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*The Supreme Court has been overlooked in recent government-wide reforms to increase transparency and accountability.*

## **Here's how Congress can fix this.**



Over the past several Congresses, a number of government reforms have been instituted legislatively and administratively to increase transparency and improve accountability among public officials – from the STOCK Act to term limits for committee chairmen to ever-expanding rules on congressional and Cabinet-level travel.

Yet unlike measures in place for members of Congress, their staffs, senior executive branch officials and even other federal judges, the **Supreme Court has been overlooked by legislators hoping to improve the public's understanding of how their government operates.**

To this day most Americans know little about the justices' personal and financial interests. Perhaps more concerning is the lack of visibility into the Supreme Court's courtroom, which remains obscured from the public due to the high court's ongoing broadcast media ban. And justices are serving longer than ever before – 27 years on average – which itself raises several concerns.

As Congress strives to increase the accountability of and accessibility to our three branches, Fix the Court stands behind commonsense reforms to bring greater openness to the high court.

**72 percent** of Americans say the Supreme Court should stream the audio of its hearings online.

*- McLaughlin & Associates poll of 1,000 likely voters (Aug. 4-7, 2014)*

### **Improving access to audio**

The result of placing unobtrusive cameras in hundreds of appeals courts from Iowa to Israel over the last decade has been a more informed populace – not a bevy of distracted judges as naysayers predicted – and little more.

But let's put video aside for a moment and focus on audio. (Images are preferable, but it's immediacy we're after).

It turns out that SCOTUS has the capability to livestream argument audio but has never done it. In fact, the court has only released same-day audio two dozen times, last in 2015, even as several other federal appeals courts have begun livestreaming their hearings. Last year, Fourth and Ninth Circuit suits on the travel ban executive order and D.C. Circuit cases on abortion and the FBI impersonating journalists were all livestreamed.

As befits a 21<sup>st</sup> century democracy, the public should have immediate, unfiltered access to the important work of their highest court. Live video may come one day, but real-time, or near real-time, audio can happen now.

How can Congress fix? Congress could pass legislation requiring live or same-day audio from the courtroom.

## **Improving judicial conduct guidelines**

Recent allegations of sexual harassment by federal judges has laid bare several holes in the judicial conduct regimen passed by Congress more than 35 years ago. Misconduct proceedings against judges are shrouded in secrecy and presided over by their judicial colleagues often reluctant to mete out punishment.

In the last few weeks, the judiciary has begun to take steps to improve the system, notably by creating a working group to study whether the branch's procedures for investigating and correcting misconduct are adequate and by updating the law clerk handbook to note that in-chambers confidentiality does not mean harassment should go unreported. But more needs to be done.

First, the Supreme Court should no longer be exempt from the 1980 statute. Though the law allows for lower judges to be censured, removed from cases or pushed into retirement following misconduct hearings, there's no recourse or reprimand for justices save the high bar of impeachment. That should be fixed.

Second, though law currently requires that the records of proceedings remain confidential, presiding judges should be given more discretion – and should err on the side of transparency.

Third, though the law offers an accused judge various resources with which to fight any allegations – e.g., he may “present [...] evidence or compel the attendance of witnesses or the production of documents” – the victim is only afforded the opportunity to appear at the proceedings “if the panel concludes that [he or she] could offer substantial information.” That imbalance screams for fixing, as both parties should be afforded the same rights.

How can Congress fix? Though the topic may be challenging given the allegations against members of Congress and the President, we are at a unique moment in history, and Congress should use its authority either to enact meaningful reforms or, at the very least, to ensure the judiciary is following through on its promises.

**86 percent** of Americans believe Supreme Court justices should be required to follow the Code of Conduct for U.S. Judges. *- McLaughlin & Associates' 2014 poll*

## **Building a stronger ethics code**

Unlike other federal judges, Supreme Court justices are not bound to follow the Code of Conduct for U.S. Judges, which includes rules about gifts, travel and avoiding impropriety, much like the guidelines Congress is subject to. Bringing justices under the code would underscore a commitment to ethical conduct in government.

How can Congress fix? Congress could amend the Ethics in Government Act to require justices to follow the code.

## **Requiring greater stock transparency**

Supreme Court decisions impact the stock market by hundreds of millions of dollars each year, so it's not unreasonable to want a court fully divested from individual securities. Yet three justices collectively own shares in about 50 companies, meaning dozens of stock-based recusals each year. (There were 47 last year.) To minimize the possibility of a tie in cases involving publicly-traded firms, we think the justices should either divest from their shares or place them into a blind trust while they're on the bench.

How can Congress fix? In a nod to transparency, Congress could amend the STOCK Act to require the justices to make their securities transactions available online within 45 days of a trade, as is required of members.

## **A role for appropriations**

Each year, the justices ask for additional funding from Congress, and even as these requests are granted in full, Congress has yet to tie any transparency stipulations to these appropriations.

Some reforms, like placing justices' disclosures online or livestreaming audio, would be of negligible cost. Others, such as writing conflict-check software or installing cameras, would be more expensive but not prohibitively so.

How can Congress fix? Congress could write conditions for transparency measures into appropriations bills.