

FROM SLATE, NEW AMERICA, AND ASU

Down With Lifetime Appointments

Humans are living longer. That means judges are serving longer, too.

By Adrienne LaFrance



IT'S TIME TO RETIRE LIFETIME APPOINTMENTS FOR SUPREME COURT JUSTICES

From left, Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor listen as President Obama delivers his State of the Union speech at the Capitol on Feb. 12, 2013, in Washington.*

Photo by Chip Somodevilla/Getty Images

When Supreme Court justices enter a room, you can feel the air change.

I first noticed this two years ago at the State of the Union address from my perch in the elbow-to-elbow press balcony above the House gallery. Members of Congress below were doing what they do best during this sort of spectacle—glad-handing influential colleagues, breaking off into partisan cliques, nudging one another like mean girls gossiping in the school cafeteria.

But when the justices filed in, they carried with them an unmistakable air of superiority. They seemed above it all. (Some justices skip it altogether because they find it "childish," as Antonin Scalia put it in [a New York magazine interview](#) recently.)

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And why shouldn't they? Once appointed, Supreme Court justices are practically guaranteed to stay on the bench as long as they want.

There's actually nothing in **the Constitution** that explicitly promises federal judges "lifetime appointments." But the language of Article III says justices "shall hold their Offices during good Behaviour," which can be reasonably interpreted as open-ended on the issue of term length.

Of course, the Constitution was written at a time when merely surviving infancy was a triumph—let alone making it to the Supreme Court with enough time for a 30-plus-year stint on the bench.

"The people who created the Constitution of the United States in the 18th century lived in a very different world than we live in," said Michael Sappol, a historian and author of *A Traffic of Dead Bodies*, a book about death and social identity. "The idea that judges would get life appointments had a different kind of meaning then than it does now."

As more Americans live longer, institutions like the Supreme Court are undergoing profound change. In other words, a lifetime isn't what it used to be. And plenty of people have argued that the highest court in the land ought to be subject to some of the restrictions that lower-level U.S. courts and top courts in other countries already have in place. "Every place else in the world they have age limits or term limits," says Paul Carrington, a law professor at Duke University.

The five most recently retired Supreme Court justices averaged more than 25 years apiece on the bench. That's nearly triple the nine-year average tenure of the court's first five justices.

Some more perspective to contextualize how times have changed: The average retirement age among the country's first 10 Supreme Court justices was 60 years old, whereas the average retirement age among the 10 justices who most recently left the bench was 76 years old.

Here's another way to think about how lifetime Supreme Court appointments have changed over time, based on an analysis of more than two centuries of **Supreme Court appointments**. Before 1900:

- 26 justices served 10 years or more
- 18 justices served 20 years or more
- 7 justices served 30 years or more

Whereas since 1900:

- 48 justices have served 10 years or more
- 27 justices have served 20 years or more
- 8 justices served 30 years or more

Those who argue in favor of lifetime appointments at the federal level say such a system safeguards judicial independence, and that the high court ought to be protected from the political ebb and flow of regular election cycles.

But lifetime appointments actually enable more politicking on the bench. "Life tenure gives the justice control, to some degree, over his or her successor," said Carrington, who explains that a justice might wait to retire until a president who shares his or her ideology has been elected. As **the New York Times pointed out** last year, justices have conflicting priorities—many of them want to serve the nation for as long as they feel up to the job, but they also have "a conflicting desire, which is to perpetuate their view on the court."

Carrington is one of dozens of lawyers pushing for reforms. An ideal Supreme Court term might be something like 10 years, says Carrington, who cautions that shorter terms could leave the court vulnerable to outside political pressure.

"We don't want to change our justices every time somebody gets angry," Carrington told me. "But we're living in a world where you're appointing a justice at the age of 50, so you're going to have a lot of them that serve for 40 years."

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