

Rotate the Court

A Structural Reform Proposal for the Supreme Court

Independent structural reform proposal — Public discussion draft • January 2026

Executive Summary

For many Americans, the Supreme Court no longer feels like a neutral adjudicative institution. Instead, it increasingly resembles a fixed political regime: once its composition is set, outcomes appear predictable for extended periods, largely insulated from elections, public debate, or evolving consensus. Disagreement that once felt provisional now feels permanent, and escalation increasingly feels rational.

This reflects a structural shift. Nine Justices decide every merits case, often for decades. With the same Justices participating in every decision, legal outcomes are tightly coupled to personnel. Turnover that once operated as a natural constraint has weakened. Stable majorities now persist deliberately over long horizons, risking indefinite entrenchment.

This paper proposes a structural reform that addresses that problem without altering the Supreme Court's constitutional authority, independence, or life tenure. It restructures how the Court exercises its authority, not what authority it has. The proposal consists of three integrated features: decision-making through randomly assigned rotating panels, a larger Court with regular and rule-governed appointments, and a supermajority requirement for overruling existing precedent.

Together, these features disperse decisional authority, restore inevitability to institutional renewal without enabling sudden capture, and ensure that precedent changes only through durable consensus. The proposal does not promise particular outcomes or ideological balance. It offers a more modest and more durable objective: a constitutional structure in which disagreement can persist without crisis, rebalancing remains inevitable, and escalation is no longer the only rational response to loss.

1. The Problem: Permanent Power and Escalation

The Supreme Court's current structure concentrates decisional authority in a small, fixed body that decides every merits case while relying on infrequent and increasingly controllable vacancies for renewal. In an era of extended judicial tenure, this design allows stable majorities to exercise durable control over both doctrine and its application.

Because the same Justices participate in every decision, legal outcomes are tightly coupled to personnel. When the Court's composition changes, doctrine shifts rapidly; when it does not, doctrine remains fixed for extended periods regardless of broader

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political or social change. Historically, this concentration of authority was tempered—imperfectly but meaningfully—by unavoidable turnover. Vacancies arose unpredictably, retirements were difficult to time, and no configuration could reliably persist forever.

That constraint has weakened. Modern longevity, combined with normalized and openly strategic retirement, has transformed vacancies from stochastic events into infrequent but controllable ones. Stable majorities can now be preserved deliberately over long horizons, with little risk. The central risk is now indefinite entrenchment.

This shift alters the system's equilibrium. When renewal is unpredictable but inevitable, loss can be tolerated through patience, persuasion, and incremental change. Even deeply contested decisions carry an implicit expectation of eventual correction. When renewal is not predictable or assured, that expectation vanishes. Waiting is no longer rational.

Escalation becomes a foreseeable response rather than a pathology: confirmation battles intensify, norms erode, and structural countermeasures become thinkable not because actors are reckless, but because permanent loss appears possible.

Importantly, this dynamic does not depend on the motives or integrity of individual Justices. It arises from institutional design. A system that concentrates authority in a small, long-tenured body while relying on chance for renewal can function tolerably only so long as chance cooperates. Once that randomness disappears, the structure hardens.

Legitimacy erodes not because the Court acts in bad faith, but because the system no longer credibly promises eventual rebalancing.

The problem, then, is not that the Court changes too much. It is that it may no longer change at all—or only through crisis. Any reform that leaves this interaction intact, regardless of its other merits, will leave the underlying escalation incentive unresolved. The proposal that follows is designed to address this structural condition directly.

2. The Proposal

The proposal has three integrated features: decisions made by randomly assigned rotating panels, a larger Court with regular, rule-governed appointments, and a supermajority requirement for overruling Supreme Court precedent.

A. Rotating Panels

Under this proposal, the Supreme Court would no longer decide every merits case as a single, permanent body. Instead, cases would be heard by panels drawn at random from the full Court. Panels would rotate continuously, and no Justice would participate in every

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case. Decisional authority is no longer exercised by the same coalition across the Court's entire docket. But all decisions remain decisions of one Supreme Court exercising undivided constitutional authority; panels alter internal procedure, not institutional identity.

This dispersion is expected to have a critical disciplining effect. When the same group of Justices hears every case, it can reliably control both doctrine and its application over time, allowing rules to be shaped in predictably outcome-aligned ways. Under rotating panels, that control disappears. Because panel composition is unpredictable, a Justice or bloc announcing a rule cannot assume it will participate in its future application. Rules must therefore be framed to function across unknown panels. Doctrines that depend on selective application or partisan asymmetry become unstable. Over time, law tends toward rules that are more general, more evenhanded, and less dependent on the identity of the parties.

B. A Larger Court with Regular Appointments

The proposal replaces rare, high-stakes vacancies with regular, predictable appointments. At a minimum, one Justice would be appointed every two years. When the Court is below its intended operational scale, additional appointments may occur on a rule-governed schedule designed to restore inevitability to institutional renewal while preventing sudden or concentrated capture.

This appointment rule restores inevitability without enabling capture. The Court cannot remain indefinitely ideologically frozen through chance or strategic retirement. Change becomes continuous but bounded. Because appointments occur on a known schedule and in limited increments, no individual vacancy carries disproportionate weight, and no short-term political alignment can dominate the Court's long-term composition.

Under a system of rotating panels, the precise size of the Court becomes far less consequential than it is today. That said, panel randomization is effective only once the Court reaches a sufficient scale. When the number of Justices is too small, panel composition becomes predictably correlated, the same coalitions recur, and decisional authority remains effectively concentrated. A substantially larger Court is therefore not an incidental feature of this proposal, but a structural requirement for rotating panels to function as intended. Empirical and institutional considerations indicate that a Court of roughly two dozen Justices is the minimum size at which panel assignment becomes meaningfully unpredictable over time.

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Still, adding members does not allow any coalition to guarantee outcomes across the docket. Regular appointments instead reduce the stakes of confirmation battles by ensuring that influence accrues gradually rather than through sudden shifts. What matters is not the absolute number of Justices, but the predictability and constraint of change over time.

C. Supermajority Review for Overruling Precedent

The proposal includes a limited safeguard governing the overruling of Supreme Court precedent. Because Supreme Court decisions must be internally consistent, any panel decision conflicting with existing precedent entails overruling that precedent. Under this system, such overruling could not occur through an ordinary panel. Instead, it would require consideration by a larger panel drawn at random from the Court and a decision by a two-thirds supermajority of that panel. This preserves panel decision-making for ordinary cases while reserving broader review for the exceptional act of overruling precedent.

This rule makes precedent harder—not easier—to overturn. Panels remain free to apply existing law, but reversing prior Supreme Court decisions requires broader agreement across a larger slice of the institution. No coalition can reliably engineer reversals aligned with short-term political advantage, and no Justice can assume control over the panel that revisits prior rulings. Precedent therefore evolves only when it commands sustained support across differing panel compositions.

The proposal accepts that some doctrinal corrections may occur more slowly than under the current system. That consequence applies symmetrically across ideological lines and protects precedent regardless of its substantive direction. It ensures that when correction occurs, it reflects durable institutional consensus rather than transient alignment, and is therefore more likely to endure.

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Taken together, these features lower the stakes of appointments and reduce incentives for escalation by making durable control across cases structurally unlikely. Legitimacy is strengthened not by changing outcomes, but by changing the structure that allows outcomes to be predictably aligned with political identity.

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3. Other Structural Proposals and Their Limits

A range of structural reforms have been proposed in response to concerns about Supreme Court entrenchment, most prominently term limits and Court expansion. These proposals address real concerns, but each operates along a single dimension of the problem.

Term limits reduce strategic retirement and restore predictability to turnover, but leave decisional authority concentrated in a small body that decides every case, while raising unresolved constitutional questions by directly altering life tenure. Court expansion alters composition, but preserves the same structural dynamics and often intensifies escalation incentives by making future retaliation more attractive.

The proposal advanced here differs in scope rather than ambition. It addresses entrenchment without touching life tenure or removing any Justice from office, instead restructuring how decisional authority, turnover, and precedent interact. By dispersing decision-making across panels, restoring inevitability to appointments, and constraining the overruling of precedent, it targets the escalation dynamics directly. Other reforms may remain valuable complements, but standing alone they do not resolve the structural concentration of power that has made disagreement feel permanent and escalation rational.

4. Addressing Common Concerns

Is Random Assignment Arbitrary or Destabilizing?

No. Randomized panel assignment is a standard feature of the federal judiciary, including the courts of appeals. Its purpose is not to make outcomes unpredictable, but to prevent predictable control. Under rotating panels, Justices continue to apply law and precedent; what changes is that no Justice or coalition can reliably control future applications of doctrine.

Will This Produce Inconsistent or Fragmented Law?

No. The Supreme Court continues to issue binding national precedent, and the supermajority requirement for overruling precedent preserves stability. Panels may apply existing law, but altering settled doctrine requires broader institutional agreement, ensuring coherence while allowing evolution only through durable consensus. Moreover, distributing the Court's work across panels allows it to review more cases, promoting quicker national uniformity where lower courts diverge rather than fragmentation.

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Does a Larger Court Dilute Quality or Prestige?

No. The Court's legitimacy has never depended on a fixed number of Justices, but on its role and authority. Under rotating panels, influence is exercised through participation rather than control. The proposal does not alter standards for appointment or the nature of judicial service.

Is This Just Court Packing by Another Name?

No. Court packing seeks to change outcomes by altering the Court's composition at a single moment, allowing the appointing coalition to reliably control decisions across the docket. This proposal operates differently. Appointments are regular and bounded, cases are decided by randomly assigned panels, and precedent can be overturned only through supermajority review. As a result, control over appointments does not translate into control over outcomes. Even a coalition that controls confirmations cannot reliably determine which cases it will decide or how doctrine will be applied over time. The reform therefore changes incentives rather than winners, making durable alignment—and the escalation it invites—structurally unlikely.

Will This Increase Cost or Administrative Complexity?

The administrative changes are modest and well within existing judicial capacity. Federal courts already manage rotating panels and internal assignment at scale. Any incremental costs are minor relative to the institutional benefits of greater national uniformity, reduced legal uncertainty, and a system in which federal law stabilizes through consistent application over time rather than prolonged fragmentation.

Conclusion

The Supreme Court's legitimacy crisis is not the product of any single decision, Justice, or political moment. It reflects a deeper structural problem: a system that concentrates decisional authority while relying on chance for renewal in an era where chance no longer reliably operates. As a result, disagreement increasingly feels permanent, and escalation increasingly feels rational.

The proposal outlined here offers a structural response to that condition. By dispersing decision-making through rotating panels, restoring inevitability to appointments without enabling capture, and constraining the overruling of precedent through supermajority review, it addresses the mechanisms that have allowed power to become entrenched. The

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Court remains independent, authoritative, and final. What changes is not what it decides, but how its authority is exercised over time.

This proposal does not promise moderation, balance, or consensus. It promises something more modest and more durable: a constitutional structure in which disagreement can persist without crisis, in which no outcome is made permanent by design, and in which escalation is no longer the only rational response to loss. In a constitutional order increasingly strained by zero-sum conflict, that option warrants serious consideration.