

**Abstract for Presentation at  
Constitutional Law Scholars Forum 2022**

In my work-in-progress: *Regularizing Change on the Supreme Court: The Sanity of the Dog Wagging the Tail*, I propose a new configuration for the Supreme Court, aimed at lowering the value of and contention for each seat. The proposal of a constitutional amendment is a helpful framing device for thinking through the compromises necessary for change, the types of alteration that might achieve my goals, and considering what other changes would accompany them.

The central scheme I propose is a court of 15 justices, each on a 30-year term. One justice would be appointed and confirmed each term of Congress. Vacancies due to deaths and retirements would not be replaced until that vacancy's term is completed. And Senate is required to vote on a nominee within a few months of nomination. If the Senate rejects three nominees, the third nominee will be appointed for a 10-year term. As a result, the populace would experience a regular routine of retirement and replacement, and each biennial election for senators and each quadrennial election for the presidency would carry a predictable, equal weight regarding the Supreme Court. Additionally, the increased size of the Court means each justice holds less power, and the larger Court might have its decisions fractured into smaller holdings. It is possible, if the Presidency and the Senate are frequently controlled by opposing parties, a center majority could come into being, with two wings of dissent.

I attempt to examine these potential results by: (1) showing how the past 40 years would have played out under the central scheme I propose, and (2) using a priori probabilities to show how a few scenarios would play out in the future (e.g., what happens if one party has control of both the Senate and Presidency 30% of the time, the other party has control of both Senate and Presidency 15% of the time, and the two are split 55% of the time) – what sort of “lean” would be expected in the Court, and how quickly would the lean arise?

**Bio**

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After graduating from the University of Minnesota School of Law, Professor Mader clerked for Justices Alan Page and Joan Ericksen of the Minnesota Supreme Court, and the Honorable Myron Bright of the Eighth Circuit U.S. Court of Appeals. Before teaching at Bowen, he taught at the University of Nevada - Las Vegas, and held a Visiting Assistant Professorship at the University of Illinois. His recent scholarship explored the meaning of the Take Care Clause, concluding it does not offer textual support for the departmentalist view that the President holds a power of constitutional interpretation equal to that of the Supreme Court (forthcoming, 99 DENVER L. REV. \_\_\_\_). His other work-in-progress offers a methodology for the best (and perhaps the only supportable) use of the records of the 1787 Federal Constitutional Convention in understanding the text of the Constitution or the original intent of the delegates to the convention.