



A Revised Proposal to Impose Term Limits on the Supreme Court

Recently, nationwide interest in Supreme Court term limits has increased. Though Fix the Court remains a leading organization advocating for the policy — we [helped](#) draft the first-ever legislation to cap the justices' terms years ago, which was again [introduced](#) by Rep. Khanna in this Congress — we've learned several lessons that should be brought to bear in future drafting: some parts of this proposal we'd keep, while others are in need of an update:

1. **KEEP:** Eighteen years with biennial appointments.

As we've long said, justices should serve on the Court for a *time* and not seemingly for *all time*, as tenures of 30-plus years are becoming all too common. Nine justices, each appointed during non-election years to 18-year terms is long enough to make a mark but not so long as to become crusty. Plus, every justice who takes senior status after 18 years under our proposal would still be a *justice* who could sub in when there's a recusal, serve on the lower courts (as Justice Breyer has been doing periodically since 2022), assist the Judicial Conference and, if we're being ambitious and they want to stop hearing appellate cases, one day serve on a judicial council that would review ethics complaints against the justices.

2. **KEEP:** Apply term limits only to future justices.

Over the last few years, lawmakers have introduced legislation that would apply an 18-year term limit to the current justices. So once a new justice was confirmed, the nine junior-most justices would comprise a panel, and the senior-most justice would lose his ability to hear cases (or in one version, his ability to hear all appellate jurisdiction cases, which comprise 99 percent of the Court's docket). The problem is that several SCOTUS cases that remain good case law require that any substantive change made to the nature of an office, including the office of *justice*, be prospective. (See [Myers](#), [Weiss](#) and [Vladeck](#).) Does this mean that under our proposal, the size of the Court may change from time to time? Yes. But just as the institution functioned fine in 2016-17 when they were eight justices, it'd work much in the same way if there were 10 justices in 2029 after the first biennial appointment and if none of the current nine opted to step down.

3. **ADD:** Senate rule modifications to force votes on nominees.

The Rep. Khanna bill says that if the Senate refuses to vote on a SCOTUS nominee within 120 days, it forfeits its advice and consent power. That has always seemed constitutionally dubious. A more acceptable way to ensure that we're not stuck in another Merrick Garland situation is two-fold: first, the Senate should change its rules so that SCOTUS nominees would automatically be moved to the top of the queue. Second, Sen. Merkley's Every Supreme Court Nominee Deserves Timely Consideration [Act](#) should be added to the term limits legislation, which would enable just 30 senators to call for the discharge of a SCOTUS nomination from the Judiciary Committee after 60 days of inaction and would compel floor debate and a vote.

4. **CHANGE:** A president would get two nominees in their first year of office.

This one, which comes from an American Academy of Arts & Sciences report (p. 24 of [this PDF](#)), might be the most controversial change, but there's a strong reason for it. Under the typical 18-year term limits plan, a president gets a new nominee to the Court in the first and third years of their term. We now propose giving the president two nominees in their first year: one who's confirmed and begins serving right away and one who's confirmed right away and begins serving in year three. The reason? When a president wins, their party typically wins the Senate. But after a midterm election two years later, the power in the Senate often shifts, meaning it'd be more difficult for that president to confirm their nominee at that point, which is something that even with the changes described above we'd want to avoid. Plus, the year-three nominee will most likely be an appellate judge, so they'd continue doing their jobs for two years until the calendar turns to year three.