

Continue to Serve for Life?

YES Since 1787, the Constitution has granted Supreme Court justices and most federal judges the right to hold their offices until they die or choose to retire. Stripping life tenure from Supreme Court justices would “fix” a nonexistent problem and threaten America’s independent judiciary.

There’s no evidence that justices need to be forced to retire. Many of our greatest justices have served honorably on the Court well into old

The idea that old people make bad judges smacks of age discrimination.

age: Oliver Wendell Holmes was 90 when he retired in 1932 after nearly 30 years on the Court, and William Brennan was on the Court for

34 years, retiring in 1990 at age 84. More recently, Justice John Paul Stevens retired in 2010 at age 90 after 35 years. The argument that old people make bad judges smacks of age discrimination.

Life tenure is one of the most important guarantees in the Constitution of an independent judiciary. It’s life tenure that allows judges to interpret the law free from the day-to-day political pressures that the executive and legislative branches of government inevitably face. Those pressures mean that Congress and the president sometimes fail to see—or choose to ignore—the bigger, longer-term picture in issues ranging from civil rights to presidential authority.

Furthermore, abolishing life tenure for Supreme Court justices would require a constitutional amendment. This would be a time-consuming and costly process that would distract us from the many real problems facing our society. In addition, such an amendment would set a dangerous precedent for more serious threats to our independent judiciary, such as giving state and local judges shorter terms of office or making it easier for politicians to fire them when they issue unpopular rulings.

When it comes to the life tenure of Supreme Court justices, our Constitution is working just fine, and it would be foolish to tamper with it. •

—NEIL RICHARDS

Professor of Law, Washington University
School of Law

NO We often say that Supreme Court justices have “life tenure.” But that’s just how we’ve interpreted the Constitution, which actually says justices can hold their offices as long as they maintain “good behavior.” This language suggests justices should retire when they’re no longer fit to work full-time.

Supreme Court justices have more influence on our society than almost anyone else. Virtually all other judges in the world are subject to term limits or age limits. Speaking from my own experience, I question the wisdom of letting justices in their 70s and 80s continue to exercise such great power. I am 85 years old, and I know that my own

Historically, some justices have held on to their power for far too long.

mental faculties aren’t as sharp as they used to be.

Historically, some justices who were seriously unfit held on to their power far too long. Former Chief Justice William Rehnquist continued deciding key cases in 2005 as he was in the hospital dying of cancer. Thurgood Marshall was 82 and in very poor health when he retired from the Court in 1991. Justice Antonin Scalia had long suffered from a number of serious medical problems, including heart disease, obesity, and diabetes. Despite those issues, he had declared at age 77, two years before his death, that he would not retire as long as there was a president who he thought would nominate a more liberal justice as his replacement.

Two factors have enabled justices to remain on the bench longer: an increased reliance on young law clerks and a smaller caseload. Since 1925, Congress has allowed the Supreme Court to choose which cases it will hear. The justices once accepted close to 300 cases a year; now they hear about 80.

It’s time for Congress to address this problem. We already have a judicial process by which aged and disabled federal judges can be placed on “senior status,”** which is a form of retirement. Congress should extend that process to Supreme Court justices. Presidents should appoint a new justice during each term of Congress, with justices who’ve been on the Court more than 18 years acquiring “senior status” similar to that held by older judges sitting on lower federal courts. •

—PAUL D. CARRINGTON

Professor Emeritus, Duke University School of Law

112

Number of justices since the formation of the Supreme Court in 1790.

15

Number of justices who’ve served on the Court beyond age 80.

36 years

Longest tenure on the Court: Justice William O. Douglas (1939-75).

**Judges who qualify for senior status no longer keep their seats on a particular court but continue to hear a reduced number of cases on an as-needed basis.