

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Joint Resolution 1 (Delegate Morhaim)
Rules and Executive Nominations

Number and Terms of United States Supreme Court Justices

This joint resolution urges the Maryland Congressional Delegation to utilize their resources and influence to ensure passage of prospective federal legislation (1) fixing the membership of the U.S. Supreme Court at nine Justices; (2) establishing nonrenewable 18-year term limits for the Justices; and (3) staggering the Justices' terms so that a vacancy would occur every two years at the end of the term in every odd-numbered calendar year.

Fiscal Summary

State Effect: None. The joint resolution does not affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Congress establishes the number of Justices that serve on the U.S. Supreme Court. The Judiciary Act of 1789 set the number of Justices at six; various legislation over the subsequent decades altered the number from a low of 5 to a high of 10. The Judiciary Act of 1869 set the number at nine, and this number has not been altered since.

Article III, Section I of the U.S. Constitution states that the Justices of the U.S. Supreme Court, "shall hold their offices during good behavior," but does not specify term limits. The provision therefore effectively grants life tenure for Justices. However, Justices may voluntarily retire or may be removed through impeachment.

In order to establish term limits for Justices, Congress must propose a Constitutional amendment. Pursuant to Article V of the U.S. Constitution, a two-thirds majority in both the U.S. House of Representatives and the U.S. Senate is needed to propose the amendment; the amendment would then need to be ratified by three-fourths of the states.

There is ongoing debate about whether Justices should be subject to term limits. Proponents of term limits argue that life-long positions are no longer pragmatic in the 21st century. Human life expectancy is significantly longer now as compared to the 18th century (when the Constitution was written), resulting in Justices serving longer terms and to an older age than ever before. Additionally, longer terms have resulted in less frequent Court vacancies, creating long periods of stagnant ideology on the Court and a more politically charged appointment process when vacancies do arise. Opponents of term limits, however, argue that life tenure preserves the Court's integrity by shielding the Court from frequent entanglement with the political process. Term limits would increase the impact of presidential elections on the Court, as the Justices would more frequently reflect the political views of the president.

According to the Brennan Center for Justice at the New York University School of Law, one of the most popular proposals for term limits is one recommended by Professors Steven G. Calabresi and James Lindgren of the Northwestern University School of Law: 18-year terms, staggered so that a vacancy would occur every two years at the end of the term in every odd-numbered calendar year. This would allow every one-term president the opportunity to appoint two Justices, and every two-term president the opportunity to appoint four Justices. The joint resolution adopts this proposal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): New York University School of Law, Northwestern University School of Law, Columbia Law School, Supreme Court of the United States, Department of Legislative Services

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md/hlb

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