TERM-END REPORT
ON SUPREME COURT TRANSPARENCY

July 28, 2015

A SPECIAL REPORT BY

FIX THE COURT

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PROLOGUE

Most reports that look back on a recently completed Supreme Court term scrutinize the opinions, divine trends in jurisprudence and prognosticate about the coming term's docket. This report will not do that.

Instead, it will look both forward and backward to determine whether the most powerful, least accountable branch of government has made any progress in becoming more open, whether it's primed for any impending improvements and what can be done to prod the justices to make the court more accessible and more in line with modern expectations of transparency.

A (Different) Series of Tubes

This past term featured numerous examples, both in and out of the courtroom, of the justices applauding their institution's insularity at a time when the public's desire for news and information about the court was, arguably, at a record high.

Nowhere was this sentiment more readily on display than in Chief Justice John Roberts' **"Year-End Report on the Federal Judiciary"** this past winter and at a **House Appropriations Subcommittee hearing** on the judiciary's FY16 budget in the spring.

In the former, which is released each year on – put down your Champagne glasses – December 31, Roberts told a story about the court's slow adoption of pneumatic tubes, a 19th century technological advance that took the judiciary some 40 years to implement.

In a nod to the court's slow embrace of broadcast and digital technology, Roberts wrote, "The courts will often choose to be late to the harvest of American ingenuity." That may be true, but live radio broadcasts have been around for more than a century and live television has existed for 85 years, so the court is already late to the game. (The technology to live-stream audio and video over the Internet has existed for just 20 years, but its rapid adoption makes the two decades from dial-up modems to 100Mbps downloads seem like an eternity.)

While the chief justice may be uncertain about, as he wrote, what "new technologies [will] continue to emerge," we're confident that **demand for audio and video transmission is here to stay.**

Roberts continued by saying that any new technology adopted by the courts must be done so in the service of its constitutional mandate – to adjudicate "cases" and "controversies," as noted in Article III, Section 2. We'd argue, on the other hand, that using technology to ensure the justices are displaying "good behavior" (Article III, Section 1) in the service of such adjudication would be an apt – and constitutional – application of technology and one whose implementation the American public is anxiously awaiting.

A second instance in which this attitude was out in the open was this past March when Justices Anthony Kennedy and Stephen Breyer testified before a House Appropriations Subcommittee on the third branch's budget. When responding to a question **(sent to the subcommittee by Fix the Court, no less)** on why the justices choose not to be bound by the Code of Conduct for U.S. Judges like the rest of the federal judiciary and do not disclose why they recuse themselves from certain cases, Breyer told the members that when it comes to matters of transparency and ethics, **"The Supreme Court is different from a court of appeals and a district court."**

Again, that's true in some modest respects, since there are only nine justices at the high court, meaning that when one recuses, there isn't another member who could fill in like at a U.S. district or appeals court and that a single recusal could lead to an undesirable 4-4 tie. But the fact that the justices don't disclose any information beyond who won or lost a case and the legal reasoning behind that result is absurd and outdated.

What's more, the justices don't have to visit an ethics office before going on an international trip, they aren't restricted in their securities trading in any way, and they don't open up their day-to-day business to individuals physically located outside of the courtroom – even though they're paid by the same taxpayers as top officials in other parts of the government to fill equally important, constitutionally mandated roles.

All this is to say that the past year the court has not made great strides to increase transparency and accountability. So unlike some advocacy groups formed to influence the court, Fix the Court has to stay in business at least a little while longer.

INTRODUCTION

When Fix the Court launched in November 2014, we outlined five issue areas in which we'd advocate for greater transparency and accountability:

- **Media and public access:** The justices should grant the media and the public greater access to oral arguments and opinion announcements through the live audio and video broadcast of those hearings and shouldn't prevent the public from congregating on the plaza in front of the building.

- **Ethics:** The justices should be bound by the same ethics rules, called the Code of Conduct for United States Judges, that all other federal judges are required to follow.

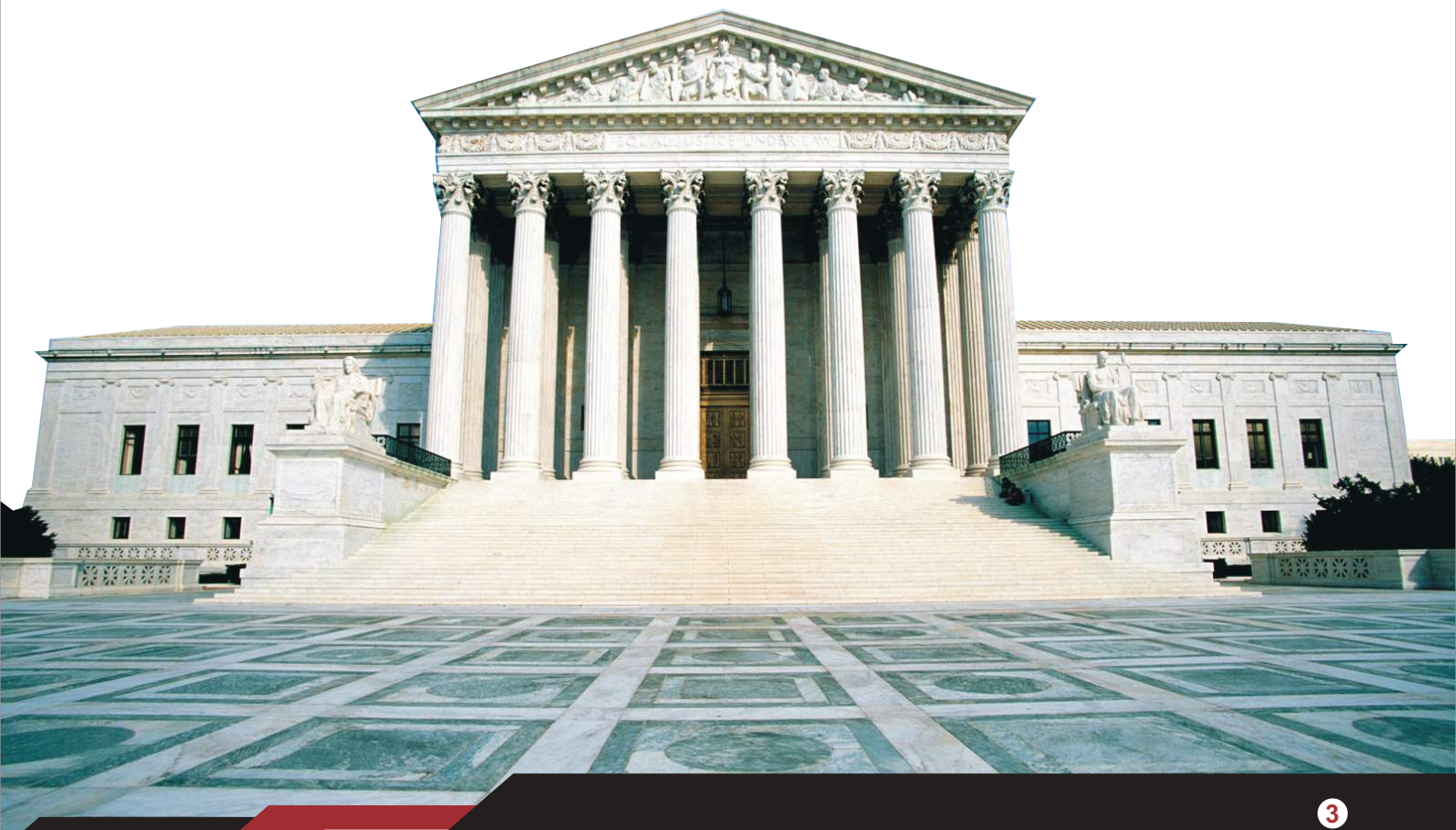
- **Financial disclosures:** The justices should submit consistent, detailed disclosure reports each year and publish them online and in a timely manner like other top government officials.

- **Recusals:** The justices should be more thoughtful about potential conflicts of interest, and when there is a conflict, they should publicly explain their reason for recusal.

- **Public appearances:** The justices, through their public information office, should advise the public of their appearance outside the court and allow media coverage of the majority of those events.

In June we added a sixth – ending life tenure, as we believe the justices should serve no longer than 18 years on the high court. And we called on the next Supreme Court nominee to pledge to serve only 18 years.

In this report, we outline how the court has fared over the last few months in these areas as well as our recommendations for how the justices can do better in the coming term.



PUBLIC ACCESS

A. Live video

The issue of separation of powers often comes up in discussions about Supreme Court reform, as some believe the President and Congress should not try to influence the court's institutional policies.

On the other hand, many advocates, including Fix the Court, believe **if the justices themselves are not willing to implement certain changes to make the court more open to the public, Congress should step in and force their hand.** After all, our theory goes, if Congress authorizes the judiciary's budget each year and determines the number of individuals who sit on the high court, it can write laws that mandate adherence to 21st century expectations of transparency and accountability from public officials.

Going to great lengths to maintain comity between the branches – where each one respects the others' authority – seems naïve in an era, to give but one example, in which the court invalidates laws passed by Congress **98-0 and 390-33.** Comity is clearly dead.

With this theory that the legislature can and should pass laws that are binding on the justices as a backdrop, the U.S. House (three) and Senate (two) have already introduced five bills related to court transparency just six months into the 114th Congress, plus another two on ethics, covered later in this report.

The Cameras in the Courtroom Act **(H.R. 94)** was introduced in the House on Jan. 6 by Rep. Gerry Connelly (D-VA), Rep. Ted Poe (R-TX) and Rep. Mike Quigley (D-IL) and has since gained five co-sponsors: Rep. David Cicilline (D-RI), Rep. Stephen Lynch (D-MA), Rep. John Yarmuth (D-KY), Rep. Kathy Castor (D-FL) and Rep. Jerrold Nadler (D-NY).

The companion bill in the Senate **(S. 780)** was introduced on Mar. 18 by Sen. Dick Durbin (D-IL) and Sen. Chuck Grassley (R-IA) and now has four co-sponsors: Sen. Richard Blumenthal (D-CT), Sen. Amy Klobuchar (D-MN), Sen. Kirsten Gillibrand (D-NY) and Sen. Al Franken (D-MN).

A broader bill that would allow cameras in all federal courtrooms, the Sunshine in the Courtroom Act **(H.R. 917),** was introduced in the House on Feb. 2 by Rep. Steve King (R-IA), Rep. Ted Deutch (D-FL) and Rep. Jason Chaffetz (R-UT), and since Rep. Stephen Lynch (D-MA) has been added as a co-sponsor.

The Senate version of that bill **(S. 783)** was introduced on Mar. 18 by Sen. Chuck Grassley (R-IA), Sen. Chuck Schumer (D-NY), Sen. Dick Durbin (D-IL) and Sen. John Cornyn (R-TX). The bill now has six co-sponsors: Sen. Pat Leahy (D-VT), Sen. Lindsey Graham (R-SC), Sen. Ed Markey (D-MA), Sen. Richard Blumenthal (D-CT), Sen. Amy Klobuchar (D-MN) and Sen. Al Franken (D-MN).

Finally, the Transparency in Government Act **(H.R. 1381),** jointly introduced Rep. Mike Quigley (D-IL), Rep. Kyrsten Sinema (D-AZ) and Rep. Jackie Speier (D-CA) on Mar. 16, calls for live audio coverage of Supreme Court proceedings in addition to television coverage.

These bills, save the last one, are all bipartisan. The sponsors and co-sponsors are geographically diverse. They include committee chairmen, ranking members and even a presidential candidate. What's unfortunate, though, is that despite all this, there has yet to be a hearing on the topic scheduled in the 114th Congress. The last hearing on opening up the court was held before the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Internet on Dec. 3, 2014, and was called by Rep. Howard Coble (R-NC), who has since retired.

Another noticeable aspect about the bills is that they're not new. Each has been introduced in a previous Congress; many have been introduced in numerous prior Congresses.

And while, anecdotally, we've heard that Sen. Richard Shelby (R-AL) doesn't feel comfortable legislating rules for the third branch (even though it's perfectly legal), Sen. Diane Feinstein (D-CA) and Rep. John Conyers (D-MI) are concerned about the effect of cameras on judges and attorneys (even though there have been no instances of grandstanding in the appellate courts with cameras that we've seen) and Rep. Louise Slaughter (D-NY) is worried that cameras will turn court hearings from something respectable into the diatribe-laden congressional sessions you're used to seeing on C-SPAN (that's not an apples-to-apples comparison since the justices [sorry, Sen. Cruz] will never be subject to an election), **there should be enough support in both houses of Congress to at least hold a hearing on the issue between now and the end of the year. We'll work toward that end.**

Amidst this backdrop of potential congressional action, it's important to note that all nine current justices **have themselves supported,** or at least articulated their disinterest toward, cameras in the courtroom at some point in their careers. Yet all nine have walked backed that support later on, flipping from the positions they held at their confirmation hearings of before.

The justices have cited tradition, potential grandstanding, lack of comprehension by the public and comments being taken out of context as their reasons for not allowing cameras. Yet we believe that transparency should trump tradition; that given the high stakes and abbreviated time, no one would dare to showboat or play to the gallery (**though some already do,** absent of cameras); that the justices could easily explain to the uninitiated the nature of appellate cases at the start of their hearings; and that reporters are already extracting snippets from the hearings, known as "quotes," and placing them into print and online reports, with sound bites on TV or the radio being no different from that.

A Good Explanation

Fix the Court believes that Supreme Court hearings should be live-broadcast. One of the critiques to allowing video has been that the public won't understand what goes on in an appellate hearing; but why not have the presiding judge give a quick explanation?

On Sept. 4, Judge Gerard Lynch of the Second Circuit Court of Appeals did just that during an ACLU v. Clapper hearing that was broadcast live **on C-SPAN:**

I don't know who is going to watch [this hearing], if anyone, but to the extent that it's going to be watched by people who aren't lawyers and aren't familiar with appellate argument, I thought I'd just say one thing. […] The procedure here is going to involve lawyers making arguments; they are likely to be interrupted and asked a lot of questions by the judges. That's not because we're rude. […] They've already had the opportunity to present in writing their positions. […] This is, to some degree, our time to ask questions to lawyers to clarify the points that they're making and the implications of those points, to perhaps raise issues that haven't been fully addressed by the parties and to give each side the opportunity […] to respond to the best points of the other side.

B. Cameras pilot program

The federal cameras in the courtroom pilot program, begun in July 2011 and comprising 14 different district courts across the country, officially ended on July 18, though some jurisdictions may choose to continue experimenting with video in their courts.

Following its conclusion, the research arm of the judicial branch, the Federal Judicial Center, will study the results and is expected to make its recommendations at the Judicial Conference's March 2016 session.

The previous cameras-in-courts pilot program ended in defeat for transparency advocates, as the conference voted – **in secret** – in September 1994 to suspend the use of cameras in federal courts. A year and a half later, in

March 1996, the conference **changed its mind** and allowed each circuit to make its own rules on audio, video and still photography.

Since then, the **Second and Ninth Circuits** have allowed video coverage of various proceedings, and nearly all of the 13 federal circuits post same-day audio online of their hearings, while the Supreme Court has allowed same-day audio only a handful of times (most recently on April 28 in **Obergefell v. Hodges**, but notably not on March 4 in King v. Burwell).

In the new year, we believe that the Judicial Conference should take a serious look at the FJC's research on the pilot program – and should do so in public.

C. Live and same-day audio

Since it's unlikely that the justices are going to embrace video until after the Judicial Conference considers the FJC's report on the pilot program, media groups and the public have instead focused on audio – and have become frustrated with the court's lack of a clearly stated audio policy at the high court. Just this year, a number of media groups and members of Congress asked the court to broadcast live, which it's never done, or at least same-day audio of various hearings – such as King – and decision announcements, including those released the last week of the term – Obergefell, King, Glossip v. Gross and others.

Broadcasting live audio of decision announcements is, we believe, a more difficult challenge than broadcasting live audio of the oral arguments themselves because the announcements are merely summaries of opinions, and as such, are not controlling for the cases. Oftentimes, justices will make statements during opinion announcements that surprise their colleagues – even ones whose opinions they joined.

One theory as to why the justices insist on delaying the release of oral argument audio – until the following Friday for 99 percent of the cases and until the afternoon for the rare instance of same-day audio – derives from the way the court treats outbursts. Instead of understanding that protests, interjections and eruptions have the potential to occur during any public exercise, the court again believes it's different, and no such interruptions can and should take place within its hallowed halls. Outbursts have been scrubbed out from the audio as if they never happened, and either not listed at all in the official transcript or only as "interruption."

While we wish that these types of outbursts never happened – and here we again note our strong opposition to surreptitious filming of court proceedings – **disallowing cameras and scrubbing the transcripts is not the solution.**

D. Congregating on the plaza

Curiously, the First Amendment guarantee of freedom of assembly, so powerfully supported inside the Supreme Court building in recent years (see Snyder v. Phelps and McCullen v. Coakley), has been not extended beyond its marble facade.

In fact, assembly is prohibited on its spacious front plaza between the court's front doors (which since 2010 have been exit only) up until the sidewalk in front of the building. But, just like the court's audio policy, there seem to be arbitrary exceptions that were on display in the last term.

First, on Nov. 24, following news that a Ferguson, Mo., grand jury had declined to indict police office Darren Wilson in the shooting death of Michael Brown, hundreds of demonstrators climbed the stairs from the sidewalk to the court plaza and then up the second set of stairs to the building's facade – chanting, signs in hand and with Supreme Court police in plain sight. The protestors left after about 20 minutes without incident and continued

Sleeping in line ahead of the April 28 oral argument in Obergefell v. Hodges.

their march. On June 26, the day in which the justices announced their decision in Obergefell, Supreme Court police also let the demonstrations ascend the steps to the plaza, though signs were not allowed. **This more assembly-friendly policy should continue in the new term.**

But here's the curveball: this year, we learned that plainclothes officers are monitoring protests on the plaza and that uniformed court police are recording the names and of individuals and groups who assemble in front of the building.

According to a front-page New York Times story on Nov. 16, "Small teams of undercover officers dress as students at large demonstrations outside the [Supreme Court] and join the protests to look for suspicious activity, according to officials familiar with the practice." Just four days prior, on the day in which Fix the Court launched, Supreme Court police officers were observed approaching a group of demonstrators, asking who they were and what group they were from and then radioing the information to someone inside the building.

Of all of the issues and sub-issues that Fix the Court is working to "fix," this one likely contains the most irony. Only a few decades ago, the court used the First Amendment to allow flag burning. More recently, it cited the First Amendment in allowing an unlimited flow of money into federal elections, as well as nasty protests mere feet from military funerals and abortion clinics. But at the same time the court chooses to be First Amendment absolutists on matters of law, it has favored a much more narrow interpretation when considering free assembly on their front plaza as well as media access inside their courtroom. Those blatant inconsistencies shouldn't stand.

Recommendation: Fix the Court will call for a congressional hearing on their various cameras bills, monitor the successes or failures of the pilot program and also make a recommendation to the Judicial Conference ahead of its March 2016 meeting. We'll also try to plan a demonstration on the court plaza (but won't say when ahead of time).

PUBLIC APPEARANCES

Supreme Court justices continued their torrid travel schedule during OT14, visiting more than two dozen states and 10 countries during their breaks in between cases and over the summer. Following the end of this past term, Chief Justice Roberts visited Japan, Justice Kennedy went to Austria, and Justice Scalia traveled to Italy. Trips to Idaho, Colorado, California and less exotic locales will follow for the justices, but the public will only learn about many of these excursions after the fact, if at all.

Although the President has his own press corps, and members of Congress routinely announce when they'll be greeting their constituents, the justices of the Supreme Court, who, like the President, have a constituency of 315 million, do not.

The court's public information office refuses to advise the press of the justices' events and speaking schedule ahead of time, and even the recently created SCOTUS Map – established for the express purpose of cataloguing the justices' public appearances – estimates it only captures 70 or 80 percent of their travels. Remember, these appearances often bring out the best in the justices and give audiences great insight into the institution at a time in which interest in the Supreme Court is likely at an all-time high.

As BYU Law Prof. RonNell Andersen Jones noted in a 2012 law review article on the media access and the Supreme Court, if the justices "want to be seen positively, to be viewed as competent, neutral and legitimate arbiters of significant disputes," and if cameras are off the table for the time being, hiding their public appearances from the press and public does little to repair the institutional harm the court has engendered in recent years.

Here's what's been attempted in the past: last year transparency advocates called Associated Press bureaus in many of the cities in which, through SCOTUS Map and Google Alerts, they found a Supreme Court justice would be giving a public talk. But they were often told that for a reporter in, say, Boise to travel to Sun Valley, Idaho, or a reporter in Fayetteville to swing by Fort Smith, Ark., would be costly and time prohibitive.

Even if said reporter made it to a justice's event, he or she, not being all that familiar with the business of the court, may not be able to distinguish between a newsworthy comment by a justice and what's simply a canned, albeit juicy, line from a stump speech.

Recommendation: In spite of the conclusion from the last paragraph, Fix the Court will try to get media coverage of the justices' public appearances, no matter how far flung in the country or the world they are.

FINANCIAL DISCLOSURES

The reason the Administrative Office of U.S. Courts gave for why the nine justices' annual financial disclosure reports were released this year in July and not in June, as has typical during Chief Justice Roberts' tenure, is that judiciary officials needed clarification from some of the justices on their forms, and it's hard to get the justices' attention at such a busy time of year as the end of the term.

What had been done in years past when a clarification has been requested, or when a justice needed more time to complete the form, was that the justice needing more time, usually Justice Alito, would be granted an extension, and the eight remaining jurists would release theirs on schedule. This whole discussion, of course, is splitting hairs about a summer timeframe and ignores the more essential question: what is the Administrative Office doing between May 15, when the reports are due, and June 20 (last year's release date) or July 3 (this year's)?

In rebuffing the need for a judicial inspector general to root out corruption in the third branch, as has been proposed by Sen. Chuck Grassley (R-IA), the head of the Administrative Office, Jim Duff, claimed that the judiciary spends some $15 million each year in auditing its members to ensure their integrity, which would amount to $17,000 in auditing power per Article III judge (assuming nine on the Supreme Court, 179 on courts of appeals, nine on the Court of International Trade and 677 on district courts.)

We believe that if the President, Vice President, other executive branch officials and members of both the U.S. House and U.S. Senate are able to release – and place online – their statutorily required disclosure forms in May or June each and every year, **so can the judicial branch with its veritable army of auditors.**

In fact, Fix the Court wrote a letter to Duff and to the chair of the Judicial Conference's Committee on Financial Disclosure, Judge Gary Fenner of the Western District of Missouri, requesting that the disclosure reports be placed online yet received no response.

Recommendation: Fix the Court will try to get to the bottom of why the judiciary refuses to place the disclosure reports online.

ETHICS

As has become the custom in the last few Congresses, Democratic members in the House and Senate this year proposed legislation that would require the justices of the Supreme Court to follow the Code of Conduct for U.S. Judges from which the nine are currently – and curiously – exempt.

Fix the Court stood with Sens. Chris Murphy and Richard Blumenthal of Connecticut and Rep. Louise Slaughter of New York when the Supreme Court Ethics Act of 2015 was introduced on April 23, and we admonished members of the Republican Party for not joining the bill, which currently has nearly 100 Democrats from both houses on board.

While the legislation stems from revelations that members of the court's so-called conservative wing attended right-wing fundraisers and were flown on a Republican donor's private jet, these ethics rules clearly have no partisan bent. So-called liberal justices were similarly suspected of violating the code's second canon, that judges avoid the appearance of impropriety, when Justice Ginsburg on May 17 performed a same-sex marriage while Obergefell remained undecided before the court, for example, or when she attended fundraisers for liberal causes, or even when Justice Kagan decided not to recuse herself from the Affordable Care Act cases that she had – logically – been involved in while U.S. solicitor general.

The reason often cited by the justices for refusing to adopt the code is that it would be impossible for the high justices of the Supreme Court to adopt rules promulgated by lower court judges. But that's like saying the pilot program to speed up game play in baseball, administered successfully in the Arizona Fall League, should never be adopted by the Major Leagues. It makes no sense (and a number of pace-of-game proposals have been adopted).

And while we know that the justices consult the code or speak with leading ethicists or other justices when thorny issues arise, there's no substitute for actual adoption.

Recommendation: Fix the Court will continue to publicize instances in which the justices do not follow the canons of the Code of Conduct for U.S. Judges and will look for Republicans in Congress to co-sponsor the Supreme Court Ethics Act.

Fix the Court executive director Gabe Roth stands with members of Congress on April 23 introducing the Supreme Court Ethics Act.

RECUSALS

The justices' recusal policy is such that they do not publicize the reasons for their recusals. In fact, they often don't even mention it to their fellow justices.

"In the rare case I recuse," Justice Kennedy said this past March, "I never tell my colleagues, 'Oh, I'm recusing because my son works for this company and it's a very important case for my son.' What should I say that? That's almost like lobbying [my colleagues]. So in my view, the reason for recusal should not be discussed."

Fix the Court clearly disagrees, believing that the public has a right to know the reason for a recusal. In January we began poring over the weekly orders lists released by the court and noting each time the phrase "Justice X took no part in the consideration of this petition" appeared, as that signals a cert.-stage recusal. (If that case is granted cert., then the same justice will presumably be recused when the case is argued; however, in cases in which a justice is recused at the cert. stage due to stock ownership, that justice may sell his or her stock before the hearing and then sit on the case – and even gets a tax deferment for doing so.)

What we found was that the most common recusers were Justices Sotomayor and Kagan, and we understood that the most common reason for recusal was that they had participated in the case in some way in their prior roles as federal judge and U.S. solicitor general, respectively. Additionally, Justice Breyer recused himself from cases in which his brother, a federal judge in San Francisco, had heard arguments, while Justices Kennedy, Thomas and Ginsburg completed the term with barely any recusals among them.

Chief Justice Roberts and Justices Breyer and Alito recused themselves when a company in which they held stock appeared before the court. This action is mandated by statute so comes as no surprise – until you take a step back and ask yourself, why do three justices (and only three) hold positions in individual, publicly traded companies? **And why don't they put this money into other financial instruments, like mutual funds or blind trusts**, that still allow for them to be invested in the market but do not raise the specter of bias or require a recusal from a body in which there's no one to replace you if you're off the bench?

Further, while justices are required by law to step aside from cases in which a company's whose stock they own is a named party, they are not required to recuse when that same company submits an amicus brief on behalf of a party – even though an opinion that favors, say, Google as a litigant would likely help the bottom line of another tech company whose shares the justices own, such as Microsoft, Hewlett-Packard or Cisco.

Plus, the proliferation of amici in recent years is a well-documented trend, and in a recent term amici were cited in 80 percent of 5-4 decisions, so they are clearly influential.

For the last six terms, including the most recent one, Roberts, Breyer and Alito sided with the amicus companies whose stocks they own nearly 73 percent of the time. To solve this overt conflict-of-interest problem, **Fix the Court has called on the justices to place their individual shares into blind trusts** – or for Congress to step in and require that they do – **and that the nine be subject to the 2012 STOCK Act**, which requires timely reporting for government officials' stock transactions. Fix the Court also recommends that the federal law governing recusals be clarified as to prevent instances of perceived bias.

The bottom line is there is no reason for the justices to own common stock in companies that may easily find themselves before the justices. And in order to bolster the credibility of their institution and demonstrate a basic level of accountability, the justices – possibly with help from Congress – should establish rules that prevent situations where their votes could affect the value of their brokerage accounts.

Fix the Court is not looking to dissuade government officials from investing in the market, but amici are clearly influential, and this conflict-of-interest problem looks horrible to a public that is rapidly losing faith in the high court. Requiring blind trusts gives the justices the ability to keep a foothold in the market through a wide variety of other financial instruments while tamping down the notion that they're not fully impartial when deciding cases that involve business interests.

Recommendation: Fix the Court will petition the justices to establish blind trusts.

TERM LIMITS

In May Fix the Court launched a new initiative called "Come to Terms" that is calling for an end to life tenure for Supreme Court justices and for the next high court nominee to pledge to serve a single term of 18 years.

Establishing an 18-year term limit would solve numerous problems at the third branch that are only getting more acute – the court's growing penchant for partisan gaming of retirements, its lack of professional diversity and real-world experience that render justices out of touch with everyday Americans and its predisposition to generations-long tenures that make the institution look more feudal than democratic in its origins.

The current system of lifetime appointments and sporadic retirements is a far cry from the original intent of life tenure. Today, the average tenure of a Supreme Court justice has spiked from less than 15 years before 1970 to more than 26 years today. Some justices serve a decade or longer past the death of the President who appointed them, and vacancies occur sporadically and unpredictably, creating the potential for one president to nominate nearly half the court and the next president to nominate not a single justice.

Lifetime appointments were supposed to shield Supreme Court justices from the influence of partisan politics. Instead, under Chief Justice John Roberts, we have a court that hands down the highest percentage of 5-4 decisions in our nation's history and some justices who spend their time off the bench among like-minded thinkers with a clear political agenda.

Our 18-year proposal is supported by two-thirds of American voters across party lines, as well as by a broad coalition of constitutional scholars and legal experts – including Erwin Chemerinsky of University of California, Irvine; Yale's Robert Burt; UT-Austin's Sanford Levinson; Duke's Paul Carrington; George Washington's Alan Morrison; Michigan's Theodore St. Antoine – not to mention presidential candidates Ben Carson, Rand Paul, Rick Perry and Mike Huckabee, all of whom articulated their support for term limits before the justices made decisions in the last week of June with which these candidates disagree.

Fix the Court and the constitutional experts who helped shape the 18-year proposal recognize the danger of intertwining the Supreme Court so closely with partisan politics at a time when the critical independence of the court has never been more important. Simply put, no one should serve for more than 18 years in the high stakes and extremely powerful position of Supreme Court justice.

Recommendation: Fix the Court will work to gain support for our 18-year proposal in town halls across America as well as in the halls of Congress, as we believe that an end to life tenure could be achieved via statute or constitutional amendment.

Fix the Court hosted an event in Washington with Politico on June 18 to unveil its Come to Terms campaign.

CONCLUSION

One of the tenets held most dear at the high court and across the entire legal system is consistency. As Americans, we expect the law to be applied equally no matter who you are or where you live. But looking at the Supreme Court's institutional practices, a clear lack of uniformity emerges – how the justices allow demonstrators on their plaza on some days but not others, permit same-day audio from some cases and not others and post all the case material online for some cases but not others. Some justices serve for 30-plus years while others for a mere fraction of that time.

This inconsistency extends to the justices' financial disclosure reports, some of which are very detailed, while others are lacking in all but the most basic elements. And it extends to the types of outside activities the justices choose to engage in, as some participate in more partisan events while others stick to the classroom or the lecture circuit.

As we conclude this report on transparency at the Supreme Court, we believe that the hodgepodge of institutional rules has failed the American people.

And we remain dedicated to moving the court in a more consistent – and transparent – direction.