To: Interested parties

From: Gabe Roth, Fix the Court

Re: Court reform prospects in the 120th Congress

Date: Nov. 4, 2026

This memo was prepared in light of Tuesday's election results, which mean Democrats will have a majority in the House and Senate beginning on Jan. 3, 2027.

Investigations:

Democrats won on a message of affordability and accountability. The former is not in Fix the Court's wheelhouse, and though the latter is, the lawlessness and disorder Americans have experienced over the last two years has largely come from the executive and not the judicial branch, so that's where most of the oversight energy will be.

That said, Democrats will have every right to **examine questions about the ethical conduct of the federal judiciary** — in particular the Supreme Court — that went unanswered amid investigations that were largely paused two years ago.

As incoming Chairmen Whitehouse and Raskin have mentioned, that will likely start with examining Justice Thomas' ethical practices and, say, whether he paid taxes on the RV he received (when the principle of a $250,000 vehicle is forgiven, that counts as a gift, which has tax implications). It may also mean looking at the extent to which the Judicial Conference purposefully, and contrary to the text of the Ethics in Government Act (5 U.S.C. 13106(b)), threw up roadblocks to slow down the Senate's 2023-24 judicial ethics investigations.

Fix the Court has worked with these offices for years, and we look forward to continuing to work productively with them. We also look forward to educating new members on court oversight and reform. Thanks to the election and several retirements, we expect seven new Senate Judiciary Committee members and as many as 20 new House Judiciary Committee members.

At the same time, Democrats who want to become Republicans and impeach judges and justices whose opinions they disagree with should be laughed out of the Committee room. The only jurists on the federal bench who should be impeached today are in Georgia (Judge Ross) and Texas (Judge Brown) — i.e., not the ones who heard arguments on One First Street this morning.

In fact, **Fix the Court will redouble our efforts to ensure that lower court judges are not let off the hook when the spotlight in the Committee rooms returns to the third branch**. Even as we have documented all sorts of SCOTUS nonsense, our country's rule of law hinges on the conduct of all 2,400 federal judges, not just nine. So whether you're a judge who's attended a political rally, got into a fight in a hospice parking lot, abandoned your caseload, had sex in chambers or harassed your clerks, accountability is coming; we will make sure of it.[1]

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[1] Dramatic flourish aside, we still just want Judges Ross and Brown gone for now; the rest can be disciplined, though we would expect more information about judges mistreating clerks to come out once the House and Senate Judiciary Committees renew their interest on workplace conduct issues.

Legislation:

This memo focuses more on the legislative side than the investigative side, and for that, the most obvious thing worth mentioning is that **the math remains the math**. I'm not talking about whether Democrats ultimately win 54, 55 or 56 Senate seats, but the numbers 100 and 435: **for a law to pass the Senate and the House, you're going to need unanimous consent.** That's especially true given that President Trump is exactly the type of president who'd veto legislation passed by such wide margins, meaning you're going to need a veto-proof majority to effect change.

I do not imagine that Democratic leadership will use up valuable floor time on, say, a Supreme Court term limits bill, or even an expansion bill, that Trump will ultimately block. At times, there is value in bringing legislation to the floor that has little chance to pass, but by the same token, if the Democrats don't want to squander what they've won yesterday, they'll need to show movement on areas like affordability, so that's where floor time will go.

But it's not all bad news: here it's worth remembering that the one court oversight bill signed into law this decade was the Courthouse Ethics and Transparency Act, which (a) passed via unanimous consent and (b) passed thanks to the work of Free Law Project (not partisan), Project On Government Oversight (not particularly partisan) and Fix the Court (👏). The lead sponsors in the Senate and House were Chris Coons, John Cornyn, Deborah Ross and Darrell Issa. **Whatever the final tallies in the House and Senate are, CETA remains the model — at least for the 120th Congress**.

The SCOTUS confirmation wild card(s):

With between 54 and 56 Democratic Senate seats in 2027-2029 and likely several years beyond that, the opportunity for Justices Thomas and Alito to retire when there's a Republican president and a Republican-led Senate will be few and far between over the next decade. **I expect Justice Alito to announce his retirement once the November sitting is over** and leave the bench once the term is effectively over (July 1), assuming a successor can be confirmed before Jan. 3. (I don't have sources on this but merely a gut instinct.)

MAGA Republicans will seek to nominate a loyalist like Emil Bove — misconduct complaint still pending, 11 months after I filed it — while non-MAGA Republicans, and likely Justice Alito himself, will seek a former Alito SCOTUS clerk, like Andrew Oldham. Though Fix the Court has never supported or opposed the confirmation of any judge or justice (we did once ask the Senate to slow down on Justin Walker), the thing to remember is that for all intents and purposes, there's no daylight jurisprudentially between the two.

Two questions remain. **Can the White House sell Bove or another loyalist?** I doubt they can. And will senators like Cassidy, Cornyn and Tillis, who are leaving, and Curtis, who has moderate instincts, be convinced that someone like Oldham counts as a "win" for them, i.e., "we didn't bow to MAGA but got a strong conservative"? (Let's assume that Collins and Murkowski would not vote for Bove or Oldham.) I think the answer is yes, but again, that vote vs. one for Bove would be a distinction without a difference.

Returning to the legislative outlook:

The best indication that legislation will be introduced and advanced in one Congress is whether it was introduced and advanced in a prior Congress. Looking at the judicial oversight bills, **the Supreme Court Ethics, Recusal and Transparency Act is the most likely candidate**. This is a bill Fix the Court has long supported, parts of which (e.g., the cooling-off period) we helped craft, and one that passed House Judiciary (2022) and Senate

Judiciary (2023) in prior Congresses. Even though the bill treats judges and justices appointed by Democratic and Republican presidents the same, this was a party-line vote, and I don't see that changing in 2027.

I also don't see legislation on SCOTUS term limits, enforceable SCOTUS ethics, a judiciary IG, shedding light on the shadow docket, ending single-judge divisions or jurisdiction-stripping becoming bipartisan in the short term. Even so, **each of these is a core part of a nonpartisan court reform agenda**. **We'll seek not only reintroduction and but also Committee passage for each**, save jurisdiction-stripping, which wouldn't occur in a standalone bill.

What can pass via UC:

As stated above, we maintain that CETA's success can be replicated, though hopefully without the scandal that led to that effort. There are three prominent examples of bipartisan reforms that would each make a monumental difference in improving court administration and access to justice that will seek to help move:

First, the JUDGES Act, which passed the House and Senate in 2024 (Coons/Young and Issa/Johnson) but was unfortunately vetoed by President Biden after President Trump's victory that year, would have added 66 new judgeships across the country to relieve ballooning caseloads. Though the Judicial Conference will release a *new* new judgeships wish list this coming March, the likelihood is it'll hew closely to the 2025 list, which hewed closely to the 2023 list, and we believe 65-70 new district court judgeships, added in a half dozen tranches over a decade, so we won't know which president will do the nominating, remains the proper course.

Second, the Open Courts Act, which would modernize the lower courts' electronic records system and make PACER free, was reintroduced in the Senate earlier this year (Wyden/Kennedy). A version of it passed the House in 2020 and was moments away from Senate passage in 2022 when retiring Appropriations Committee octogenarians killed it on the floor. The judiciary has said it's working to modernize PACER and CM/ECF, but it's also raising PACER fees to $0.12/page in January, and we do not trust they will do a suitable job creating a new electronic court records system without the congressional action and oversight present in this legislation.

Third is the Judiciary Accountability Act, which would give the federal judiciary's 31,000 employees stronger protections against harassment, discrimination and retaliation, and was most recently introduced in the Senate (Hirono/Murkowski) and House (Johnson) in 2024. This should be an obvious one Democrats and Republicans should get behind, especially considering the recent wave of judicial misconduct has come from judges appointed by presidents from both parties. (A standalone bill requiring periodic climate surveys, which is Section 301(h)(7) of the JAA, might be a foot-in-the-door opportunity here.)

Fix the Court will also work on three additional categories of court bills in the 120th Congress:

- *Plus Article Three* legislation
- *Should Be Bipartisan* legislation
- *Judicial security* legislation

Plus Article Three legislation:

This is legislation that was initially conceived to cover Congress and/or top executive branch officials but should also apply to both the Supreme Court and the lower courts. We call this Plus Article Three legislation, or PAT legislation, since, much like a PAT is added after a touchdown — the main thing football players are working toward — these bills were initially conceived as Article I- or Article II-focused but can and should have the same

applicability to officials in Article III, namely judges and/or justices. (CETA is PAT legislation since it included Article III in the STOCK Act requirements of online disclosures and stock transaction reports.) Included here are bipartisan bills that would ban stock ownership and participation in prediction markets, like the No Profiting from Public Service Act and the Public Service Accountability Act, both of which are bipartisan.

We'd also include in this category bills that would apply the congressional gift ban to judges and justices, like the High Court Gift Ban Act.

Should Be Bipartisan legislation:

This is legislation that isn't yet bipartisan but can be with some additional work. Chief here is the Republican-led effort called the Judicial Conduct and Disability Reform Act, which would modernize the JCDA so that judicial suspensions are capped, complaint transfers can more readily occur and the Judicial Conference can independently review complaint orders that don't pass muster, among several other apolitical fixes. There's nothing conservative (or liberal, for that matter) about this bill.

Legislation to increase transparency around the work of the lower courts also fits this category. Yes, there was a bill introduced this year to bring the judiciary into FOIA, but since FOIA is already a mess (i.e., it's difficult to obtain useful information without filing a lawsuit), adding Article III to a failing system is suboptimal. I'd prefer a Judicial Open Records Act, where agencies within the third branch would be required to periodically release certain data they have access to or regularly generate but currently keep under wraps.

Judicial security legislation:

Third, and this is really a last-but-not-least situation, are bills to improve judicial security. Threats against federal and state judges are rampant, and Congress has the resources to increase and improve jurists' protection. Efforts here include increasing funding for the U.S. Marshals Service court security line item and for the Supreme Court Police Department, both of which seek to surge the number of security personnel in their ranks. There's also a bipartisan bill to permit the existing State Justice Institute to provide grants for state-based judicial threat and intelligence resource centers, since it's not just federal judges who are being threatened at alarming rates.

Always willing to keep working on:
Any bill listed here introduced during the 119th Congress that Fix the Court has endorsed, including SCERT, SCOTUS term limits, enforceable SCOTUS ethics, a judiciary IG, shedding light on the shadow docket, ending single-judge divisions and jurisdiction-stripping.

Tier One priorities:
Judiciary Accountability Act, or similar legislation
JUDGES Act, or similar legislation
Open Courts Act, or similar legislation

Tier Two priorities:
Judicial Conduct and Disability Reform Act, or similar legislation
High Court Gift Ban Act, or similar legislation that applies to judges and justices (this one does, too, despite name)
Stock market and prediction market ban, or similar legislation (must be a real ban)

Perpetual priority: *Judicial security legislation*, which will always be top of mind given the threats