



WE THE PEOPLE

BY DAVID ADLER, *The Alturas Institute*

Compelling Reasons to Impose Term Limits on US Supreme Court Justices

Plummeting public approval of the U.S. Supreme Court, now at record lows, reflects in part deep-seated concerns about recent rulings that have overturned precedents that protected fundamental rights, as well as an unprecedented ruling—the creation of presidential immunity from criminal prosecution—without foundation in our constitutional architecture. It is also true that the diminished confidence of the citizenry in the nation's highest bench is a function of the ethical lapses of some current Justices. These factors, among others, have accelerated the gathering force of calls for the imposition of term limits on the Supreme Court.

Such proposals are not new, and they are not the exclusive property of either the Right or the Left. Indeed, scholars and commentators representing various platforms have been urging term limits for Justices for at least the past quarter-century. What's different at this juncture, is the chorus of demands for limits emanating from rank-and-file Americans. Beyond that, legislation to limit the years of the Justices has been introduced in Congress and may be considered for further discussion, debate and hearings after the November election. President Joe Biden has endorsed the concept, and various commissions have put forth proposals for term limits.

The idea, as they say, is one whose time has come. Before considering the merits of the concept, let's sweep away some confusion. First, the moniker, "term limits," is a little misleading. The essence of current proposals is not to amend the Constitution, but rather to enact a statute to emphasize "case assignments" for Justices. Justices will serve a fixed term of 18 years on the High Bench, after which they will become a "senior justice." In this capacity, they would continue to serve as Article III judges, enjoying the same salary and benefits which, the Constitution provides, cannot be "diminished during their Continuance in Office," but they would be assigned to lower federal courts and would carry out the duties assigned to them by the active justices. Some Supreme Court Justices—David Souter and Sandra Day O'Connor, for example—volunteered as senior Article III Justices after retiring from the Supreme Court.

Congress, under Article III, section 2, and blessed with approval by the

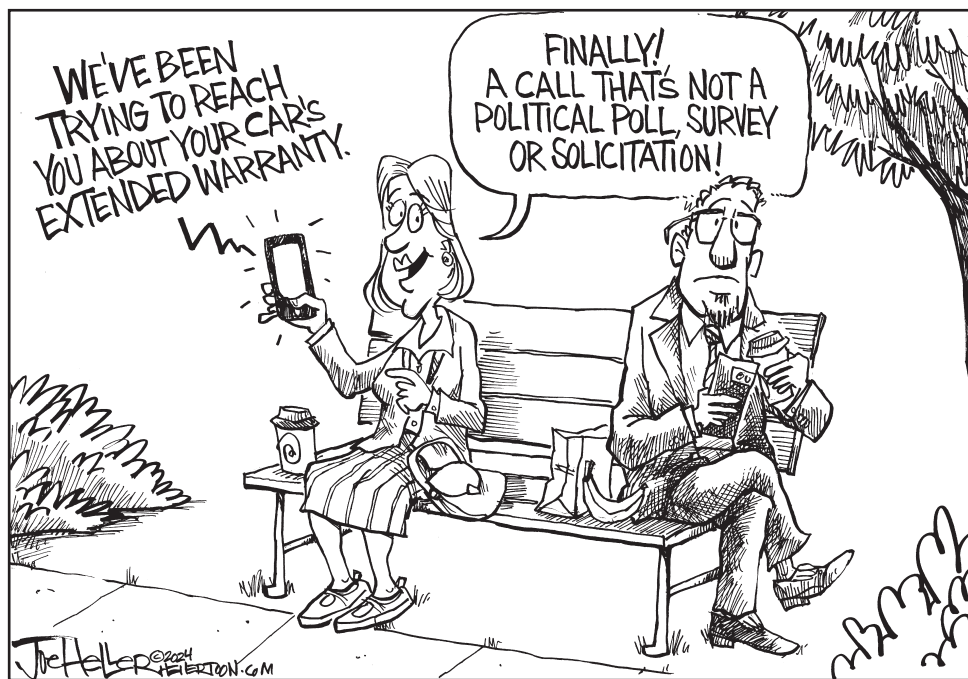
Supreme Court in *Stuart v. Laird* (1803), possesses broad statutory authority, exercised since the founding period, to regulate the Court's appellate function "with such Exceptions, and under such Regulations as the Congress shall make." Thus, Congress may limit to 18 years the automatic participation of the justices in appellate cases.

Why 18 years? That is the average length of service on the Supreme Court since the founding period, and it is plenty long for a single justice to exert power which, increasingly, lacks accountability. For Justices appointed since 1990, however, the average is 26 years and climbing. The concern with too many years of service in any governmental position, which was the driving rationale behind Republicans' enthusiasm for the 22nd Amendment that limits presidents to two terms, is the aggrandizement of power, arrogance and lack of accountability.

Near the end of his second term as president, Thomas Jefferson was urged to seek a third term. He declined because, like George Washington, eight years in office was sufficient. He expressed concern that if the services of the president "be not fixed by the Constitution, or supplied by practice, his office, nominally for years, will, in fact, become for life." History, he said, "shows how easily that degenerates into an inheritance." Jefferson believed that a representative government, held to short periods of election, "is that which produces the greatest sum of happiness to mankind."

What Jefferson said of the presidency and republicanism in general, applies to the length of service on the Supreme Court. A notable feature in the proposal is the assurance that two seats on the Court would open up in each four-year presidential term. This levels the playing field and assures the citizenry of balance on the Court, rather than control or dominance of one party or the other. Some presidents have appointed several justices while others, like Jimmy Carter, had no appointments. The goal, always, should be to appoint men and women of stature, wisdom and experience, rather than younger nominees who might further the policies and preferences of a president for decades. This proposal faces criticisms and objections, which we shall consider next week.

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Back in the day

Underwood

20 years Ago • September 2004

Six of the seven McLean County schools met the state's test score standards mandated by the federal No Child Left Behind Program. Many showed better scores than last year's test results, according to recently released results.

There's so much negativity in the world these days, Underwood's Gail Withey is making an effort to really look at things positively. Because of that, she decided to start her own business, "on a Positive Note," using her talents as a poet and songwriter to create lasting memories.

Mollie Smidt turned 102 on Aug. 22. She is a resident of Prairieview Nursing Home here in Underwood. Her cousins from Minot, the Plesuks, came to help her celebrate as did a granddaughter, Denise Fisch of Spring, Texas. A nephew, Jeff Delzer, was also on hand to wish Molly a "Happy Birthday." On Monday, Aug. 20, Delzer and Lori Gefroh were guests of Mollie's for her birthday dinner at Prairieview.

Graydon and Marilyn Ash were in Dickinson over the weekend to celebrate Graydon's 60th birthday. They visited in the home of Ryan and Christi Beck. Christi is a daughter of the Ashes.

Dan and Lori Gefroh recently had as guests in their home, Kerstin Gruener and friend from Kelheim, Germany. Kerstin was a foreign exchange student here in Underwood and graduated with the Class of 1999. She made her home with the Gefroh's while she was here.

Christiana Reile and Len Brabandt, Bismarck, will wed Oct. 16, at the First Lutheran Church in Mandan. Parents of the bride are Larry Dockter, Dickinson and Cheryl Helm, McClusky. Dale and Joan Brabandt, Underwood, are the parents of the groom.

30 Years Ago • September 1994

School is in session and teachers are at

their desks, but returning teachers are still working without a contract. Negotiations between Underwood's Education and School Board representatives continue to drag along, as they have throughout the summer.

The Falkirk Farmers Elevator received nine rail cars after not seeing a single one since Soo Railroad employees went on strike July 14.

The volunteer art program got underway at the Underwood School this week. Gail Leidholm and Renee Fransen were on hand to help students in the lunchroom.

40 Years Ago • September 1984

Cassie Busch and Tyler Brandt were named Little Miss and Little Mr. Underwood in the Aug. 25 contest. They are the children of Mr. and Mrs. Kevin Busch and Mr. and Mrs. Guy Brandt.

Members of Augustana Lutheran Church held their first worship service and communion in their new sanctuary. Although finish work is continuing and new furnishings are not yet in place, the sanctuary is complete enough to be put to use as the work of remodeling the former sanctuary into Sunday School classrooms can progress.

50 years Ago • September 1974

Larry Clark's win at the last Dakota Motocross Association points race gained him enough points to make him Dakota Motocross Open Champion for the second straight year.

New members were elected at the September meeting of the Peppermint Pals 4-H Club. They are: president, Mavis Schafer, vice president, Carol Torgrimson, secretary, DeAnn Miller, and treasurer Pauline Rosberg.

On Tuesday, August 27, the front yard

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THE OPEN LETTER

BY DICK MESSERLY



Not Able to Comprehend!

The number trillion is an amount that is beyond my comprehension.

If you can give me a good understanding of that number, we can meet for coffee, and I'll buy.

So, I'll start with some numbers I can fathom: one-thousand-1,000, and one-million-1,000,000.

Now a number pretty much beyond my comprehension: one-billion-1,000,000,000, and a number well beyond my comprehension or even imagination: one-trillion-1,000,000,000,000.

One trillion is a one with 12 zeros behind it. One year equals 525,942.5 minutes of time.

So, one trillion minutes is 1,901,324.3 years, a very long time. The sun is only 93 million miles away from earth. Nowhere near a trillion miles. I'm not sure where I'd end up traveling 1,000,000,000,000/one-trillion miles from earth.

So you might be asking what is the point? My point is I am informed that our nation, the United States of America, is thirty-four trillion-34,000,000,000,000 dollars in debt. This does not seem like a good financial plan for my wife and I, my kids and grandkids or your future.

I sure hope and pray with the upcoming election that those men and women elected will start the hard and probably painful process of paying down our federal government debt.

Many of you can recall when things cost much less, and our money had a lot more purchasing power. The nation's indebtedness has a lot to do with the increased cost of living. What are we willing to give up to get the United States back on good financial ground?

How much more debt can our nation take?

Do you favor a federal Balanced Budget Amendment?

"In the Arena"

Central McLean News-Journal

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Published every Thursday by Nordak North Publishing., P.O. Box 309, 59 North Main, Garrison, ND 58540-0309. Periodical postage paid at Garrison, ND. For more information or for a subscription, write Central McLean News-Journal, P.O. Box 573, Underwood, ND 58576.

POSTMASTER: Send address changes to Central McLean News-Journal, P.O. Box 573, Underwood, ND 58576.



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