



## **Opinion: High court term limits make for interesting debate**

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Democrats in the U.S. House of Representatives, upset about the current makeup of the Supreme Court, are reprising the argument that term limits offer the only solution to the drama that accompanies appointments.

A bill by Reps. Ro Khanna of California, Don Beyer of Virginia and Joseph Kennedy III of Massachusetts proposes 18-year limits on the bench for new justices. Every president would have the chance to appoint only two justices during his or her four years in office; presidents would nominate a new justice in the first and third years of their presidency.

“It would save the country a lot of agony and help lower the temperature over fights for the court that go to the fault lines of cultural issues and is one of the primary things tearing at our social fabric,” Khanna said.

Appointments to the Supreme Court are for a lifetime. Ruth Bader Ginsburg died at age 87 after serving 27 years. Antonin Scalia was in his 30th year on the bench when he died suddenly at 79. Clarence Thomas, 72, is in his 29th year as a justice and Stephen Breyer, 82, is finishing his 26th year. John Paul Stevens served 35 years on the court, Sandra Day O’Connor 25. Oliver Wendell Holmes Jr. retired from the court at age 90.

The idea of lifetime appointments was to create an independent judiciary that would be shielded from politics. Yet today the court is often criticized for legislating instead of simply serving as arbiter.

One problem with this proposal, however, is the two-justices-per-term rule. What if more than two openings occurred, as has happened occasionally through the years? During his first term, Richard Nixon appointed four justices in the span of about two-and-a-half years.

Although this is a Democrat-driven proposal, some conservatives are OK with term limits. Among them is John Fund of National Review, who notes that average life expectancy is more than double the 38 it was at the nation’s founding.

“Now, Supreme Court justices can spend two generations on the bench,” Fund wrote recently. “And, so long as they avoid impeachment, only they can decide when it’s time to leave. Judges today usually retire only when they can ensure a philosophically compatible successor. This can result in judges staying past their ‘sell by’ date either physically or mentally.”

Writing in *The Atlantic*, Ilya Shapiro of the Cato Institute raises a number of concerns about the 18-year term limits. He also argues that term limits would not change the ideological makeup of the court over time. “Nor, for that matter, would they address the fundamental power that each justice wields, which is the reason we see such ferocious political battles every time a vacancy occurs.”

This latest effort will go nowhere with a Republican-controlled Senate, but it does make for an interesting debate.