreme Court hears cases that have been appealed through lower courts and that are in need of a final arbitration.

Since the court was established in 1790, the number of justices that have sat on the bench has changed six different times. The last change to the number of justices was in 1869 and the basic structure that was created for that court is what we still use today: a total of nine justices with one Chief Justice and eight associate justices. The wording of the constitution and much of the literature around the founding of the Supreme Court underscores the importance of the court standing as a nonpartisan entity within the United States. While there is some debate around whether the court has actually ever been truly non-partisan, the general concept is that rather than focusing on campaigning, reelection, or the political exchanges that most politicians in the other two branches of government participate in, court justices are expected to stay above the partisan fray.

Yet, while the court is ostensibly a non-political entity, because the justices are appointed and confirmed by political figures who are currently in office, rather than elected by the American people, the impacts of partisanship are inevitably felt. This was most recently seen in the choices that the Republican-controlled legislature made when denying a seat to Obama's appointee for the Supreme Court, Merrick Garland, with the rationale that a president should not be able to appoint someone to the Supreme Court in the spring before an election. A few years later, Trump's nominee Amy Coney Barrett was confirmed only one week ahead of the 2020 election, a move that was clearly politically motivated and in direct contradiction to what had been decided earlier. Because the current system allows for the appointment of justices to happen unpredictably, there have been discussions around "strategic retirements", which is when a justice will retire while a president with sympathetic political leanings is in office, ostensibly to ensure that their replacement will have similar political leanings.

Currently, the United States Supreme Court is one of the only high courts in the world to have justices serve without either a term limit or a mandatory retirement age. There are also no specific age or education requirements to be a Supreme Court justice; however, the average age of appointees has remained fairly consistent over time and almost all Supreme Court

justices have graduated from law school. There has been some discussion around reforming the courts for years and a number of democratic senators introduced the TERM Act in 2021, which would establish 18-year term limits for anyone appointed to the Supreme Court. It is worth noting that many Americans, both experts in the field and those questioned in general public opinion polls, agree with some form of term limit for Supreme Court Justices.

The Court as an Institution

The Constitution of the United States: A Transcription

Supreme Court

The History of the Courts | The Supreme Court Historical Society

History of the Supreme Court

Supreme Court of the United States

H.R.8424 - Supreme Court Term Limits and Regular Appointments Act of 2020

How Does the Supreme Court Work?.

Affirmative Arguments:

Term Limits Check for Increased Life Expectancies:

The world today looks remarkably different than it did in 1790, when the courts were first established. While the Constitution has been written in a way that can be broadly interpreted and reinterpreted, one element of the constitution that has been fairly rigid in regards to the courts has been the concept of how long a Supreme Court justice can serve. Article III of the US Constitution notes that “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.” Essentially, this has been understood to mean that, except in the case of a major legal transgression, judges are able to stay in their appointed seat until they choose to retire or pass away.

However, when the courts were first established, the average life expectancy hovered around 44 years old. Today, life expectancies are significantly longer. Debaters looking to build off of this argument could highlight the concerns that have arisen from having justices serve well into their seventies and eighties. One argument that can be made is that the original intent was not to have the same justices serving on the court for over three decades. Debaters looking to make this argument should explore how creating term limits could bring the amount of time that each justice serves closer to what the original intent of the Constitution.

Living Longer: Historical and Projected Life Expectancy in the United States, 1960 to 2060

Chart: How long have the Supreme Court justices served?

Term Limits Reinforce Checks and Balances:

While the courts are theoretically thought of as a-political, they are impacted in a number of ways by the hyper-polarized arena that exists between the executive and legislative branch. One way is through the actual appointments of justices. If partisan conflicts between the executive and legislative branch play out by withholding or pushing through appointments, it potentially impacts both the perception and the legitimacy of the resulting court. In addition, without clearly defined procedures, members of the legislative and executive branch are able to make interpretations, such as how close to an election a justice can be nominated, in a way that favors their party.

In a similar, but much more insidious vein, because the Supreme Court ultimately could be tasked with making a decision regarding the legitimacy of elections or of executive actions, there is an argument to be made that potentially having one president be able to add multiple justices in an unchecked way could leave the courts open to corruption. Having term limits that

keep the courts more balanced between different election cycles and that have more clearly defined procedures around appointments could help to reinforce the balances between each of the three branches of government.

The Need for Supreme Court Term Limits

McConnell's fabricated history to justify a 2020 Supreme Court vote

Term Limits Allow the Court to Better Represent the American People:

One of the concerns that comes with life-appointments is that the courts can become more antiquated and too far removed from the American people. While there has been an increasing amount of diversity within the Supreme Court, the demographics that are represented by court justices have been disproportionately white and male. In addition, it can be argued that ideals within society and our collective conception of rights have broadened over time but when Supreme Court justices serve on the bench for multiple decades, their decisions do not always adequately represent these changes. There is research that suggests that judges are more likely to vote in a way that favors their own background and experiences.

Because the amount of time each judge stays on the bench has been continuously increasing, in line with medical advancements, the problem of a Supreme Court that is disconnected from the American people is likely to continue to get worse. Debaters can argue that having set term limits and a more steady influx of new justices will also lead to an increase in different perspectives on the court would help to ensure that the decisions made continue to reflect the changes that are seen within the American public.

Public's Views of Supreme Court Turned More Negative Before News of Breyer's Retirement

What Research Shows About the Importance of Supreme Court Diversity

Term Limits Increase the Structural Stability of the Courts:

One of the concerns with instituting term limits for the Supreme Court is that it may create instability within the courts. In direct contrast to this, debaters on the Affirmative can argue how term limits may help to solidify the structure of the courts because it will stop other ways that political leaders may look to artificially balance the court. After President Trump was able to nominate three justices in a way that many did not believe was fair, and with the subsequent overturning of *Roe v Wade*, there has been increased pressure on President Biden and other political leaders to consider expanding the courts.

Commonly referred to as “court packing,” adding additional justices would likely become very contentious and potentially have negative implications for the overall legitimacy of the court. There are others who have predicted that adding justices would start an “arms race” between the parties where the courts could be expanded multiple times to favor whichever political party was in charge.

Creating term limits could help to appease some of the concerns with the current structure in a way that would not overtly favor either political party. While there has been some turnover with justices on the court, the unpredictability of when turnover happens and the strategic nature of how some of the vacancies are created supercharges the political importance for the party in power any time an appointment is made. Introducing term limits may not completely solve the wider political tension but could be a way to ensure some additional stability for the courts.

Senator Warren Calls for Supreme Court Expansion to Protect Democracy and Restore Independent Judiciary

Senate Dems divided over expanding Supreme Court

Democrats Unveil Long-Shot Plan To Expand Size Of Supreme Court From 9 To 13

Why the Supreme Court must be kept at nine justices

Other Articles:

Supreme Court justices should have term limits

Designing Supreme Court Term Limits

Executive Order on the Establishment of the Presidential Commission on the Supreme Court of the United States

Coming to Terms with Term Limits: Fixing the Downward Spiral of Supreme Court Appointments

Term Limits for Justices are the Best Way to Fix This Supreme Court Mess

Extraneous factors in judicial decisions

Beyond Court Packing: The Supreme Court Has Always Been Political

What the Democrats Achieve By Threatening to Pack the Supreme Court

How Modern Medicine Has Changed the Supreme Court

Negative Arguments:

Term Limits Exacerbate Politicalization

One common argument on this topic will likely be that having term limits will exacerbate the politicalization of the courts. While there have been partisan antics around the appointment of justices, once appointed, justices tend to maintain that their focus is on interpreting the constitution and not serving a particular political agenda. Introducing term limits and more concretely tying the cycle of justices to election cycles could potentially ramp up political tension and lead to a number of detrimental consequences. While term limits would create openings that would more predictably fall into a president's time in office, the appointment and confirmation process would be subject to the same partisan issues that have existed for years. This means that there is the potential for congress to decide not to confirm a justice, leaving a vacancy that could potentially be filled by an incoming president with different political leanings.

In addition, even if the actual process of appointing new justices goes smoothly, being able to predict the political leanings of the court based on who maintains control of the executive and legislative branch could potentially lead to more strategic decisions within lower courts to impact the timing for when a case would get to the Supreme Court, with the intent of getting a more favorable outcome. The Supreme Court is meant to serve as a non-political check on the other two branches of government. As polarization reaches an all time high within the US government, debaters can argue that creating an additional space for this polarization to creep in would erode the ability of the court to function effectively.

Politicizing the Supreme Court

Supreme Court term limits would increase political tensions around justices, not ease them

Term Limits Increase Instability

A major concern with introducing term limits to the court is that it will decrease the overall stability of the court. It is important to note that the resolution does not specify what these term limits would be and, while there have been various plans that have discussed an eighteen year term limit, this is not guaranteed by the resolution and the term-limits could potentially be much shorter. Implementing term-limits could potentially lead to turnover within the court that many believe would make it difficult for the courts to build precedence and make consistent rulings.

It can be argued that, when interpreting the constitution, decisions should be flexible to change but that those changes should be done slowly and with much consideration. With a continuously shifting court, this becomes much more difficult to achieve and potentially leads to a “whiplash” effect. In addition, with shorter terms and, even to an extent with eighteen year terms, term-limits would make it likely that a single president serving for more than one term could significantly influence the political leanings of the court with new appointments. Debaters can argue that this could further exacerbate instability and overall legitimacy.

Why Supreme Court justices serve such long terms

The Risks of Supreme Court Term Limits

Term-Limits Shift the Perception of the Court

Another argument that debaters can look into is the way that term-limits impact the perception of the court. In order for the courts to be an effective branch of government, they need to be perceived as legitimately fulfilling their role as outlined in the US Constitution. While there may be some general popularity around the abstract concept of term-limits within the public of the United States, when the increased turnover leads to whiplash reversals of major decisions, or when one president is able to effectively stack the courts by appointing several justices, the erosion of the perception of the court will impact its ability to effectively act as a check, whether or not the court is actually operating in good faith.

Whether or not judicial independence can actually be preserved stands as a separate argument from whether the courts can keep the faith of the American public, if the appointments were seen as a routine pick that each president was able to make at some point during their term. There is currently an unfavorable perception that the courts have become more politicized. Debaters looking to use this argument could explore the potential impact of further delegitimizing the rulings by the court, either because justices are seen as an extension of the executive branch and because any ruling could potentially be overturned after those term limits are up. It will be important for debaters looking to run this argument to be able to prove how term-limits uniquely make this situation worse than the status quo.

The Politicization of SCOTUS Threatens Its Legitimacy

Over Half of Americans Disapprove of Supreme Court as Trust Plummets

Other Articles:

Supreme Court term limits would increase political tensions around justices, not ease them

The Supreme Court Has a Longevity Problem, but Term Limits on Justices Won't Solve It

How to rein in partisan Supreme Court justices

Supreme Court Trust, Job Approval at Historical Lows

The Regulation of Turnover on the Supreme Court : University of Illinois Law Review

The Policy Consequences of Term Limits on the US Supreme Court

"Retaining Life Tenure: The Case for a Golden Parachute"

Justice Breyer argues against expanding the Supreme Court

Additional Reading:

The Supreme Court Has a Longevity Problem

Term Limits Won't Fix the Court

Frequently Asked Questions: General Information - Supreme Court of the United States.

The Politicization of the Supreme Court

Losing Faith: Why Public Trust in the Judiciary Matters

Are Term Limits Undemocratic?

Term Limits for the Supreme Court: Life Tenure Reconsidered

Age and Tenure of the Justices and Productivity of the U.S. Supreme Court: Are Term Limits Necessary?

Can Structural Changes Fix the Supreme Court?

Saving this Honorable Court: A Proposal to Replace Life Tenure on the Supreme Court with Staggered, Nonrenewable Eighteen-Year Terms

A Case for Supreme Court Term Limits? The Changing Ideological Relationship between Appointing Presidents and Supreme Court Justices

Supreme Court term limits would greatly reduce imbalance on the court, study finds

Interpretation: Article II, Section 2: Treaty Power and Appointments