**1NC**

**Definitions**

**Ought: Used to express duty or moral obligation** [**Dictionary.com**](https://www.dictionary.com/browse/ought)

**Term-Limits: A specified number of terms that a person in office is allowed to serve [**[**https://www.merriam-webster.com/dictionary/term%20limit**](https://www.merriam-webster.com/dictionary/term%20limit)**]**

**Framework**

**The value is justice, and the value criterion is governmental legitimacy. Define this as the requirement for governments to be stable. Pref because:**

**A just government must be able to protect and provide resources.**

**Slaughter 17** [World Economic Forum, 2-13-2017, "3 responsibilities every government has towards its citizens," <https://www.weforum.org/agenda/2017/02/government-responsibility-to-citizens-anne-marie-slaughter/>]

**The oldest and simplest justification for government is as protector: protecting citizens from violence.** Thomas Hobbes’ *Leviathan* describes a world of unrelenting insecurity without a government to provide the safety of law and order, protecting citizens from each other and from foreign foes. The horrors of little or no government to provide that function are on global display in the world’s many fragile states and essentially ungoverned regions. And indeed, when the chaos of war and disorder mounts too high, citizens will choose even despotic and fanatic governments, such as the Taliban and ISIS, over the depredations of warring bands. The idea of government as protector requires taxes to fund, train and equip an army and a police force; to build courts and jails; and to elect or appoint the officials to pass and implement the laws citizens must not break. Regarding foreign threats, government as protector requires the ability to meet and treat with other governments as well as to fight them. **This minimalist view of government is clearly on display in the early days of the American Republic, comprised of the President, Congress, Supreme Court and departments of Treasury, War, State and Justice. The concept of government as provider comes next: government as provider of goods and services that individuals cannot provide individually for themselves. Government in this conception is the solution to collective action problems, the medium through which citizens create public goods that benefit everyone, but that are also subject to free-rider problems without some collective compulsion.** The basic economic infrastructure of human connectivity falls into this category: the means of physical travel, such as roads, bridges and ports of all kinds, and increasingly the means of virtual travel, such as broadband. All of this infrastructure can be, and typically initially is, provided by private entrepreneurs who see an opportunity to build a road, say, and charge users a toll, but the capital necessary is so great and the public benefit so obvious that ultimately the government takes over. **A more expansive concept of government as provider is the social welfare state: government can cushion the inability of citizens to provide for themselves, particularly in the vulnerable conditions of youth, old age, sickness, disability and unemployment due to economic forces beyond their control.** As the welfare state has evolved, its critics have come to see it more as a protector from the harsh results of capitalism, or perhaps as a means of protecting the wealthy from the political rage of the dispossessed. At its best, however, it is providing an infrastructure of care to enable citizens to flourish socially and economically in the same way that an infrastructure of competition does. It provides a social security that enables citizens to create their own economic security.

**This can only be achieved if a government is stable.**

**USIP** [United States Institute of Peace, xx-xx-xxxx, "8: Stable Governance," <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance>]

**Stable governance refers to an end state where the state provides essential services and serves as a responsible steward of state resources; government officials are held accountable through political and legal processes; and the population can participate in governance through civil society organizations, an independent media, and political parties.** Stable governance is the mechanism through which the basic human needs of the population are largely met, respect for minority rights is assured, conflicts are managed peacefully through inclusive political processes, and competition for power occurs nonviolently. National and subnational government institutions may work with a range of non-state partners to provide some of the government functions. Essential services— defined here as security, the rule of law, economic governance, and basic human needs services—are addressed fully in Sections [6](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/safe-and-secure-environment), [7](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law), [9](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/sustainable-economy), and [10](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/social-well-being), respectively. Societies emerging from conflict often have debilitated or corrupted governance institutions, lack professional capacity for governance, and require new or reformed legal frameworks for political engagement. State security forces may be degraded, nonexistent or have been co-opted by warring parties. An urgent demand for humanitarian assistance, amplified by a general lack of institutional capacity, often exists, especially for minority or displaced populations. Due to the degradation of security and the rule of law during violent conflict, a culture of fear may have overwhelmed a culture of civic participation, resulting in the collapse of civil society organizations and media. **Without stable governance, political spoilers may rise to fill the governance vacuum and usurp state resources.** Their quest to gain authority and control over resources—often aided and abetted by organized criminal groups, terrorist organizations, or other profiteers — can destabilize the state and motivate a return to violence. **When the government cannot provide for the population, people will do whatever it takes to put bread on the table and ensure their own security, even if it means supporting opponents to the peace process or engaging in criminal activity.** [Provision of Essential Services](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance/provision-esse) is a condition in which the state provides basic security, the rule of law, economic governance and basic human needs services; essential services are provided without discrimination; and the state has the capacity for provision of essential services without significant assistance from the international community. [Stewardship of State Resources](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance/stewardship-st) is a condition in which national and subnational institutions of governance are restored, funded, and staffed with accountable personnel; the security sector is reformed and brought under accountable civilian control; and state resources are protected through responsible economic management in a manner that benefits the population. [**Political Moderation and Accountability**](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance/political-mod-0) **is a condition in which the government enables political settlement of disputes; addresses core grievances through debate, compromise, and inclusive national dialogue; and manages change arising from humanitarian, economic, security, and other challenges. A national constituting process results in separation of powers that facilitates checks and balances; the selection of leaders is determined through inclusive and participatory processes**; a legislature reflects the interests of the population; and electoral processes are free and fair.[Civic Participation and Empowerment](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance/civic-particip)is a condition in which civil society exists and is empowered, protected, and accountable; media are present, professional, and independent of government or political influence; equal access to information and freedom of expression are upheld; and political parties are able to form freely and are protected.

**If the government fails to acquire this stability, then it fails and is no longer just. This stability is a prerequisite to being able to take care of the rest of society, we must ensure governmental stability first.**

**Contention 1: Checks and Balances**

**Subpoint A: Judicial Independence**

**The Supreme Court is a check on other branches of government.**

**BRI** [A Single, xx-xx-xxxx, "Separation of Powers with Checks and Balances," Bill of Rights Institute, <https://billofrightsinstitute.org/essays/separation-of-powers-with-checks-and-balances>]

**In our system of separated powers, each branch of government is not only given a finite amount of power and authority but arrives at it through entirely different modes of election.** Madison theorized that as it is the Constitution that grants each branch its power, honorable ambition that ultimately serves the highest interests of the people could work to maintain the separation. In other words, since Congress is not dependent on the presidency or the courts for either its authority or its election to office, members will jealously guard its power from encroachments by the other two branches and vice versa. For Madison, this organization of powers answered the great challenge of framing a limited government of separated powers: “first enabl[ing] the government to control the governed…and in the next place, obling[ing] it to control itself” (James Madison, Federalist No. 51, 1788). What does Madison’s theory look like in practice? **While it is the legislative branch that makes law, the president may check Congress by vetoing bills Congress has passed, preventing them from being enacted. In turn, Congress may enact a law over the president’s objection by overriding his veto with a vote of two-thirds of both the House and Senate. The Supreme Court can then check both branches by declaring a law unconstitutional (known as judicial review)**, but the Supreme Court itself is checked by virtue of the fact the president and Senate appoint and approve, respectively, members of the Court. Furthermore, both the president and federal judges are subject to impeachment by Congress for “treason, bribery, or other high crimes and misdemeanors” (United States Constitution: Article II, Section 4).

**Term-limits politicize the Supreme Court, and it becomes an extension of the presidential race.**

**Marcum 20** [USA TODAY, xx-xx-xxxx, "Supreme Court term limits would increase political tensions around justices, not ease them,"<https://www.usatoday.com/story/opinion/2020/10/13/scotus-term-limits-political-temperature-even-higher-column/5873219002/>]

Here we go again. The third Supreme Court confirmation battle in less than four years has begun. Court watchers and policymakers have speculated about this moment for months, as Justice Ruth Bader-Ginsburg’s health scares graced headlines until her passing last month. The legendary justice had not even been laid to rest before the partisan temperature surrounding her replacement and the confirmation process was white hot. And — as it goes in these moments — judicial experts are taking this opportunity to call for changes to the nation’s highest court. Last week, House [Democrats introduced a bill](https://khanna.house.gov/media/press-releases/release-rep-ro-khanna-proposes-supreme-court-term-limits-appointments-schedule) supporting one of the more popular court reform proposals — term limits. **Although well-intentioned, term limits have a problem. Not only are they unconstitutional, but they will have the exact opposite result proponents wish for. More, term limits will ensure that court vacancies are inextricably tied to every presidential race and has the potential to create abrupt ideological shifts on the highest court, only increasing the political scrutiny.** In other words, term limits will not lower the temperature around nominations, they will leave the country scorched .Here is the [gist of most plans](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=701121):Supreme Court justices will serve staggered, 18-year terms, which will provide two vacancies each presidential term. The logic goes that once these vacancies become structured and routine, the political heat around these vacancies will dissipate. As mentioned above, the first problem is that such a plan is unconstitutional. [Article III says](https://www.archives.gov/founding-docs/constitution-transcript) that federal judges “hold their offices during good behavior.” This is universally understood to mean that federal judges have life tenure. As a result, to enact term limits, it is necessary to amend the Constitution. Aha! Some term limit proponents say. There is a workaround to this pesky constitutional obstacle. [Some suggest](https://www.usatoday.com/story/opinion/2020/09/24/supreme-court-justices-give-them-term-limits-instead-life-tenure-column/3503999001/) that Article III’s description of “office” to mean any judicial office, not necessarily the Supreme Court. Therefore, once a justice’s 18-year term is up, a justice may retire or choose to continue serving on a lower federal court. This proposal, too, runs afoul of the Constitution. Article III makes a firm distinction between “supreme” and “inferior” courts. While the [Constitution dictates](https://constitution.congress.gov/browse/essay/artIII-S1-1-2-1/ALDE_00001189/) “one supreme Court,” it gives Congress much more flexibility to “ordain and establish” other, lower federal courts. Similarly, Article II sees the two offices differently. Under [Article II, Section 2,](https://www.archives.gov/founding-docs/constitution-transcript) the president has the power to nominate “Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States.” Federal circuit and district judges fall under the “other Officers” title. This deliberate bifurcation suggests that the two judicial “offices” are quite different and have separate constitutional roles. Therefore, it is suspect that a justice can be compelled to abandon their seat by statute and take a lower judicial position once their 18-year term is up. If that were the case, Congress could easily remove the Chief Justice at any time and force him to become the ambassador of Denmark. The second problem is the canard that guaranteed vacancies every two years will somehow reduce the political turmoil around each Supreme Court confirmation. Regrettably, it would do the exact opposite. President Trump’s first term has been irregular in a number of ways, including the fact that he had the chance to nominate three Supreme Court justices so quickly. Yet term limits would regularize the process, and in turn tie two Supreme Court seats to every presidential cycle. A single two-term president could pick 44% of the court. **If two presidents of the same party served three or four consecutive terms, an overwhelming majority of the court would quickly be ideologically one-sided. In the span of only a few years, a court of eight Scalias could turn to eight Ginsburgs. Certainly, the chance for such a dramatic ideological shift in the highest court would only put a greater spotlight on it during presidential elections and judicial confirmations. The potential for ideological ping-pong on our highest court could also damage our common law system.** The legal doctrine of stare decisis, Chief Justice Roberts [wrote last year,](https://www.supremecourt.gov/opinions/19pdf/18-1323_c07d.pdf#page=47) “requires us, absent special circumstances, to treat like cases alike.” He further explained the doctrine “is necessary to 'avoid an arbitrary discretion in the courts'” and distinguishes judicial decision-making from the “political and legislative process.” That process could quickly erode in a term-limited court. Even-handed and predictable legal results is an attribute, not a defect. Some laws are bad, but they should be changed by lawmakers. And a warning for those who wish to dramatically change public policies in courtrooms rather than legislative floors: The same court that can overturn Roe v. Wade can also cement it. Finally, term limits do not solve today’s politicization. At best, it is a multi-decade plan to fully implement. **Absent impeachment, today’s justices cannot be forced off the Court.** And many of the Court’s youngest jurists may serve for 30 years or more. And when a regularized vacancy process finally does roll into place, what is to stop the Senate from not confirming a nominee to fill the vacancy? Go further. **With 18-year terms, what is to stop a Senate refusing to hear four years’ worth of nominees, giving the next president potentially four open seats in just the first term?** The Senate’s recent refusal to consider [Merrick Garland’s 2016 nomination](https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now) is just the groundwork for such shenanigans.

**Term-limits kill judicial independence, which is key to maintaining checks and balances and governmental stability.**

**Warren** [<https://ncsc.contentdm.oclc.org/digital/api/collection/judicial/id/207/download>]

**In practice, the rule of law requires a written, or unwritten, constitution or other public agreement about the powers of government and the rights of the people. It also requires the separation of governmental powers and an independent judiciary to provide checks and balances on government power, to ensure that no branch of the government gains absolute power in order to subvert the rule of law, to ensure that one branch does not interfere in the affairs of another branch, and to ensure that the laws are administered fairly, which we call “justice.” That judicial independence is essential to the rule of law and therefore essential to democratic government is well recognized.** Efforts proceed worldwide to promote judicial independence in developing democracies. Taiwan expressly recognizes judicial independence in its Constitution. Oddly enough, despite America’s strong commitment to an independent judiciary, judicial independence is not mentioned in our Constitution. And yet, in our Declaration of Independence, in which the American colonies back in 1776 set forth the twenty-seven reasons why they wanted to declare independence from England, almost half of the reasons stated had to do with the poor administration of justice under the English king and the desire in America to establish an independent judiciary. Indeed, judicial independence is a common and frequent subject of discussion among members of the United States judiciary and bar associations. On the other hand, what is much less frequently discussed or written about is the principle of judicial accountability. But accountability—the accountability of those who rule or govern to the governed—is inherent in the nature of all democracies. Such accountability, of those who govern to those who are governed, is indeed the aim or purpose of all democratic governments to ensure that government consists of mechanisms or legal processes through which the government is accountable and can be held accountable by the people served. Indeed, the rule of law itself is a two-edged sword. It not only ensures the protection of rights but also enforces responsibilities. Its protections are meaningless if requirements of the law are not obeyed or enforced. It provides that those who rule as well as those who are ruled must be accountable to legal requirements and for the proper performance of their respective responsibilities. No one is either above or beneath the protections or requirements of the law. The rule of law ensures that all government officials are held accountable to those in whose name they govern: to prevent corruption and abuse of power; to ensure that the laws that are enacted truly reflect the will of the people and the fundamental values and interests expressed in the Constitution; and to ensure that all government officials perform well their responsibilities. The judiciary is not exempt from these principles. Judicial officials, like all government officials in a democracy, must be accountable to the people for the proper performance of their duties.Let us examine these principles of judicial independence and judicial accountability in greater depth. Let us start with judicial independence. What is judicial independence? **In short, judicial independence is freedom from improper control or influence**. It has, I think, two aspects: first, “decisional independence,” the independence of a judge in deciding cases, and second, “institutional independence,” the independence of the court, or judicial branch, or the judiciary as an organization. **With respect to decisional independence, it provides that the judge should decide cases solely based on the law and facts that are applicable without regard to political or popular pressure, without regard to the fact that there are some who would corrupt the judicial decisionmaking process for their own advantage, without regard to partisanship, fear of intimidation, or special interests.** The goal of decisional independence is judicial integrity, judicial impartiality, and judicial fairness. **Institutional independence seeks to ensure that the court, or judicial branch, or all judicial officers are free from improper influence and interference in the governance and management of the judiciary’s own affairs.** Its aspects include judicial selection; judicial retention; judicial evaluation; judicial discipline; judicial compensation; the proper funding and budgeting of the judiciary; and legislative or executive branch encroachments into the power of the judiciary, or into the administration of justice or interference with personnel, facility, or internal financial management of the judiciary. Here, the purpose is to promote the effective governance and management of the judiciary and the proper exercise of judicial power. Speaking from the American experience, judges often fail to remember that judicial independence is not an end in itself, but a means to an end. The objectives of judicial independence are the rule of law, separation of powers, and the fair and impartial exercise of judicial power to safeguard a free society and to protect rights. Judicial independence is a means toward those objectives. When judges talk about judicial independence as an end in itself, it can cause the public and other branches of government to think that the judiciary regards itself as superior to other branches of government, or is arrogant. **Furthermore, judicial independence is not total independence. It is limited independence. It is not freedom from all influence; it is only freedom from improper influence. With respect to judicial decision making, for example, it is not freedom from criticism; it is freedom from unfair criticism, intimidation, or retaliation.** It is not freedom from appellate review; it is not freedom from the influence of arguments presented by counsel in the courtroom, but it is freedom from ex parte or improper contacts or communications. And, with regard to institutional independence, it is not that the court or judiciary is superior to any other branch of government. It is that we are coequal: the role of the legislative branch in enacting legislation and appropriations, the role of prosecutors in the enforcement of law, these are coequal functions of government. There must be an attitude of mutual respect between the branches of government: of cooperation, dialogue, and effective communication. The judiciary cannot operate in a vacuum. Judicial independence is not judicial isolation or judicial separation. Separation begets suspicion; suspicion begets mistrust. Independence is served through interdependence. In the U.S., this thought was expressed by one of the justices of our Supreme Court in this way: “While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but inter-independence, autonomy but reciprocity.” **There are many threats to judicial independence. There are those who would corrupt the judicial process for their own personal advantage, or the advantage of their party, family, or friends, or for revenge, or malice—in order to injure. There are those who offer money or promises, and those who threaten, or conduct ex parte communications with the court. There are those who would improperly seek to influence judicial selection, or the criteria and considerations that should be used in judicial evaluation.** There are those who would deny sufficient funding to the judiciary, or seek to control its personnel, or seek to selectively fund only their own pet projects, or fund the judiciary only on special conditions. There are those who would fail to support the judiciary’s efforts to improve its’ own performance.

**Unchecked government inevitably fails.**

**Cleveland 97** [September 1, 1997, xx-xx-xxxx, "Government: The Good, the Bad, and the Ugly," Independent Institute, <https://www.independent.org/publications/article.asp?id=1598>]

The essence of ugly government then, is not only its failure to consistently and systematically punish wrongdoers, but its perverted use of power. **All unchecked government will inexorably turn ugly. This is true for the same reason that institutional government is needed in the first place.** Flawed human beings are capable of gross displays of arrogance, envy, pride, malice, and greed. **Since this is the case, and since these same flawed human beings exercise authority over others, it is easily understood that power is abused. For this reason, the best government that can be expected in this world is limited in scope and is subject to numerous checks and balances. This brings us back to the American experience.** Originally, the government was designed with extensive checks and limitations on power. Yet, in the course of time, the country has moved steadily away from its constitutional moorings. For a time period, various aspects of government worked as planned and served to limit the abuse of power. However, the dam began to break in the early twentieth century when the Constitution was altered in several significant ways. The election of Senators by popular vote, the introduction of an income tax, and the establishment of the Federal Reserve System set the stage for many more abuses of government power. In the 1930s, the election of Franklin D. Roosevelt marked the beginning of an all out assault on the nation’s Constitution. While the courts struck down numerous provisions of his New Deal legislation as unconstitutional, eventually Roosevelt won the day. Over time he was able to replace a number of constitutionally minded judges with judicial activists who were willing to reinterpret the plain meaning of the Constitution so that it might serve to expedite political ends rather than to restrict government power. **The result of this has been the massive increase in the size and scope of government and in its control over the lives of the American people.** The current institution is ripe for being abused by unprincipled men. In fact, we have already witnessed numerous examples of such abuses. The current concentration of power in the federal government does not bode well for the future of the nation. The lessons of history clearly teach that such concentrations of power will ultimately lead to disaster. **The only way that we might avoid the uglier kinds of abuses is for there to be a real reduction in the size, scope, and power of government.** As of yet, there are no signs that the nation is moving in this direction.

**Subpoint B: Polarization**

**Power concerns will incentivize justices to appease political parties and postpone retirement.**

**Perez-Gea 18** [Armando Perez-Gea, 03-13-2018, "," Yale University, <http://www.wpsanet.org/papers/docs/perez-gea2018.pdf>]

The literature consciously focuses on the appointment of the justices, rather than on the incentives of the justices while in office (like what this lobbying model presents). “The Court should be independent enough to stand up to majority pressure to ignore the Constitution, but not be so far beyond control that nine life-tenured and unelected individuals can impose their will on the nation. In assessing this latter point, whether the nation can control or at least influence the Court, most scholars focus on the Supreme Court appointment process as the best, and perhaps only, opportunity for democratically elected leaders to substantially influence the Court (Baum, 1992; Dahl, 1957; Krehbiel, 2007; Moraski and Shipan, 1999; Rohde and Shepsle, 2007; Snyder and Weingast, 2000).” (Bailey and Yoon 2011). **While the choice of justices is extremely important, the incentives that justices have depending on the institution (i.e. election, appointment, term limit, life tenure) also matter tremendously. It is interesting to point out that the literature realizes that at the end of a term when a reelection is imminent, a sitting Justice will have an incentive to please those who have power over his career. “First, toward the end of their careers, active judges may cater to the wishes of the majority party in Congress to smooth their path toward reconfirmation, which could damage judicial independence. Second, the prospect of a difficult reappointment might encourage aging judges to remain in active status rather than endure another confirmation battle, which could lead to a greater number of mentally and physically infirm judges carrying a full case.” (Stras and Scott 2006). This is the same insight motivating the internal lobbying model of justices’ interactions, since justices think about the post-retirement future after their term in office. This concern for the future occurs, even if no reelection will occur in the future.** The internal lobbying model adds an additional positive claim to better adjudicate the normative debate that is the literature’s main concern. The positive claim is that in a court with term limits, justices will partake in intergenerational exchanges in the court so that longer serving justices will be subservient to new justices (assuming the justices are not old when appointed). The longer serving justice will do this so that the new justice will help him when he retires and the new justice remains in the court; such that a justice with a term limit is more powerful in her early years in court than in her later years. This added positive claim should be welcomed in the debate, as Burbank (2006) argues: “Indeed, the work of many engaged in the debate is quite relentlessly normative and replete with unsupported causal assertions. For that reason I thought it useful to explore the question whether proponents' assertions and predictions about political phenomena are supported by the theories or empirical evidence produced by those whose business it is to study political phenomena.” The political phenomenon being presented here is lobbying amongst justices.

**Justices would be pivotal voters — every ruling would be a landmark decision.**

**Chilton et al. 21** [Adam Chilton, Daniel Epps, Kyle Rozema, and Maya Sen, 2021, "," University of Chicago Law School, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2196&context=public_law_and_legal_theory>]

**One concern with term-limits proposals is that the Justices may behave differently closer to the end of their term because they are looking toward future professional opportunities.** In the same way that elected politicians may behave differently once they know they are going to retire and no longer have to face voters, Supreme Court Justices may behave differently when they know they are about to seek new opportunities in fields like politics, private practice, or academia. **This behavior is only likely to dramatically alter the functioning of the Supreme Court, however, if the Justices who are changing their behavior are marginal voters. For instance, if the Supreme Court has a 7-2 conservative/liberal split, it would be unlikely to sway many cases if either a conservative or liberal Justice decided to vote differently because of their upcoming professional goals.** As a result, to assess this, we calculated the share of times when a Justice’s term expires when there is a 5-4 breakdown between Democratic-appointees and Republican-appointees (or vice versa) on the Supreme Court under term limits. We then further calculated the share of years where one of the Justices who is part of the five-Justice majority—and thus a pivotal voter—would be in the final two years of their eighteenyear term. Because these results are consistent across all five plans, we simply report one set of results using a density distribution. Figure 18 reports these results. The lighter (gray) distribution plots the results from our simulations of the share of years in which a Justice exits the Court when there is a 5-4 split on the Court. **These results reveal that, on average, exits would occur during a 5-4 split sixty-two percent of the time.** The darker (blue) distribution plots the results from our simulations of the share of years that a Justice exits the Court when there is a 5-4 split on the Court and the departing Justice is part of the five-member majority. These results reveal that, on average, exits would happen by a Justice part of a fivemember majority forty-two percent of the time. (The blue curve peaks around forty-two on the x-axis.) These results are explained by the fact that term limits are more likely to keep the membership of the Supreme Court balanced. **As a result, there would regularly be Justices in their final period who are pivotal voters in a Court that is split 5-4.**

**Overpoliticization kills court credibility and court accountability.**

**Taylor 23** [William W., 1-25-2023, "How The Supreme Court Is Destroying Its Own Legitimacy — AFJ," AFJ, <https://www.afj.org/article/how-the-supreme-court-is-destroying-its-own-legitimacy/>]

**Justices of the Supreme Court have repeatedly claimed that the decisions about what cases to decide and how to decide them are not affected by politics.** Justice John Roberts said in his confirmation hearing that he is like an umpire, not a batter. Justice Neil Gorsuch said that justices are not like “politicians with robes.” Shortly after her confirmation, Justice Amy Coney Barrett told an audience that her goal was “to convince you that this Court is not comprised of a bunch of partisan hacks.” **The justices are not convincing the American people. Favorable ratings of the Court have declined dramatically, according to numerous polls. This fall,** [**a Gallup poll found**](https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx) **that 58% of Americans “disapprove” of the job the Court is doing, which aligns with the 60%** [**who disapproved**](https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_062822/) **of overruling *Roe.* A substantial majority have lost faith in the Court’s vaunted impartiality and believe it is too affected by “politics.”** [**A Quinnipiac poll**](https://poll.qu.edu/poll-release?releaseid=3846) **conducted after the *Dobbs* leak in May of last year found that 63% of Americans believe the Supreme Court is mainly motivated by politics. A** [**Yahoo poll**](https://news.yahoo.com/poll-confidence-in-supreme-court-has-collapsed-since-conservatives-took-control-122402500.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAFFYTKvh0yfM914PGgBHBXL2rGW4cBqh04ZzNEVvD_9d1D6Ssk5gMVxLty-MNIqEIZRi7nK9j_5pNjFmxmUYBqwg1IJAo5EvgymjFJ80BqxNFXjPa6nQBqvaP4JXl8tk1Inmq7P2tPhE7FfOawBqdXzLA4IOYsbtV8dIw93yFtbc) **around the same time found that 74% believe the Court is “too politicized.”** The Court’s wounds are entirely self-inflicted. It has a far-right agenda and the scholarship informing its decisions is often questionable. Worse, new details have come to light of relationships some justices have had with wealthy ideological soulmates, including those with interest in cases before the Court. The Court’s credibility and the public’s acceptance of its decisions depends upon trust that it is not subject to outside influence. While lobbying may be common and acceptable in the legislative and executive branches, it is not — nor ought not to be — conceivable in our courts. In November of last year, [the New York Times reported](https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html) that a former antiabortion activist, Rev. Rob Schenck, learned of the Court’s 2014 decision in *Burwell v Hobby Lobby* and its author (Justice Samuel Alito) days before it was publicly announced. Rev. Schenck more recently [repeated his account](https://www.npr.org/2022/12/08/1141546218/supreme-court-leaks-reverend-rob-schenk-dobbs-hobby-lobby) of the leak before the House Judiciary Committee and added some details. At the time of the *Hobby Lobby* decision, he was the leader of a Christian ministry called Faith and Action. He recruited wealthy Christian couples as “stealth missionaries” to befriend Supreme Court justices and lobby them on issues like gun rights and abortion — an effort he called “Operation Higher Court.” Schenck says that one of those couples, Gayle and Don Wright (now deceased) had a dinner with Justice Alito while *Hobby Lobby* was pending, after which Gayle relayed back that Justice Alito was writing the opinion and that Schenck would be happy with it. Justice Alito and Ms. Wright have both denied the leak, but no one has denied the efforts by Schenck and his nonprofit to directly lobby certain justices on contraception and abortion issues. Indeed, the Wrights socialized with Justices Alito, Scalia, and Thomas and happily occupied guest seats for arguments provided to them by “Nino and Sam” (Scalia and Alito). Gayle Wright sent Schenck a message after the decision saying, “I sent your email about [the] [H]obby lobby case to Sam [Alito]… He sent me an email back saying he appreciated your comments very much. How about that?” “How about that,” indeed. Supreme Court justices have maintained and even encouraged relationships with persons deeply interested in their decisions and who share their political views. The relationships become so familiar that they refer to the justices by their first names, “Nino” and “Sam.” Schenck’s level of access was undeniable. He arranged for the president of Hobby Lobby to attend a Court Christmas party in hopes of discussing his views with the justices in attendance. Schenck was also invited by Justice Thomas into his chambers to see a plaque of the Ten Commandments given to Thomas by Gayle and Don Wright. One of the primary ways Schenk and others obtained the access necessary to build these relationships was through the Supreme Court Historical Society, a nonprofit ostensibly engaged in educating the public on the Court’s history. [The New York Times reported](https://www.nytimes.com/2022/12/30/us/politics/supreme-court-historical-society-donors-justices.html) that in the previous ten years, the society has raised more than $23 million dollars from donors, a substantial but unknowable chunk of which came from corporations, interest groups, and lawyers who have an interest in cases pending before the Court. The society has a black-tie dinner in New York City, attended by all the justices, at which generous donors receive special recognition. Contributors get to rub shoulders with the justices at the dinner and other events. Schenk encouraged his own donors and others in the antiabortion movement to become trustees by donating at least ten thousand dollars. That is one way Gayle Wright built her “missionary” relationships. The society and its leadership deny that contributions influence matters before the Court, but that is not the point. The donors do not think they are buying results in particular cases. They think that their contributions give them access to justices, just as lobbyists use candidate fundraising to gain access to Congress and the White House. Despite its protestations of impartiality*,* the Court stubbornly refuses to be bound by the ethical rules that govern every other federal judge in the country. Those rules, embodied in the Code of Conduct for United States Judges, prohibit *ex parte* communications between judges and persons interested in their decisions and demands that judges avoid impropriety and the appearance of impropriety in all their affairs. They likewise require recusal when a judge’s impartiality might reasonably be questioned or when a decision might affect a judge’s personal interest or the interest of a family member, and they prohibit fundraising for charitable organizations — even educational ones. By their refusal to be bound by these rules, the justices explicitly maintain that they may engage in conduct which for all other federal judges would be unethical. That includes indulging in the kind of relationships that have just been disclosed and presiding over cases in which a justice’s spouse, such as Justice Thomas’s wife and January 6 insurrectionist Ginny Thomas, is a vigorous advocate for or against a cause before the Court. The six justices in the majority have signaled that they intend to select and decide cases in a way that advances goals of the far right, notwithstanding the pretense of calling “balls and strikes.” They have now issued multiple decisions in which they unashamedly torture precedent and rely upon biased recitations of history to support their desired outcome. **There’s no denying this Court and its supporters care more about the results than the reasoning. When justices vote on a specific case as the president who nominated them promised they would, the public justifiably perceives that this branch of government is no less political than the other two.** When the explanations for their votes appear to be shallow or disingenuous, the skepticism mounts further. The majority’s explanation in [*Dobbs v Jackson Women’s Health Organization*](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf)for overruling *Roe v Wade* was that the Constitution did not contain a right to abortion and no such right was recognized at the time of the Fourteenth Amendment. This reasoning is shallow by any standard. By that rationale, there would be no right to obtain contraceptives, to marry a person of another race or of the same gender, or to the privacy of sexual conduct between adults. The dissenters wrote that the only reason the majority overruled *Roe* is because they have always despised it and went on to point out that the reason women did not claim a right to abortion in 1868 was that they had no rights at all. The dissenters got it right, but to those who oppose abortion, including Justice Alito’s dinner companions, whether the reasoning was sound or not is entirely irrelevant. Similarly, in [*New York State Rifle and Pistol Assn v. Bruen*](https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf), the Court twisted the text of the Second Amendment and misrepresented the history of firearm regulations in England, the colonies, and this country to justify invalidating virtually all state regulation of gun possession*.* The decision entirely ignored the harm to human life that it will cause, as well as the relevant history of firearms regulation and outright prohibition, but it was a victory for conservatives as well as for the gun lobby, which had donated multiple millions to the cause. None of them complains about hypocrisy. This term in [*Moore v Harper*](https://www.scotusblog.com/case-files/cases/moore-v-harper-2/)*,* the Court is considering the bizarre notion that state legislatures are uncontrollable by state courts in deciding the manner of elections. It could not arrive at such a conclusion without some creative reinterpretations of the nation’s history. Even if the Court does not go so far as conservatives want, the fact that it has decided to hear the case at all is encouraging to those opposed to free and fair elections. The people who deny that President Biden won the 2020 election are salivating over the prospect of state legislatures having the final say on who wins and who loses the next one. **The Supreme Court is running the risk that it will lose its credibility and its decisions will no longer be accepted by the majority of Americans.** [**In an interview**](https://www.washingtonpost.com/magazine/2022/08/16/supreme-court-roe-vs-wade-clarence-thomas/) **last year, Professor Laurence Tribe put it succinctly. The danger, he said, is that if the court “becomes so headstrong and so out of touch with modern reality and so unwilling to listen effectively to counterargument and so agenda-driven and so committed to its, really, alternative facts,” then it’s likely people will eventually “start defying what it says.” He warned that point is getting closer. This Court’s conservative majority is clearly committed to arriving at its preferred results. As Professor Tribe said, “when they’ve got the votes, they don’t even care about the reasoning.” It also seems that they do not care about the decline in credibility for which they are responsible.** They are imposing an agenda and feigning impartiality. In the process, they put at risk the role our Constitution envisioned for a branch of government not affected by politics — and our democracy itself.