

Advertisement

SEARCH:

washingtonpost.com

Web : Results by Google™ | Search Archives

washingtonpost.com > Nation > Special Reports > Supreme Court

Legal Experts Propose Limiting Justices' Powers, Terms

By [Robert Barnes](#)

Washington Post Staff Writer

Monday, February 23, 2009; Page A15

If we had it to do all over again, would we appoint Supreme Court justices for life? Allow the chief justice to keep the job forever? Let the court have the final word on which cases it hears and those it declines?

A group of prominent law professors and jurists thinks not, and the group says in a letter to congressional leaders that there is no reason Congress should consider the operation of the high court sacrosanct.

"We do not suggest, and would oppose, any interference with the substance of the court's work," says the letter, which was organized by Duke University law professor Paul D. Carrington and signed by 33 others from different stations on the political spectrum.

But the group said Congress has every right to address how the court *operates*, "a subject it appears not to have seriously considered for at least seventy years."

Carrington said the four proposals in the letter -- sent to the chairmen and ranking minority-party members of the congressional judiciary committees, Attorney General Eric H.

TOOLBOX



Resize

Print

Email



Save/Share +

COMMENT



Discussion Policy

CLOSE

Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site.

Additionally, entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

Advertisement

Top Jobs on [washingtonpost.com](#)

- [Director III, Intervention & Prevention Servi](#) / Fairfax County Public Schools - FCPS
- [Grounds Equipment Technician Apprentice I / I](#) / Fairfax County Public Schools - FCPS
- [Transportation Attendant](#) / Fairfax County Public Schools - FCPS
- [Principal, Elementary School \(Effective Date:](#) / Fairfax County Public Schools - FCPS
- [Carpenter I](#) / Fairfax County Public Schools - FCPS

[ALL TOPS JOBS](#)

Find Your Dream Job Now!

Keywords

IN

Locations

[FIND JOBS](#)

Featured Advertiser Links

Holder Jr., and Vice President Biden -- are drawn from various studies, commissions and reform efforts that have foundered in the past.

He's not particularly optimistic they will fare any better now and notes that even this group was not unanimous on any of the proposals. "The politics of this are very difficult," he said. "Nothing on this is really going to happen until someone invests his or her career on the issue."

He's confident of one other thing: "I'm sure the justices would hate it."

For starters, the group proposes a form of term limits, moving justices to senior status after 18 years on the court. The proposal says that justices now linger so long that it diminishes the likelihood that the court's decisions "will reflect the moral and political values of the contemporary citizens they govern."

To get around the Constitution's prescription that justices serve for life, the group would let justices stay on the court in a senior role -- filling in on a case, perhaps, or dispatched to lower courts -- or lure them into retirement with promises of hefty bonuses.

It would set up a regular rotation on the court by providing for the nomination of a new justice by the president with each new two-year term of Congress. If that results in more than the current nine justices, only the nine most junior would hear cases.

The new policy would not take effect until those already on the court are off, but the current tenure of the court suggests what a radical change that would be. Four of the court's justices -- John Paul Stevens, Antonin Scalia, Anthony M. Kennedy and David H. Souter -- have already surpassed the 18-year mark, and Clarence Thomas gets there later this year. Ruth Bader Ginsburg and Stephen G. Breyer are not far behind.

University of Chicago professor Eric Posner said the Constitution's call for lifetime appointments is one element of American democracy that is never copied by other countries, perhaps because "it is very undemocratic."

"People who wield an enormous amount of power should not have lifetime appointments," Posner said.

Relatedly, the group calls for the justice who serves as chief to be limited to seven years in the job, because it has "extended into numerous other political, administrative and non-judicial roles calling for a measure of special accountability."

The third proposal deals with the removal of justices in failing health "who are increasingly prone to remain in office and retain their political power even if no longer able to perform their office."

It did not name names. But it said the chief justice should have the duty of advising such a justice to resign and promptly report that fact to the Judicial Conference of the United States (if the chief is the one in

Who's Blogging

powered by **sphera**

» [Links to this article](#)

- [Join TD AMERITRADE and trade free for 30 days + get \\$100.](#)
- [Asbestos Lung Cancer Lawyer, Navy, Shipyard, Boilermaker](#)
- [Mesothelioma Lawyer, Construction, High Risk Jobs, Vets](#)
- [Roll over your old 401\(k\)s to Fidelity.](#)
- [Save Up To 75% On Cruises at Vacations To Go](#)
- [MetLife - Try the Life Insurance Selector now](#)
- [\\$387+ Roundtrip Flights to Italy with taxes!](#)

question, it falls to other justices to report him).

And the proposal would deprive the justices of one of their greatest powers: deciding which cases they hear. Justices now comb through the thousands of petitions for certiorari they receive each year, and in recent years have declared a declining portion of them worthy of their time.

The court issued 67 merit opinions last term, the lowest number since the 1950s. The number of cases the court will decide this term is a bit higher.

"It is increasingly difficult to justify absolute independence for justices whose chief work is expressing and imposing on the public laws on topics of their choice," the proposal said.

It envisions a "Certiorari Division" made up of senior justices and appellate judges who would review the petitions and send 80 to 100 each year for the Supreme Court to decide, whether it wanted to or not.

"They don't have to decide anything they don't want to decide," Carrington said, which adds to a perception that the court is "not just powerful but arrogant."

Carrington said the group sent the proposals to Holder because the Justice Department once had an office that looked into judicial reform and to Biden because of his experience on the Senate Judiciary Committee.

The group sent the proposals as statutory texts, it said, in hopes they would not be treated as "mere political or scholarly utterances." In other words, Carrington said, the approach seemed better "than writing another law review article."

Understand more about...

[Big Shift on Enemy Combatant](#)

[Supreme Court Limits Proposed](#)

[Stevens: No White House oath needed for justices](#)

[Justice Ginsburg Returns to Work](#)

[Supreme Court Justice Ruth Bader Ginsburg Hospitalized for Cancer](#)

[A New Rule Allowing Concealed Weapons in National Parks Is Under Fire](#)

[State Secrets? Let the Courts Weigh In.](#)

[City Can Reject Religious Display](#)

[High Court to Hear DNA Case](#)

[Justices' Stocks Risk Potential Conflict](#)



Web-Wide News Alerts

Get MyWebpost

Get The Post's take on whatever you're reading -- anywhere on the Web.

[Sign Up](#) | [Learn More](#) powered by **MyWebpost**

Most Viewed Nation Articles

- [White House: US will operate in South China Sea](#)
- [Research Finds Chimps Can Plan Stockpiling, Use of Weapons](#)
- [Court refuses to expand minority voting rights](#)
- [Court turns down NYC case against gun industry](#)

- » [Top 35 Nation Articles](#)
- » [Most Popular on washingtonpost.com](#)

More on the Supreme Court

The Supreme Court

Full coverage of the U.S. Supreme Court, including key cases and nominations to the nation's highest court.



Guantanamo Prison

Full coverage of the U.S. prison in Guantanamo Bay, Cuba, including Supreme Court rulings over its legality.




© 2009 The Washington Post Company

[News](#) | [Politics](#) | [Opinions](#) | [Local](#) | [Sports](#) | [Arts & Living](#) | [Going Out Guide](#)

[Jobs](#) | [Cars](#) | [Real Estate](#) | [Rentals](#) | [Shopping](#)

SEARCH:

washingtonpost.com

Web: Results by 

[Search](#)
[Archives](#)

washingtonpost.com: [About Us](#) | [Work for Us](#) | [Advertisers](#) | [Site Map](#) | [Search Terms](#) | [Topics Index](#) | [Make Us Your Home Page](#) | [Newsletters](#) | [Mobile](#) | [RSS](#) | [Widgets](#)

The Washington Post: [Subscribe](#) | [Home Delivery Service](#) | [Advertisers](#) | [PostPoints](#) | [Electronic Edition](#) | [Online Photo Store](#) | [The Washington Post Store](#) | [About The Post](#) | [National Weekly](#)

The Washington Post Company: [Information and Other Post Co. Websites](#)

© Copyright 1996-2009 The Washington Post Company | [User Agreement and Privacy Policy](#) | [Rights and Permissions](#)

[Help](#) | [Contact Us](#)