



Gabe@FixTheCourt.com  
www.FixTheCourt.com  
FB.com/FixTheCourt  
Tw: @FixTheCourt  
Ph: 202-780-4990

*The Supreme Court is the most powerful, least accountable part of our government.*

## Here's how we're working to fix this.



### Broadcast and Digital Access

2017 successes: Fix the Court worked with the Senate Judiciary Committee to ensure then-Judge Gorsuch would be asked his views on cameras in the courtroom during his confirmation hearings (he said he'd "**keep an open mind**") and with several other members from both parties to confirm their biannual **cameras-in-courts bills would be introduced**. And we were pleased by the high court's **new homepage** and **new electronic filing system**.

Otherwise, our wins last year came at the circuit level, **all of which**, save the Tenth Circuit, **now allow same-day audio**. In addition, several U.S. courts of appeals now allow **video** (Third Circuit) or **live audio** (D.C. Circuit for all cases; Fourth Circuit for major ones), with the D.C. Circuit policy announced in response to our requests.

2017 disappointments: With the **first-ever live audio broadcast** from the Supreme Court's courtroom for the Justice Scalia Bar Memorial on Nov. 4, 2016, we had hoped for a more positive 2017 in this regard. We (or our proxies) asked the justices several times for expanded audio access – e.g., live audio for *Gill v. Whitford* and same-day audio for *Matal v. Tam*, *Trinity Lutheran* and *Masterpiece Cakeshop* – **but were denied each time**.

2018 outlook: We've pushed several circuits to study live audio, and some are expected to implement the policy this year; at least one (Seventh Circuit) is expected to allow video. **All bets are off** at the Supreme Court, though.

### Judicial Conduct and Disability

2017 successes: FTC joined a dozen law professors, who then joined 695 current and former law clerks, to ask Chief Justice Roberts to **address sexual misconduct in his year-end report** and suggest improvements, which he did.

2017 disappointment: Alex Kozinski.

2018 outlook: Following the Oct. 2016 harassment allegations against Justice Thomas, we called on Congress to **update the Judicial Conduct and Disability Act to include the justices** – a call that we've since renewed. The Kozinski affair laid bare several shortcomings of those guidelines for lower court judges, as well, and we'll push Congress to ensure that the third branch follows through on its promises to **reevaluate judicial conduct policies**.

### Congress Examines Judicial Transparency and Ethics

2017 successes: FTC provided research and a witness for a **Feb. 2017 House Judiciary Subcommittee hearing** on the topic, in which Chairman Darrell Issa said, "When it comes to the ethics of the judiciary, **[members of Congress] have an obligation**" of oversight, and Ranking Member Jerry Nadler noted, "Public scrutiny of [appellate] proceedings is **essential to democracy**."

2017 disappointments: Though Democrats in Congress did criticize Justice Gorsuch's speech at Trump Hotel in September, and Republicans sent a letter to Justice Ginsburg saying she should recuse from travel ban cases, **the two**

**parties have yet to come together to jointly support any improvements to the high court's ethics guidelines.** Further, for the second year in a row, the justices spoke to members of Congress about their budget behind closed doors – instead of in a hearing room in front of C-SPAN cameras as they once did.

2018 outlook: FTC executive director Gabe Roth recently argued in a *USA TODAY* op-ed that **the justices should seek out ideologically different audiences for their public appearances**, and we'll press them on this idea. At the very least, we want the Chief Justice, much as he's taken the lead in decrying harassment, to **establish clearer rules for justices' appearances** thus removing any appearance of impropriety.

## Recusals and Stock Ownership

2017 successes: The three justices who own shares of publicly traded companies – Chief Justice Roberts and Justices Breyer and Alito – **sold off nine securities worth up to \$1.045 million.**

2017 disappointments: The three still owned stakes in 53 companies last Jan. 1 (though down from 76 when FTC launched at the end of 2014), and their stock ownership led to **four dozen cert.-stage recusals last year.**

2018 outlook: With **this being the third term in a row in which a justice missed a statutory recusal** (Roberts and Breyer in OT15, Roberts in OT16 and Kagan in OT17), we'll encourage the nine to utilize the same **software-based conflict-check system** that lower court judges have had for more than a decade.

## Term Limits and Mitigating Cognitive Decline

2017 successes: FTC joined two dozen legal scholars in **proposing a legislative framework for ending life tenure at the Supreme Court** that takes into account prolonged vacancies and recusals in contentious cases.

We also issued reports on how and why **five foreign countries, five U.S. states and several dozens of federal government offices ended life tenure for their top officeholders** – in case the judiciary would like a different blueprint – and began working with circuit executives to ensure each circuit has the resources it needs **to address aging-related issues, like mitigating cognitive decline.**

2017 disappointments: Though our proposal was drafted at a time in which the clear majority of the country was expecting a Democratic president, conservatives were loath to join our efforts.

2018 outlook: **There must be somewhere** the five dozen conservative members of Congress who have cosponsored legislative term limits proposals can meet the two dozen liberal law professors supporting judicial term limits.

## Public Documents and Travel

2017 successes: Since we failed to receive a response from the Justice Department on our Dec. 2016 FOIA for records from Gorsuch's tenure at the agency, **we sued last February**, and within days, 175,000 pages from his time there were uploaded to the Judiciary Committee's website.

2017 disappointments: **We shouldn't have had to sue at all**, let alone twice (see below).

2018 outlook: Our June 2016 FOIA for **U.S. Marshals records** related to the death of Justice Scalia and the travel of other justices also went unanswered. Our subsequent lawsuit for these records is expected to yield documents by March.

## Financial Disclosure Reports

2017 successes: After years of lobbying, the Administrative Office finally agreed to digitize federal judges' and justices' annual financial disclosure reports, **placing them on thumb drives for members of the press and public.**

2017 disappointments: Though the first batch of 2016 reports (released, as usual, in June) were on time, **subsequent requests took much longer.** FTC didn't receive some reports requested in May 2017 until Jan. 2018.

2018 outlook: When there's a lag, we'll let the AO know about it. **Shaming does work sometimes.**

(Updated Jan. 2018)