



School of Law  
UNIVERSITY OF GEORGIA

Digital Commons @ Georgia Law

---

Popular Media

Faculty Scholarship

---

3-23-2017

# Why not limit Neil Gorsuch — and all Supreme Court justices — to 18-year terms?

Lori A. Ringhand

*University of Georgia School of Law*, [ringhand@uga.edu](mailto:ringhand@uga.edu)

Paul M. Collins Jr.

---

## Repository Citation

Ringhand, Lori A. and Collins, Paul M. Jr., "Why not limit Neil Gorsuch — and all Supreme Court justices — to 18-year terms?" (2017). *Popular Media*. 276.

[https://digitalcommons.law.uga.edu/fac\\_pm/276](https://digitalcommons.law.uga.edu/fac_pm/276)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Georgia Law. It has been accepted for inclusion in Popular Media by an authorized administrator of Digital Commons @ Georgia Law. [Please share how you have benefited from this access](#)  
For more information, please contact [tstriepe@uga.edu](mailto:tstriepe@uga.edu).

# Why not limit Neil Gorsuch — and all Supreme Court justices — to 18-year terms?

By Lori A. Ringhand and Paul M. Collins, Jr. March 23, 2017



Staff gathers and the media sets up before the Senate Judiciary Committee begins a confirmation hearing for U.S. Supreme Court nominee Neil Gorsuch on Monday. (Melina Mara/The Washington Post)

This week, Supreme Court nominee Neil Gorsuch took the hot seat and began testimony before the Senate Judiciary Committee. If confirmed, he will be one of only 113 people to sit on the high court since it was established in 1789.

Why have so few people had this honor? Because the Constitution effectively grants life tenure to justices. The Constitution states that justices “shall hold their office during good behavior” and that they can be removed only by impeachment. In the 228-year history of

the Supreme Court, only [one justice](#) has been impeached (and he was not removed); the others have served until their voluntary retirement or death.

The United States is rare among the world's constitutional democracies (and most U.S. states) in granting unlimited tenure to unelected high court judges. The system does have some advantages. It protects justices from the influence of ordinary politics and allows them to focus on constitutional duties without considering any decision's effects on future career opportunities.

Nonetheless, legal scholars and political scientists increasingly question whether life tenure remains a good idea. While [scholars disagree](#) about the exact numbers, our Supreme Court justices are serving longer and longer terms; presidents have incentives to choose younger and younger nominees; and the justices themselves appear to delay retirement in the hope of having an ideologically compatible president select their replacements. Moreover, the confirmation process has become increasingly contentious, culminating last year in Senate Republicans refusing to even grant a hearing to President Barack Obama's nominee, Merrick Garland.

As a result, many scholars propose a shift to staggered 18-year terms. What are the pros and cons of such a change? Here's a breakdown.

### **What would be good about 18-year terms?**

First, term limits could make appointments less politically fraught. Our [research](#) shows that selecting Supreme Court nominees has [always been political](#). That's not a bad thing. Having elected officials select Supreme Court justices ensures that, over time, the Supreme Court's decisions do not get too far out of step with U.S. [public opinion](#). Such indirect public accountability probably is essential in a system like ours, where our justices are charged with deciding how words written hundreds of years ago will apply to contemporary situations.

But when the nation's politics are polarized, partisan antagonism can shut down the entire system, as happened with Garland's nomination. Staggered 18-year terms could help prevent that, lowering the stakes for each nomination while retaining an appropriate level of democratic accountability. When fully implemented, 18-year terms would evenly distribute appointments so that each president would nominate two justices per term, with a midyear election falling in between. Vacancies would be predictable and evenly paced, draining confirmation hearings of much of the current drama. If a sitting justice dies or needs to step down before his or her expected resignation date, the seat could be temporarily filled by a lower court judge or a retired one, drawn from a pool and sitting by designation.

Second, by tying appointments more predictably to each election's results, this system would actually increase the Supreme Court's democratic accountability. Numerous studies have found that justices over time "[drift](#)" from the ideological preferences of the governing coalition that appointed them. More-frequent turnover would reduce this drift. The Supreme Court's views would better reflect the choices of the American people, rather than the vagaries of chance and time. Justices wouldn't become too disconnected from mainstream American values.

One of the major problems with life tenure is that justices serve for so long that they can become out of touch with the nation they help lead. Staggered 18-year terms minimize this risk.

Finally, term limits could increase the quality of Supreme Court nominees. Like it or not, one of the driving factors behind current presidential appointments is a [nominee's age](#). Individuals older than about 60 years of age are unlikely to be appointed. (Garland, age 63 at the time of his nomination, was likely picked in part in hopes that his relatively advanced [age](#) would reduce opposition to his appointment.) This means presidents are [intentionally excluding](#) a sizable number of highly qualified individuals from serving on the Supreme Court. Term limits solve this problem. And the threat of a justice's [cognitive decline](#) might be reduced, since there would no longer be the temptation to hold out for a [strategically timed retirement](#).

## **And what would be bad about 18-year terms?**

First, term limits may hurt judicial independence. One of the chief arguments against term limits is that life tenure frees the justices from [political or popular pressure](#). Justices are not elected officials, and we don't want them to respond too much to the passing passions of ordinary politics. We also don't want them to worry too much about post-Supreme Court careers. Shorter terms could prompt justices to think too much about how their votes play in the arena of public opinion, or — worse — how they may limit or help future earnings.

Second, the Supreme Court's legitimacy might be [threatened](#) by shorter terms. Life tenure enables the justices to interpret and apply the Constitution exactly the way they see fit, without considering pressure or repercussions. This perception of independence may be important to what scholars call the Supreme Court's "[diffuse support](#)" — the perception that people support the Supreme Court regardless of disagreement with particular decisions because they believe the Supreme Court overall is engaged in something other than ordinary politics.

Third, staggered 18-year terms could not eliminate all risk of political gamesmanship. A determined Senate majority could still refuse to act on a nomination or vote down a nominee they found unacceptable. But term limits would change the political calculations and incentives by creating a predictable, fair distribution of seats over time and making each individual vacancy less consequential.

The final argument against term limits may be the most important: They may be impossible to implement. Creating legally enforceable Supreme Court term limits would almost certainly require amending the Constitution. That's unlikely to happen anytime soon. Any solution short of a constitutional amendment would require getting justices and senators to agree to change the norms and customs governing retirement and confirmation. In other words, they would have to voluntarily agree to play by a new set of rules. Given the state of politics today, that may be too much to ask.

*Lori A. Ringhand is the associate dean for academic affairs and J. Alton Hosch Professor of Law at the University of Georgia School of Law.*

*Paul M. Collins Jr. is a professor of political science and director of legal studies at the University of Massachusetts Amherst.*

*Together they are the authors of "[Supreme Court Confirmation Hearings and Constitutional Change](#)" (Cambridge University Press, 2013).*