

## An Alternate Timeline of the Supreme Court of the United States — and the Citizens It Affects

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*Research Question: How Might the 1971 Institution of a Term Limit for U.S. Supreme Court Justices Have Affected the Composition of the 2020 Court — as Well as the Intervening Courts' Decisions?*

### ABSTRACT

*In the Fall of 2020, with re-emerging arguments in favor of term limits for the Supreme Court of the United States (SCOTUS), this project proposed to explore the effects of an 'Alternate timeline' wherein an 18-year term limit was instituted in 1971. Using a set of basic parameters and established (and extrapolated) Liberal-to-Conservative scoring metrics, Actual and Alternate ideological timelines were built. From these, a portrait of the Alternate sitting Court was established and case studies of notable SCOTUS decisions were examined. The findings shed light on national perceptions of SCOTUS ideology and currently proposed legislation on term limits, while laying a potential foundation for additional, more complex models.*

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### INTRODUCTION

#### The State of the Court

As the 2020 U.S. presidential election approached, the stakes of a contest that was already framed as existential by both the left and right wings of the nation were raised a little more — or certainly cast in an even starker light. The death of Supreme Court Justice Ruth Bader Ginsburg — a prospect that had filled public figures and private citizens with a sense of opportunity or dread, depending on their political views — initiated a successful move to confirmation of a new Associate Justice before election day and raised speculation over whether or not that appointee (or a Court without them) would help determine the outcome of a disputed election. As weeks have passed and numerous legal challenges have been refuted, the implications of Court appointments have remained.

Weighing over this is the realization by some that the sitting president was elected with less than a majority or plurality of the popular vote and has subsequently nominated two Associate Justices who were confirmed by narrow margins in the Senate with: Neil Gorsuch receiving Yea votes from Senators who had collectively received fewer votes than those voting Nay in their most recent elections (McMahon, 2018); Brett Kavanaugh receiving Yea votes from Senators who represent less than half (44.2%) of the U.S. population (Bump, 2018). Gorsuch was the first time that such a convergence of non-majorities occurred. Amy Coney Barrett — who was appointed to replace Ginsburg during the execution of this project — became the third time, meaning that a full third of the bench might be viewed as appointed by a less-than-democratic process.

## **(Re)Enter Term Limits**

With such a focus on the judiciary, its impact and its potential politicization, it is only natural that talk turned once more to term limits for the Supreme Court. Even before this election and Ginsburg's death, the notion of term limits has been raised by various parties over the years and was even a discussion at the nation's founding.

These discussions are non-partisan. While a push by organizations like Fix the Court and the Center for American Progress may be viewed (in light of the current situation) to be addressing this from a more left-leaning angle, the idea has also been supported by more conservative publications such as National Review, which itself cites now-Chief Justice John Roberts as supporting the idea in 1983, while serving in the Reagan White House (Fund, 2019).

While at that time Roberts proposed 15 years as a possible term limit and the Center for American Progress notes the same number as a possibility (Buchanan, 2020), a more common number being floated is 18 years, which appears to stem from a 2006 article in the Harvard Journal of Law and Public Policy. Writing back when there had just elapsed an 11-year period with no appointees, this article proposed a system (including a constitutional amendment) wherein the court is fixed at nine Justices, with staggered 18-year term limits effectively giving two appointments to one-term presidents, and four appointments to two-term presidents (Calabresi, et al, 2006). (On the surface, this of course supposes that no Justice dies in office or simply decides to retire.)

The timeliness of this discussion is made even more apparent by the current proposal — again raised during the time of this project — of The Supreme Court Term Limits and Regular Appointments Act, which was introduced in the House of Representatives on September 29, 2020. (Fix the Court, 2020) This bill would eliminate life tenure on the Court with an 18-year term limit, allow for former Justices to fill-in during vacancies and waives Senate “advise and consent authority” if it is not executed within 120 days of a Justice's nomination (The Supreme Court Term Limits and Regular Appointments Act).

## **Other Proposals**

While either 15 or 18 years might be considered reasonable suggestions, considering that Justices served an average of 14.9 years from 1789 to 1970 (Calabresi, et al, 2006), some have proposed not a term limit, but a retirement age of 75, as seen in other countries (Berman, 2020). Putting aside for a moment the possible insinuations of ageism, this is a valid historical argument. After the previously referenced deliberation, the writers of the Constitution decided that “The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour...” (US Const.) which was a fair proposal at a time when life expectancy was approximately 38 years (Fund, 2019). In contrast, the last three Justices to die in office (all in the past 15 years) averaged 82 years of age when they passed. Prior to the first of those (Rhenquist in 2005), one has to go back to 1953 to find a Justice who died in office, which is indicative perhaps of a more recent trend toward longer tenures. As a kind of term limit, this is worth factoring into exploration.

More ‘radical’ departures from structure, such as Pete Buttigieg's proposal for a 15-member Court (wherein five Justices are appointed by Democrats, and five by Republicans with an additional five appointed by those combined ten) (Millhiser, 2019), as well as notions of “court packing” are more side notes to the primary proposals listed above.

## **What Does This Mean in Application?**

It is with these very relevant developments and arguments in mind that this project proposed to

practically explore the question: How might the 1971 institution of a term limit for U.S. Supreme Court Justices have affected the composition of the 2020 Court — as well as the intervening Courts' decisions?

Fix the Court has mapped out how their proposal would play out over 27 years (Fix the Court, 2020) but of course cannot predict who will be in the White House or Senate during those years. This study, utilizing readily obtainable data of Court composition dating back to 1971, implements parameters wherein Justices are removed at the end of a theoretical term limit and then replaced by mean-based ideological archetypes of those appointed by the President at that time, and present where we might otherwise have stood at this point of partisan divide.

By applying these parameters to an existing Court, and reviewing compositions from the past during a particularly divisive time, we might achieve some sense of the tangible effect of the term limit proposals. Would we still be looking at three Justices whose legitimacy is questioned? Would we be facing a judicial appointment as a ruling on the outcome of a presidential election stands as a very real possibility? The results may shed some light on the arguments moving forward, as those almost certainly will not abate. To place such questions in relatable, concrete terms, the project then explored not only how this affects the present, but applies the effect of such limits to past Court decisions.

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## METHODS

### Obtaining the Data

In order to investigate the effects of term limits on U.S. Supreme Court composition, it was first necessary to establish a portrait of the Court in historic and contemporary light. This has been crafted through a series of tables containing tenurial, ideological and personal data.

The base data set for this project is a table of all Supreme Court Justices who have served on the court since 1971, including any part of that year. This ranges from Hugo Black and John Marshall Harlan II, both of whose tenures ended in September of 1971, to Amy Coney Barrett, who was appointed in October of 2020. This data was collected and aggregated from a number of readily available and reliable online sources. Term lengths and other justice-specific information (e.g. birth, death, confirmation vote) were obtained from the Supreme Court's web site (Justices 1789 to Present) with Wikipedia's listing of Justices (List of justices of the Supreme Court of the United States) used as a handy reference for order of all Justices, a listing of which Justice they replaced and their tenure length in years and days. The Supreme Court site also identified the appointing President, for whom I was able to assign a political party using personal knowledge.

Justice ideology was based on Martin-Quinn Scores — specifically the Estimated Martin-Quinn Score (posterior mean) — which can be obtained on the Martin-Quinn Scores site (Martin-Quinn Scores: Measures) as a downloadable csv file. These scores, generated using data from Washington University Law's Supreme Court Database (The Supreme Court Database) measure "the relative location of U.S. Supreme Court justices on an ideological continuum" (Martin-Quinn Scores: Description) ranging from approximately +6 (Conservative) to -7 (Liberal) at the far ends. Originally presented as the basis of dynamic models in Andrew D. Martin and Kevin M. Quinn's "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999," (Martin and Quinn), their use in visualizations produced by other reputable sources including fivethirtyeight.com and The Washington Post lend them ample authority as an accepted metric for representing ideology

in this exploration.

That dataset, in conjunction with a generated table of historical ideological rankings (once more utilizing Martin-Quinn Scores), was then used to create a heatmap documenting the Court's composition for every month from January 1971 to December of 2020, the creation and further development of which will be explained in more depth later.

### **Initial Dataset: Justices 1971 to Present**

The initial dataset (Appendix A), hand-compiled as a Google sheet, contains a list of 26 Justices that have served since January 1971. Along with their First and Last Name, each Justice has an ID number, denoting their overall place in appointment to the Court as well as a Position of Chief or Associate Justice (and in the case of William Rehnquist, both). Start Term and End Term Dates are presented as month day and year, with Length of Tenure converted from months and days to a decimal for computing purposes. (For sitting/incumbent Justices, there is of course no End Term Date, and Length of Tenure was computed to the end of October 2020, when comparisons began.)

As the Martin-Quinn Scores obtained online present a different score for each year of a Justice's term, a mean of all available years for each Justice was established as a representative score. (As Barrett has no established Martin-Quinn Score, a temporary value had to be assigned to her. Based on all current reporting and her own comments, she was given a placeholder Martin-Quinn Score to match that of her mentor, Antonin Scalia.)

For political context, each Justice's listing contains the name of the President they were Appointed By, the Party of that President, and their Confirmation Vote. All could be even more relevant in future analyses and explorations of the data, while the appointing President helped establish a mean Judicial ideology for that President. Lastly, personal and professional data is provided in the form of Birth (for possible exploration of a retirement age option in future study), Death and the State Appointed From.

### **Categorizing Ideology and Defining Time Frame**

To establish the Liberal or Conservative lean of the Court over the period since 1971, I first went back to examine the Martin-Quinn Scores for Justices back to 1937 (the first year for which these scores are available), and created a table of their mean scores. (Appendix B) This span includes 47 Justices, who were placed in order from Liberal (William Douglas, a true extreme at -4.725) to Conservative (3.6037 for Clarence Thomas). Each Justice was then placed in a quintile of 9 or 10 across that spectrum. Quintile locations for this uneven division were determined based on proximity of borderline Justices to their neighbors. By first assigning all Justices since 1937 these values, it allowed the Justices since 1971 to be placed in a larger context.

At this point it should be noted that 1971 was selected as a start year for several reasons. For one it establishes a solid, 50-year 'modern' cycle over which the institution of a term limit would have a more profound, cumulative effect. Also, as noted previously, Justices serving from 1789 to 1970 averaged a Tenure Length of 14.9 years (Calabresi, et al, 2006), almost exactly the length of the 15-year term limit proposed by some. In contrast, looking at all completed tenures (whether by death or retirement) starting with the Justices in this study's post-1970 set, the shortest length of tenure is 15.47 years and the average is approximately 26.7 years. (Of the sitting court, Stephen Breyer (26.23) is right at this average and Clarence Thomas (29.01) is comfortably past it, while John Roberts and Samuel Alito are both around 15 as of this project's initiation. With such a marked increase in tenure length, this period seemed ideal for the exploration of setting limits. Its inclusion of one of

the landmark and most contentious Supreme Court decisions in *Roe v. Wade* was coincidental, but proved extremely insightful down the line.

### **The Ideological Heatmap**

Utilizing the initial dataset, I created a third table (Appendix C) with Justices color-coded according to ideological quintile (deep blue, medium blue, purple, medium red, deep red) and ranked (literally and figuratively) left-to-right according to their Martin-Quinn Score, with the appointing President also listed, as an aid to future analysis. The table contains separate entries — and therefore Court compositions — for every month of each year back to January of 1971 (600 total listings), with presumed values projected (and then confirmed) for the last two months of 2020, and Justices shifting left or right as necessary in the ideology order, as new appointments were made.

In assigning months, if a Justice served for a full week of any month, starting or ending the month, they were given that month. If the month was split, it went to the Justice who served more time. For example, William Rehnquist started January 7 of 1972, and died in office September 3 of 2005, so he gets that January, but not that September. His replacement, John Roberts, started September 29 of that year, so his listing actually starts in October 2005. Antonin Scalia essentially replaced Warren Burger in September of 1986, with a transition day of Sept 26, so the month goes to Burger. Vacancies contain no Justice name or score, and all other Justices maintain their position, ideologically speaking. None of the specific cases that are examined later in this report occurred during such a transitional month.

### **Writing the Alternate History**

With the time frame and rankings established and the ‘Actual’ heatmap organized temporally and ideologically, an additional ‘Alternate’ heatmap (Appendix D) was now hand-generated to represent the effects of an 18-year term limit — instituted at the beginning of the post-1970 dataset. Sitting Court members for 1971 were grandparented in and allowed to ‘finish’ their tenure, as if a constitutional amendment were ratified that year, while those appointed after were limited to the proposed tenure. When vacancies occurred, Justices were immediately replaced by fictional ones (and possibly earlier or later appointments of actual ones) whose Martin-Quinn Scores and quintile assignments align with that President’s historical appointments.

If the Justice retired, they were replaced immediately — working with the presumption that one would be able to plan for this. However, if in the actual timeline a Justice died before arriving at 18 years, the gap that followed their tenure was maintained. For example, with Potter Stewart, Sandra Day O’Connor’s appointment was moved to a few months earlier, but since she served under 18 years, she retired at the same time, being replaced by Samuel Alito. John Marshall Harlan II retired after 16 years in office (we’ll call that unexpected) so the 3-month gap before his replacement by William Rehnquist was maintained. On the other hand, Hugo Black retired the same year, but having served since 1937 was immediately replaced by Lewis Powell.

When an appointment could be maintained within one year of its ‘Actual’ occurrence, ‘Actual’ Justices were still appointed in the Alternate timeline. For example, Sonia Sotomayor replaced David Souter in reality, but in the Alternate version, she replaces Clarence Thomas, who would have been forced to retire just over a year after Souter would have been. In the Alternate timeline, Barack Obama appoints both Sotomayor and Elena Kagan later — by two months and eleven months, respectively — while George H. W. Bush appoints Souter seven months earlier. George W. Bush appoints John Roberts (though presumably not as Chief Justice) exactly one year earlier, but if



there's more than a year of stretching, a new Justice was introduced.

In those instances where a 'fictional' Justice had to be inserted, a mean was determined from the Martin-Quinn Scores of the sitting President's other appointments and an archetype placeholder was created with the President's name and the number of that appointment. So Bill Clinton's mean Martin-Quinn Score of -1.4821 was applied to his third and fourth appointments, 'Clinton 3' and 'Clinton 4'.

To maintain the model with set parameters, allowance was not made for political machinations in the Alternate timeline, such as a Justice retiring early to give a President of their party another appointment. Likewise, the potential success of failed nominations like Robert Bork and Douglas Ginsburg in Reagan's replacement of Powell (eventually with Anthony Kennedy).

While the focus of this project is an 18-year limit (as proposed in the aforementioned House bill), some exploration was done around a 15-year term-limit, using the same parameters. This scenario resulted in some fascinating developments, including perennial swing justice Anthony Kennedy never serving, and George W. Bush appointing an astounding seven Justices. While some of these occurrences are fascinating to consider, it was removed from further consideration to maintain focus.

### **Compare and Contrast**

Of course, with these two heatmaps created, it seems a shame to examine just the sitting Court, so the next step was determining Alternate decisions for impactful or landmark cases during the 50-year period covered by these timelines. Thinking in broad terms with understandable context for the everyday citizen, it became possible to explore 'what might have been.'

To this end, notable decisions for that period were reviewed and one was selected for each decade to examine possible alternate outcomes. The cases are defined later in this report, but the votes of each Justice were initially sourced from Wikipedia and then corroborated by the Oyez website (a project of Cornell's Legal Information Institute, Justia, and Chicago-Kent College of Law), which provided clearer breakdowns. In determining how 'Alternate' Justices would vote, their Martin-Quinn Scores were compared with those of Justices from the 'Actual' timeline to determine majority or minority. As Justices, relative to SCOTUS opinions, are most commonly defined by 'majority' or 'dissent' in a particular case, that categorization shifted with the number of Justices in favor or opposed to a decision. Lastly, in looking at these decisions, which often have multiple questions and therefore complicated votes of majority, concurrence and dissent for different parts of a decision, the most recognizable aspect or impactful vote was used for simplicity sake. (For example, the 2000 case of Bush v. Gore is most known for the 5-4 decision that halted the Florida recount, so that is the decision that was examined.)

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## **RESULTS**

### **Where the Sitting Court Stands**

The full results of the heatmap explorations can be found in Appendices C and D. To answer the initial question of the composition of the Sitting Court (December 2020) in the Alternate timeline, the Alternate heatmap presents a Court that looks a little more Liberal than where the Actual Court currently rests. (See Table 1.) While Chief Justice John Roberts remains the median Justice, his immediate neighbor to the left is not Brett Kavanaugh (still very much perceived as 'Conservative') but the established Liberal Elena Kagan, and the dark red of the Actual is replaced by a solid chunk of dark

blue. The mean of Martin-Quinn Scores shifts from a 'Center' 0.5436 to a 'Liberal' -0.2275. Both of these can then be contrasted to means of 0.1198 for all Justices since 1971 and 0.2588 since 1937.

Table 1: Actual vs. Alternate Justices. December 2020

### Actual Justices, December 2020

Quintile 1 (Far Liberal)	Quintile 2 (Liberal)	Quintile 3 (Center)	Quintile 4 (Conservative)	Quintile 5 (Far Conservative)
S Sotomayor -2.6794 E Kagan -1.5824	S Breyer -1.2332	B Kavanaugh 0.5405 J Roberts 0.9303	N Gorsuch 0.9823	S Alito 1.8167 Barrett 2.5145 C Thomas 3.6037

### Alternate Justices, December 2020

Quintile 1 (Far Liberal)	Quintile 2 (Liberal)	Quintile 3 (Center)	Quintile 4 (Conservative)	Quintile 5 (Far Conservative)
S Sotomayor -2.6794 [Obama -2.1309] [Obama -2.1309] E Kagan -1.5824		J Roberts 0.9303	N Gorsuch 0.9823 [GWBush 1.3735] [GWBush 1.3735]	S Alito 1.8167

It is a Court that likely causes less concern for Liberals over any potential decisions related to abortion rights, but more on that later.

Looking to the outcome of the 2020 election, and presuming all other factors would remain the same, the next presidency would have the opportunity to replace Roberts, Alito and one archetypal George W. Bush appointee. A second Donald Trump term would presumably keep the Court 5 to 4 Conservative, while a first term for Joe Biden would make it 7 to 2 Liberal.

### 'What Might Have Been'

That addresses the initial question — the present — but what about the past? If we are to think about how such term limits might define the future, value can be obtained by theoretically rewriting the past. To that end, five high-profile Supreme Court cases were selected from the observed 50-year period (one per decade) and the implications of the 18-year term limit's Alternate composition were examined to see how the opinions might have played out, based on Judicial ideology. (Static versions of interactive visualizations that were created to explore these cases can be viewed in Appendix E.) Their outcomes tell a more complex (and at times surprising) story than simply looking at the revised sitting Court. The following case studies sum up the Actual and Alternate votes and describe the changes

#### *Obergefell v. Hodges: June 26, 2015*

This landmark decision, which guaranteed the right to marry for same-sex couples as a fundamental liberty under the Fourteenth Amendment was actually decided 5-4, with median Justice Anthony Kennedy casting the deciding vote. ("Obergefell v. Hodges," Oyez) In the Alternate timeline Kennedy (mean Martin-Quinn Score [MQS] of 0.6823) is replaced by Bill Clinton's 4th appointment (MQS: -1.4821) and the decision remains the same.

#### *Citizens United v. Federal Election Commission: January 21, 2010*

In this decision, centered around Citizens United's film *Hillary: The Movie*, the Court ruled that,

regardless of a donor's corporate identity, political funding, as a kind of free speech, cannot be limited. In this decision, Kennedy was also the swing vote, but this time sided with the Conservative wing of the Court and, by a 5-4 decision, "big money" was not regulated. ("Citizens United v. Federal Election Commission," Oyez) However, in an Alternate Court, Kennedy is once more replaced as median Justice, this time by Stephen Breyer (MQS: -1.2332) who switches the Majority to the Liberal side and a 5-4 rejection of unlimited corporate donations. (The second part of the decision, restricting advertisements directly related to the Citizens United film also remains a 5-4 Liberal 'victory.')

#### *Bush v. Gore: December 12, 2000*

With the outcome of the 2000 presidential election seemingly in the balance, the Supreme Court appeared to hold the nation's future — and possible its own future appointments — in its hands. While the decision that Florida's disparate recount methods were unconstitutional was a solid 7-2 decision, it is the 5-4 majority that halted the recount (citing the inability to reasonably conduct such a task) that is most noted in popular memory. Yet again, Kennedy is the deciding vote. ("Bush v. Gore," Oyez) In the Alternate timeline: David Souter (MQS: -0.7725) takes his place; that vote is presumably 5-4 on the Liberal side; some form of recount proceeds; and Al Gore still stands a chance of being the 43rd President. The likelihood of that being the outcome of a recount is a matter of debate, and a topic for a different study, but it is worth noting that George W. Bush went on to appoint two Justices over his two terms, and — term limits or not — those two Justices are (or would be) on the sitting Court during the time of this writing.

#### *Texas v. Johnson: June 21, 1989*

In this landmark case on free speech, the Supreme Court decided that burning the American flag is protected under the First Amendment. In both Actual and Alternate timelines, the vote is 5-4, with perennial swing vote Anthony Kennedy again sitting in the Majority. However, what is surprising — and telling — here is that while the Court composition is exactly the same, the vote composition is different. In the Actual vote, we see a serious crossing of ideological lines, that includes both Thurgood Marshall (MQS: -2.8313) and Antonin Scalia (MQS: 2.5145) voting with Kennedy ("Texas v. Johnson," Oyez). If we went with the presumption of Liberals as pro-expression, pro-civil liberties, pro-free speech and 'pro-flag burning' they would still 'win,' but the flaws in presuming votes based on ideology begin to show.

#### *Roe v. Wade: January 22, 1973*

This brings us to what is undeniably one of the most famous and contentious cases in Supreme Court history. Despite that reputation, and the polarizing nature of the topic in the United States, the 7-2 decision in favor of 'Jane Roe' and protection of abortion rights under the Fourteenth Amendment and its inherent "right to privacy" — with some restrictions — was surprisingly one-sided and non-ideological ("Roe v. Wade," Oyez). Sitting as it does at the start of this exploration, the Court's composition in the Alternate timeline remains exactly the same — and remarkably similar to the Court's composition today.

Yet if we apply the kind of Liberal-Conservative central line that we presume (not without reason) to today's Court, abortion rights are likely not protected to the same degree. Specifically, if we place the dividing line between Potter Stewart (MQS: 0.4022) and Byron White (MQS: 0.436) — who voted for and against Roe, respectively, in the Actual — the vote is 5-4 against Roe, and abortion rights are curtailed.

It can readily be argued that the Alternate decisions could easily have been 5-4 for Roe, as



both Stewart's and White's Martin-Quinn Scores are 'left' of the median, yet 'right' of the mean, looking at the full suite of Justices since 1971 and 1937. It is their split in the Actual decision that leads to their split here — except of course that with the Alternate decision we have flipped which side of the line they are on.

But this hairsplitting between the measures for Stewart and White misses the point. The original vote was 7-2, and it was split across ideologies. So is there a problem with the methodology and the ranking or is it in our presumptions vis-a-vis ideological voting? Or perhaps with where the U.S. has come as a divided country?

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## DISCUSSION

### The Bigger Picture

Alternate histories allow us to look at the world in a new light — but that light is of course filtered by the parameters we set. Future explorations of the kind of history established here might factor in a good deal more complexity (such as the compositions of the Senate), and with a larger number of case studies, a much more complex portrait could be painted. In the end, as an Alternate timeline, there is nothing 'proven' by such explorations. Instead, they serve as a means for asking questions or examining our own conceptions (justified or not) of judicial ideology today.

With that in mind, let's compare row contents from the heatmaps again, this time not of Actual and Alternate sitting Courts, but rather of the Actual sitting Court in December 2020 and the Actual Court that decided *Roe v. Wade* in June 1973 (which, again, does not change in the Alternate timeline). In 1973, the mean Martin-Quinn Score for the Court was 0.096 and the median was 0.436. In December 2020, the mean is 0.5436 and the median 0.9303. While those numbers may seem indicative of the general rightward shift of the Court over this project's 50-year period, it is worth looking at the quintile assignments in Table 2.

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*Table 2: Justices. December 2020 vs. June 1973*

#### Actual Justices, December 2020 (Mean = 0.5436; median = 0.9303)

Quintile 1 (Far Liberal)	Quintile 2 (Liberal)	Quintile 3 (Center)	Quintile 4 (Conservative)	Quintile 5 (Far Conservative)
S Sotomayor -2.6794 E Kagan -1.5824	S Breyer -1.2332	B Kavanaugh 0.5405 J Roberts 0.9303	N Gorsuch 0.9823	S Alito 1.8167 Barrett 2.5145* C Thomas 3.6037

#### Actual / Alternate Justices, June 1973 (Mean = 0.096; median = 0.436)

Quintile 1 (Far Liberal)	Quintile 2 (Liberal)	Quintile 3 (Center)	Quintile 4 (Conservative)	Quintile 5 (Far Conservative)
W Douglas -4.725 T Marshall -2.8313	H Blackmun -0.0273	P Stewart 0.4022 B White 0.436	L Powell 0.9696	W Brennan 1.7802 W Burger 1.89 W Rehnquist 2.969

The quintile distribution is exactly the same. What does it mean that a case as polarizing as *Roe v. Wade* was 7-2 in favor of abortion rights in its day but seems inconceivable, and likely to go

5-4 or 6-3 in the other direction with a Court whose composition is remarkably similar? As in the case study of the Actual and Alternate Roe v. Wade decisions, only by shifting to a polarized view does a lopsided decision suddenly become borderline at best.

### **In Conclusion**

If we look to the past to interpret the present and consider our future, then what does the application (and presumptions) of the ideologies in this alternate timeline say about a nation's views (founded or unfounded) on the composition of the Court today? While a deeper investigation of those views in the context of this project's explorations would provide further insight, it is telling to look at the headlines that fear an overturning or crippling of Roe v. Wade by a Court that resembles one that voted 7-2 in favor of 'Jane Roe.' It appears that the polarization that has infected other branches of the U.S. government has officially infected the most impartial — or at the very least, its citizens' perceptions of it. While this may not 'prove' the need for term limits, it certainly presents a strong case. If the Judiciary, like the Legislative and Executive, is viewed as an ideological body, then perhaps it should have similar temporal limits. •

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## Appendix A: Initial Dataset, Justices 1971 to Present

ID	Position	Last	First	Start Term Date	End Term Date	Length of Tenure	Martin-Quinn Score (Mean)	Appointed By	Pres Party	(Original) Confirmation Vote	Birth	Death	State Appointed From
117	AJ	Barrett	Amy Coney	October 27, 2020	-	0	2.5145*	Trump	R	52-48	1972	-	IN
116	AJ	Kavanaugh	Brett	October 6, 2018	-	2.06	0.5405	Trump	R	50-48	1965	-	MD
115	AJ	Gorsuch	Neil	April 10, 2017	-	3.55	0.9823	Trump	R	54-45	1967	-	CO
114	AJ	Kagan	Elena	August 7, 2010	-	10.22	-1.5824	Obama	D	63-37	1960	-	MA
113	AJ	Sotomayor	Sonia	August 8, 2009	-	11.22	-2.6794	Obama	D	68-31	1954	-	NY
112	AJ	Alito	Samuel	January 31, 2006	-	14.74	1.8167	Bush, GW	R	58-42	1950	-	NJ
111	CJ	Roberts	John	September 29, 2005	-	15.08	0.9303	Bush, GW	R	78-22	1955	-	MD
110	AJ	Breyer	Stephen	August 3, 1994	-	26.23	-1.2332	Clinton	D	87-9	1938	-	MA
109	AJ	Ginsburg	Ruth Bader	August 10, 1993	September 18, 2020	27.11	-1.731	Clinton	D	96-3	1933	2020	NY
108	AJ	Thomas	Clarence	October 23, 1991	-	29.01	3.6037	Bush, GHW	R	52-48	1948	-	GA
107	AJ	Souter	David	October 9, 1990	June 29, 2009	18.72	-0.7725	Bush, GHW	R	90-9	1939	-	NH
106	AJ	Kennedy	Anthony	February 18, 1988	July 31, 2018	30.47	0.6823	Reagan	R	97-0	1936	-	CA
105	AJ	Scalia	Antonin	September 26, 1986	February 13, 2016	29.38	2.5145	Reagan	R	98-0	1936	2016	VA
104	AJ	O'Connor	Sandra Day	September 25, 1981	January 31, 2006	24.35	1.0147	Reagan	R	99-0	1930	-	AZ
103	AJ	Stevens	John Paul	December 19, 1975	June 29, 2010	34.53	-1.8098	Ford	R	98-0	1920	2019	IL
102	CJ / AJ	Rehnquist	William H.	January 7, 1972	September 3, 2005	33.65	2.969	Nixon	R	68-26	1924	2005	AZ
101	AJ	Powell	Lewis	January 7, 1972	June 26, 1987	15.47	0.9696	Nixon	R	89-1	1907	1998	VA
100	AJ	Blackmun	Harry	June 9, 1970	August 3, 1994	24.15	-0.0273	Nixon	R	94-0	1908	1999	MN
99	CJ	Burger	Warren	June 23, 1969	September 26, 1986	17.26	1.89	Nixon	R	74-3	1907	1995	VA
98	AJ	Marshall	Thurgood	October 2, 1967	October 1, 1991	24	-2.8313	Johnson, L	D	69-11	1908	1993	NY
95	AJ	White	Byron	April 16, 1962	June 28, 1993	31.2	0.436	Kennedy	D	Acclamation	1917	2002	CO
94	AJ	Stewart	Potter	October 14, 1958	July 3, 1981	22.72	0.4022	Eisenhower	R	70-17	1915	1985	OH
92	AJ	Brennan	William	October 16, 1956	July 20, 1990	33.76	1.7802	Eisenhower	R	Acclamation	1906	1997	NJ
91	AJ	Harlan II	John Marshall	March 28, 1955	September 23, 1971	16.49	1.6205	Eisenhower	R	71-11	1899	1971	NY
81	AJ	Douglas	William	April 17, 1939	November 12, 1975	36.58	-4.725	Roosevelt, F	D	62-4	1898	1980	CT
78	AJ	Black	Hugo	August 19, 1937	September 17, 1971	34.08	-1.7645	Roosevelt, F	D	63-16	1886	1971	AL

## Appendix B: Quintiles of Judicial Ideological Means

Term Start	ID	Justice	Martin-Quinn Score (Mean)	Ideological Quintile
1938	81	WODouglas	-4.725	Liberal
1967	98	TMarshall	-2.8313	
2009	113	SSotomayor	-2.6794	
1975	103	JPStevens	-1.8098	
1937	78	HLBlack	-1.7645	
1993	109	RBGinsburg	-1.731	
1939	82	FMurphy	-1.5892	
1937	77	BNCardozo	-1.585	
2010	114	EKagan	-1.5824	
1965	97	AFortas	-1.325	
1953	90	EWarren	-1.2573	
1994	110	SGBreyer	-1.2332	
1962	96	AJGoldberg	-1.0763	
1990	107	DHSouter	-0.7725	
1937	68	LDBrandeis	-0.608	Mean: .2588
1941	83	JFByrnes	-0.188	
1969	100	HABlackmun	-0.0273	
1937	74	HStone	0.0114	
1937	75	CEHughes2	0.1878	
1937	79	SFReed	0.3742	
1958	94	PStewart	0.4022	
1961	95	BRWhite	0.436	
1949	88	TCClark	0.4647	
1938	80	FFrankfurter	0.5208	
2018	116	BMKavanaugh	0.5405	Median: .5208
1987	106	AMKennedy	0.6823	
1941	84	RHJackson	0.6985	
2005	111	JGRoberts	0.9303	
1971	101	LFPowell	0.9696	
2016	115	NMGorsuch	0.9823	
1945	86	HHBurton	1.0059	
1981	104	SDOConnor	1.0147	
1946	87	FMVinson	1.0346	
1949	89	SMinton	1.1019	
1956	93	CEWhittaker	1.1663	
1942	85	WBRutledge	1.4093	Conservative
1937	76	OJRoberts	1.5218	
1937	71	GSutherland	1.587	
1954	91	JHarlan2	1.6205	
1956	92	WJBrennan	1.7802	
2005	112	SAAlito	1.8167	
1969	99	WEBurger	1.89	
1937	72	PButler	2.2295	
1986	105	AScalia	2.5145	
1971	102	WHRehnquist	2.969	
1937	67	JCMcReynolds	3.482	
1991	108	CThomas	3.6037	



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## Appendix E: Case Studies, Actual/Alternate Comparisons

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### *Obergefell v. Hodges: June 26, 2015*

*Actual Decision*



*Alternate Decision*



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### *Citizens United v. Federal Election Commission: January 21, 2010*

*Actual Decision*



*Alternate Decision*

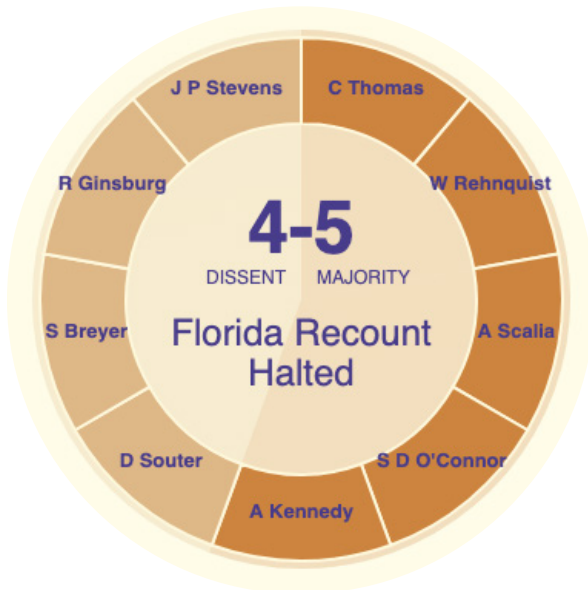




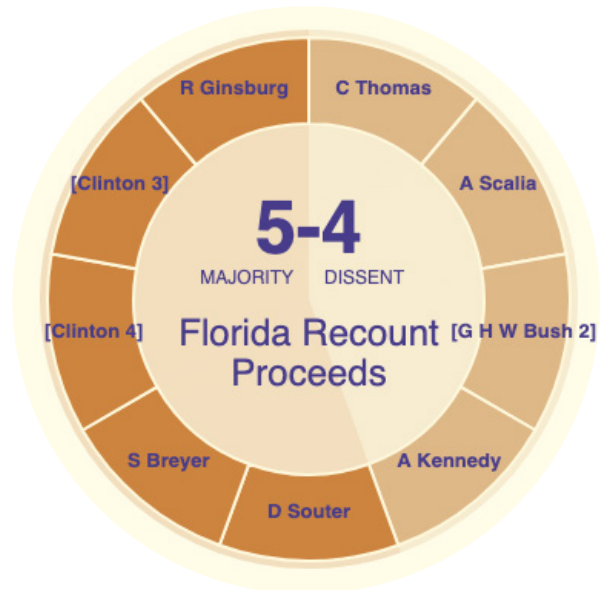
## Appendix E: Case Studies, Actual/Alternate Comparisons (Continued)

### *Bush v. Gore: December 12, 2000*

*Actual Decision*



*Alternate Decision*



### *Texas v. Johnson: June 21, 1989*

*Actual Decision*



*Alternate Decision*



## Appendix E: Case Studies, Actual/Alternate Comparisons (Continued)

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### *Roe v. Wade: January 22, 1973*

*Actual Decision*



*Alternate Decision*

