



201 W. Lake St., Ste. 153  
Chicago, IL, 60606

Rep. Darrell Issa  
Chairman, House Judiciary Subcommittee on Courts, IP and the Internet  
2269 Rayburn House Office Building  
Washington, DC, 20515

Rep. Jerry Nadler  
Ranking Member, House Judiciary Subcommittee on Courts, IP and the Internet  
2109 Rayburn House Office Building  
Washington, DC, 20515

September 29, 2016

Dear Chairman Issa and Ranking Member Nadler:

[Fix the Court](#), a national non-partisan organization that advocates for pro-transparency reforms in the federal judiciary, respectfully requests the House Judiciary Subcommittee on Courts, IP and the Internet to explore whether Congress, much as it requires annual financial disclosures, may compel the justices of the U.S. Supreme Court to release rudimentary facts about their mental and physical health.

On September 6, the *National Law Journal* [asked](#) each of the eight justices to disclose any “current and recent health issues [...] that could, in the near- or long-term future, affect your professional work.” Chief Justice John Roberts responded on his colleagues’ behalf, [writing](#) on September 19 that the court’s Public Information Office would “provide health information when a need to inform the public arises.”

Fix the Court holds that the need is more substantial than the Chief Justice pronounces and for a number of reasons.

For the first 180 years of our Republic, Supreme Court justices typically served about 15 years. Since 1970, the average length of tenure has [nearly doubled](#), to 26 years, and the [average age](#) of the current cohort of justices is 69, near an all-time high. [According to](#) the leading scholar on aging at the high court, the last half-century “has featured at least a half-dozen instances in which serious questions were or should have been asked about whether judicial votes were being cast by a less than fully competent justice.” This is rarely discussed yet of utmost constitutional importance.

The justices themselves have acknowledged the general phenomenon of age-based decline. “It is an unfortunate fact of life,” Justice Sandra Day O’Connor [wrote](#) in a 1991 opinion upholding a mandatory retirement age provision for state judges, “that physical and mental capacity sometimes diminish with age.”

Health disclosures, then, are important both outwardly, so the public can have faith their top legal officials are working with complete competence, and inwardly, as the justices consider their own abilities to continue in their roles.

The public does not need to be apprised of every judicial ailment, of course, and we want to make clear that our request comes in full recognition of potential separation of powers concerns. Yet just as the justices comply with 28 U.S.C. §455, which requires them to release information about their finances, stock transactions and privately-funded travel each year, basic information about the justices' mental and physical health can and should be a part of an annual disclosure.

This request comes at a time when the two major-party presidential candidates have been less than forthcoming about their own physical well-beings. Nevertheless, a specific individual is mandated by the Constitution to succeed November's victor should he or she experience a health crisis while in office. That is not the case at the Supreme Court, and both candidates, in fact, disclosed additional information once public pressure was applied.

As Chairman Issa [noted](#) during a July 6 subcommittee hearing, "The judicial branch is the least well-known branch. [...] It has also historically lacked transparency. It is time, however, for the judicial branch to come out of the shadows." We believe that requiring the justices to disclose fundamental information about their health would help accomplish that directive, and we are hopeful that you and your committee explore this issue further.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "GRoth".

Gabe Roth  
Executive Director  
Fix the Court