

According to Alexander Hamilton in his 1788 *Federalist 78*, the judicial branch will always be the least dangerous because it doesn't hold the power of the purse or the sword, but in modern-day times, it has grown to be the most unchecked branch.¹

Our founding fathers adopted the concept of checks and balances in our government, so no one branch is all-powerful. The legislative and executive branches both have limits to their power, but the Supreme Court is relatively unlimited. It has neither direct election nor term limits, something both Congress and presidents have. When F.D.R. was the first president to be non-compliant with a two-term precedent, the Twenty-second Amendment was passed to check presidential power. Now, an amendment is desperately needed for our Supreme Court.

When the Constitution was created in the 1700s, the average life expectancy was significantly lower than today, so there was no need for term/age limits. Now, “the average justice's term is longer than it has been at any other point in U.S. history,” giving innumerable power to nine individuals that affect millions of lives.² Also, since it can be decades long, presidents feel incentivized to select a justice who fits their political ideology, even though they should be impartial.³ This creates a very politically-charged court instead of one that runs off of the law, which is very dangerous and has appeared in cases such as *Dobbs versus Jackson*.

For the Twenty-eighth Amendment, I propose that the Supreme Court is subject to an age limit, with the minimum age being thirty-five and the maximum age being sixty. Once a sitting justice reaches fifty-nine years, the president shall begin looking for their replacement and begin the confirmation process in Congress. During this time, presidential nominees will be required to sit in on at least fifty hours worth of Supreme Court sessions to get an idea of the process. Once the Supreme Court justices reach sixty years old, there is a thirty-day period for the new justice

¹ See The National Constitution Center

² See Buchanan

³ See Buchanan

to be confirmed. If the sitting justice turns sixty during November through January of an election year for a new Congress or president, the new justice must be confirmed before their predecessor turns sixty, with no more than one hundred days in between confirmation and birthday. If the sitting justice turns sixty after January thirty-first following an election year for a new president, the new president can use the former president's elected nominees or elect new nominees. If they choose to have new nominees, they must replace the sitting justice before they turn sixty-one and not take longer than 365 days, not including the thirty-day confirmation period. If the Amendment passes, justices over seventy will be replaced first, with a one-year replacement period. After an additional year, the next justices to replace are any over sixty-five, also taking a one-year replacement period. Finally, after another year in between, any justices over sixty are to be replaced. This entire process will take six years.

The year of looking for a replacement will ensure ample time for the President and Congress to find a well-rounded and experienced replacement. The fifty hours minimum of on-the-job training will allow new members to know how the Supreme Court functions so they know what to do once confirmed. Additionally, the initial replacements are staggered to ensure that the Supreme Court does not change completely in such a short amount of time and for two possible presidents to elect justices.

Making an age limit is necessary for many reasons.

For one, many justices stay in power for an excessive amount of time because of fear that a member of the opposing political party will replace them. With the limit in place, successors won't be in power for multiple decades, minimizing that fear. If a justice is *still* concerned about their birthday falling within a year that a president of the opposing party is in power, they are still more than welcome to resign.

Second, age limits will compel presidents to look for qualified, younger candidates, so their impact on the court will last longer. Younger justices also reflect the majority in the United States, where 65% of the population is between fifteen and sixty-four and only 17% is above sixty-five.⁴ In today's court, four justices are over the age of sixty-five, and not one is under the age of fifty.⁵ In *Federalist 10*, Hamilton warned about the tyranny of the minority trampling over the majority, and while he wasn't directly talking about the courts, the argument is applicable. Our court should reflect the generations their decisions will impact, but since the Supreme Court justices are much older, they're far more likely to make out-of-touch decisions that don't match most Americans' beliefs. In fact, "43% [of U.S. adults] said that they have hardly any confidence" in the justices in a 2022 poll, but if they represented the people better, this confidence will rise.⁶

Third, both the people and the government want Supreme Court limits. Of all U.S. adults, "64% support a mandatory retirement age," and thirty-one states already "have some form of mandatory retirement" for their state justices.⁷ In 2022, Congressman Hank Johnson introduced the T.E.R.M. Act, which would establish term limits for Supreme Court justices.⁸ While even some Supreme Court justices like Justice Stephen Breyer agreed that term limits would "make [his] life a lot simpler," and Chief Justice John Roberts said a term of "fifteen years would ensure that federal judges would not lose all touch with reality through decades of ivory tower existence," the act can still be subject to judicial review and easily be overturned by the Supreme Court at any given time.⁹

⁴ See O'Neill

⁵ See Schwarz

⁶ See Schwarz

⁷ See Schwarz

⁸ See Press Release

⁹ See Buchanan

The ratification process is through a $\frac{2}{3}$ proposal by Congress and a $\frac{3}{4}$ vote by State Legislatures. Because the amendment won't affect their power but limits another branch, it's likely to pass.

Change is necessary for our government to fit modern America. Without it, our rights will continue to be threatened.

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