



To: Interested parties
From: Gabe Roth, Fix the Court
Re: Blueprint for court reform
Date: November 22, 2024

Introduction: Where Do We Go From Here?

In the aftermath of the 2024 election, it’s important to assess where the organization stands, where the court reform movement as a whole stands and what opportunities for reform exist in the short, medium and long term.

For some background, **Fix the Court celebrated its 10th anniversary earlier this month.** In that time, and in alignment with our “fixes,”¹ the Supreme Court adopted an ethics code and began livestreaming its oral arguments. The public can now read every SCOTUS filing for free on the Court’s website. All of the justices and lower court judges are posting their financial disclosures and stock transactions in a public online database. Some justices are explaining their recusals, while others are striving to speak before more ideologically heterogeneous audiences. The SCOTUS term limits debate is no longer theoretical, as members of Congress have introduced bills that would, in various ways, curb life tenure. **None of this was true in 2014.**

Though we can’t take credit for all of it, **we did help create an environment where change was possible** thanks to an “all of the above” approach. Fix the Court and other groups and individuals² invested time into researching judicial conduct and conflicts. We pushed the press to cover ethical malfeasance. We wrote dozens of op-eds, hundreds of press releases and 1,000 posts on FixTheCourt.com. I testified before Congress and the Biden SCOTUS Commission and got to know members of the appellate bar, policy-interested law professors and think-tank experts, who helped fine-tune our pitches on issues like live audio and enforceable ethics. My staff and I worked with congressional staff and lawmakers, who introduced a wide range of proposals that, even though none resulted in a Rose Garden ceremony, did affect policy on financial disclosure transparency, judge-shopping and livestreaming. We interfaced with judges and justices, whose words of encouragement (and discouragement) helped us see the world of reform from their perspective.

Yes, Republicans won big this month, and of the two parties, Democrats have in the recent past been more interested in court reform. But Fix the Court’s strategy has always been to work with people and organizations of varied ideologies to advocate for a wide range of reform. **This approach is what differentiates us from other court reform groups,** some of whom do more than court reform (which, if they have the capacity, makes sense in the Age of Trump, though that’s not our charge), or do court reform with a decidedly partisan bent. As long as I’m running Fix the Court, our approach will not change on account of the political winds.

Do I miss the political landscape of 2014, when more lawmakers and advocacy groups worked, as we strive to do, between the proverbial 40-yard lines? Of course. And will an altered political landscape reorder some of our priorities, especially when it comes to legislation? Also yes. But the ethos of Fix the Court — **to ensure the most powerful, least accountable branch of government is not exempt from scrutiny** — will persist, especially given the increasingly important role the judiciary may play in stabilizing and maintaining the public’s faith in our democracy.

The following pages briefly outline how I’m thinking about the work in the short, medium and long terms. It’s not meant to be comprehensive, but it should offer a general idea of where I believe we’ll be spending our energies.

¹ The six fixes are broadcast access, term limits, stronger ethics, disclosure reform, recusal reform and public appearance notifications.

² Success has many parents, but it’s worth mentioned here the Free Law Project, with whom we’re leading the charge on free PACER and whom we connected with the *Wall Street Journal* for its “Hidden Interests” investigation; Project On Government Oversight, which wrote its own SCOTUS ethics code before SCOTUS did and helped draft the Courthouse Ethics and Transparency Act (our contribution there was ensuring SCOTUS and magistrate and bankruptcy judges weren’t left out of the bill); and the women who have stuck their necks out to advocate for stronger anti-harassment protections.

The Short Term: Keeping the Judiciary Honest

I see Fix the Court's job no. 1 as keeping judges and justices honest. That means uncovering and reporting on the times when Conservative Justice A doesn't disclose a gift, Liberal Justice B has dinner with a litigant, Conservative Judge C gives a partisan speech before a partisan group, and Liberal Judge D attends a junket with attorneys who practice before her court, all of which we've done in the last few months and versions of which we've done through the last 10 years.

There is no secret formula to this work; it's done by combing through the information the judiciary itself releases, by speaking to the various sources we've cultivated over the years and by filing public records requests, among other tactics. Fix the Court (especially our law clerks) produce a lot of spreadsheets, send a lot of emails and make a lot of phone calls. As anyone reading this memo knows, nothing beats shoe leather, and few groups beat our track record.

Though the research often leads to information that gives rise to new solutions, it's also an end to itself, since every citizen should be concerned about the ethical conduct of nine of the country's most powerful people and the 2,300 judges below.

The Medium Term: The Bipartisan Fixes

Fix the Court will in the next two years prioritize legislation that already has support on the left and on the right³ while working to develop additional bipartisan fixes that reflect any on-the-ground ethics issues that come to light.⁴ We've done this before (e.g., the Courthouse Ethics and Transparency Act) and will do it again. Here are the proposals we plan to advocate for most emphatically:

1. Free PACER, i.e., the Open Courts Act

Last I checked (last week), the legislation, which would make access to federal court records free and no longer \$0.10/page, has bicameral, bipartisan support. What's more, the system that would replace PACER will still bring in revenue and will save the government money over the next decade, which makes sense, seeing as how it shouldn't cost \$140 million dollars to run a website largely comprising HTML text and PDFs. Whether the legislation is added to a CR or is reintroduced as a stand-alone next year remains an ongoing conversation that we'll play a role in, as well.

2. Workplace conduct reform, i.e., the Judiciary Accountability Act

This bill, which would ensure that the more than 30,000 judiciary employees have strong statutory rights and protections against harassment, discrimination and retaliation, has bicameral, bipartisan buy-in (currently bipartisan only in the Senate, but we can fix that). Fix the Court has endorsed the text, though we want to see the section that would create an Office of Employee Advocacy in the judiciary (only in the House bill right now) in the final version. Would we back other edits to ensure that both houses have the same text and that both are bipartisan? Yes, and we'll be working toward that.

3. Nationwide injunction reform

In the 118th Congress, both Democrats and Republicans introduced legislation that would end nationwide injunctions. Two Republican bills would limit relief to the parties involved in the litigation or those similarly situated within the judicial district, and five Democratic bills would remove cases seeking a nationwide injunction either out of single-judge divisions and/or to the D.C. District or a three-judge panel.

Almost no one likes the idea that a single judge located anywhere in the U.S. can enjoin the application of a law or executive action. And though there's concern Democrats might fall back in love with injunctions come Jan. 20, it's my belief that the recent proposals on judge-shopping and judicial power, including from Leaders Schumer and

³ We have since at least 2019 backed adding new judgeships to Article III in a staggered approach, as the JUDGES Act, which awaits House action, would do. We support enactment between now and Jan. 3.

⁴ As an example, Fix the Court did not break the Judge Kozinski scandal in 2017 but shortly after took a leading role in pushing for stronger workplace protections branchwide.

McConnell, present an opportunity for real reform. Our plan is to take members' temperatures come January and find Capitol Hill staff left and right who want to work with us on this.

4. Other bills that currently have bipartisan interest

This includes some version of a judiciary gift ban bill, an Inspector General for the Administrative Office of the U.S. Courts, clarification of certain recusal rules and livestreaming for federal criminal trials. Stay tuned for more.

The Long Term: The Harder Reforms

1. Supreme Court term limits

Fix the Court has existed for 10 years. During the first half, ending life tenure for the justices was a more popular proposal among thought leaders and politicians on the right than on the left. Now it's the opposite. Though we don't anticipate another switch any time soon, it's worth stating that at the grassroots level, conservatives largely remain opposed to the notion of a professional political class in Washington, which poll after poll has shown extends to the courts. And when you put the Rep. Khanna bill, which we pitched and helped draft, against the other term limits proposals, ours is the most popular, in large part because it has no political valence and would not apply to the current nine.

Even so, there are no GOP cosponsors to any of the SCOTUS term limits bills in Congress, and more work needs to be done to ensure that politicians right and left understand the arguments that term limits for future justices are both desirable and constitutional. We plan to continue this critical work.

2. Enforceable ethics at the Supreme Court

Barring a mega-scandal by a liberal justice in the next few years, this, like term limits, is likely to take some time. Let's face it: doing accountability work will be less charged and less challenging after Justices Thomas and Alito retire, since naysayers will not be able to claim, albeit incorrectly, that the accountability work is only in the offing because of disagreements with Thomas' and Alito's jurisprudence.

In the meantime, we want to hear more from Congress and from the justices, besides Justice Kagan, who's already spoken out. Might they support the Kagan proposal of a "committee of highly respected judges" receiving and reviewing complaints against the justices? What about an IG that incoming Judiciary Committee Chairman Grassley has long championed and which, per the text, could investigate malfeasance at SCOTUS? How about the "designated individual" idea backed by Sen. Murkowski or Sen. Whitehouse's panel of circuit chiefs? There are many thoughts on how to do enforceable ethics, and I believe now is the time to have a full-throated discussion on it, with the goal of coalescing around a single, comprehensive-yet-comprehensible proposal within two years.

3. Cameras in the Supreme Court

As the head of the Coalition for Court Transparency 2012-13, I advocated for video access to SCOTUS arguments and opinion announcements, and that became Fix the Court's first "fix" in 2014. My view now is that we need generational turnover to get cameras in the Court — i.e., a Court comprising justices all born in the 1960s or later. That day may come sooner than you think. But before that happens, our work on broadcast remains two-fold: ensuring all 14 federal appellate courts keep livestreaming and pushing the Judicial Conference to relax barriers to livestreaming district court proceedings.

Conclusion: A Strong Position to Effect Change

Ten years ago, I thought Fix the Court was a quixotic idea and wasn't sure how long it would last. I believe that in that time, my staff, law clerks, board and I have turned quixotic into indispensable. As outlined above, **Fix the Court is in a strong position to effect change** in a variety of areas related to court reform.

Fix the Court wasn't the first group to do judicial oversight, and it won't be the last. But our work has ensured that the pressure put on the judiciary to become the open, accountable branch our democracy deserves will continue to grow — in good faith and in perpetuity.