

When it comes to deciding cases that could affect the outcome of the 2020 election, all members of the U.S. Supreme Court have a serious conflict of interest – not because they may be political partisans, but because their jobs are at stake. It is well-understood that if the Democrats take the White House and both houses of Congress, there will be debate about changing the rules for membership on the Supreme Court. One possibility would involve an expansion of the court, which could dilute the power of existing members. Another would be to establish term limits, which would end the expectation of a lifetime appointment. The latter could be particularly worrisome for the younger members of the court, who might be anticipating another thirty years on the bench.

The current members of the Court should step aside and temporarily appoint other federal appellate judges to handle any election cases. In the alternative, they should decline to review any additional cases relating to this election. Although they are highly unlikely to take either of these steps, a failure to do so could seriously damage faith in our democratic institutions.