

# Supreme Court justices serve as long as they want, many say that's too long

By Associated Press, adapted by Newsela staff



U.S. Supreme Court justices pose for a group photo at the Supreme Court in Washington, D.C., Oct. 8, 2010. Justice Antonin Scalia (seated, second from left) died recently. Photo: AP/Pablo Martínez Monsiváis

WASHINGTON, D.C. — A month before his 80th birthday, Supreme Court Justice Antonin Scalia died suddenly. His death and the possible disagreement over replacing him is giving new strength to an old idea: Limiting the service of justices on the U.S. Supreme Court.

Scalia had been on the court for nearly 30 years, which is longer than any of the current justices.

"I think 30 years on the court is too long for anyone — liberal or conservative. That is just too much power in one person's hands for too long a period," said Erwin Chemerinsky. He is a liberal legal scholar and head of the law school at the University of California at Irvine.

Liberals and conservatives represent the two major, opposing political beliefs in the United States. Generally, conservatives stick to the traditional way of doing things. Liberals, on the other hand, prefer progress. Conservatives usually vote Republican. Liberals usually vote for Democrats.

## **What If The President Chose Every Two Years?**

The U.S. Constitution says federal judges "shall hold their offices during good behaviour." Basically, they can stay as long as they wish.

The most talked-about idea has support from liberals and conservatives alike. A single 18-year term could replace the lifetime position. Going forward, presidents would appoint a justice every two years, ensuring both balance on the court and two picks for each presidential term.

The Supreme Court already had been a topic of conversation in this year's presidential race. Scalia's death has brought up how the court's appointments can be one of the most important things a president does.

Even with Scalia's death, there remain three justices who are at least 77 years old and have served more than 20 years. Justice Ruth Bader Ginsburg's 83rd birthday is March 15. Justice Anthony Kennedy turns 80 on July 23. Justice Stephen Breyer will be 78 on Aug. 15.

## **Trouble With Staying Too Long**

Historian David Garrow said that health crises on the court cannot be avoided. Even with quality medical care and longer life expectancies, health issues arise across society.

"The fact that we have a court that is this elderly at the moment and there aren't any signs of decrepitude ... is like the Florida Gulf Coast dodging a hurricane," Garrow said.

Justice William Douglas' declining health provided a clear example of what can happen when a debilitated justice remains on the bench. The 76-year-old Douglas suffered a stroke on Dec. 31, 1974. He did not retire until the following November.

Douglas tried to continue working in the court, but had trouble staying awake, even during public court sessions. Court arguments were interrupted when the justice, who used a wheelchair, had to leave the bench. Still, it took many months before Douglas agreed to retire.

He was not alone in staying on the court too long, Garrow said. Justices Hugo Black, Thurgood Marshall and Lewis Powell all suffered significant declines in what Garrow called their mental energy. They should have left the court earlier than they did, he said.

## **Modern Issues Versus Old-School Judges**

Knowing that their picks may outlive them by years, presidents tend to choose younger men and women for the job. President Ronald Reagan named 50-year-old Scalia to the court in 1986. Douglas, the longest serving justice of them all, was appointed by Franklin Delano Roosevelt before the start of World War II and served until 1975. He took his seat at age 40.

No one older than 55 has joined the court since 1972 except Ginsburg. She was 60 when she took her seat in 1993.

"If you are 62 years old, no one is going to appoint you under the current rules," University of Chicago professor Harold Pollack said. Another point in favor of term limits, Pollack said, is that judges educated in the 1940s and 50s are making decisions about same-sex marriage and technology. "They're from a totally different time," he said.

## **Unsuccessful Past Efforts**

Orin Kerr is a George Washington University law professor and was once a clerk assisting Justice Kennedy. Kerr noted that President Jimmy Carter made no Supreme Court appointments in four years in the White House. Reagan made four in the following eight years.

Staggered appointments of Supreme Court justices would keep the makeup of the court more closely in line with the current political majority, either conservative or liberal, Kerr said. However, if a justice dies or has to leave the court early, the composition could change.

Past efforts to gather support for term limits have failed. Most scholars believe the Constitution would have to be changed to amend the term limits.

Scalia said that one thing he wished the framers of the Constitution had done differently was to make it easier to change.