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SOLUTIONS FOR A STRONGER DEMOCRACY

Six Solutions to Fix the Supreme Court

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The U.S. Supreme Court wields vast power with minimal accountability. Its actions shape the law, democratic institutions, and people's lives. Yet it has no direct means of enforcing its decisions. Its authority depends emphatically on its credibility with the public.

Today, the Supreme Court is facing a crisis of confidence. Americans' favorable views of the Court hover at historic lows.[1] Polling shows that only 22 percent of voters have a "great deal" or "quite a bit" of confidence in the Court.[2] It's clear why. Over the past few years, the Court has been defined by polarizing opinions that have taken away constitutional rights and grossly expanded presidential power, serious ethics scandals, and contentious confirmation battles.[3]

The Court has always had an unavoidable political dimension — the justices are appointed by presidents with the advice and consent of the Senate. But it has become increasingly out of balance in recent years, often representing the will of one political faction. Beginning with George H. W. Bush, who appointed Justice Clarence Thomas, the longest-serving member of the current Court, Democratic and Republican candidates have won the presidency an equal number of times, yet Republicans have appointed six of the current justices, establishing a supermajority on the Court.[4] In fact, the last chief justice appointed by a Democrat took office in 1946. Extreme polarization in Congress has led to toxic, high-stakes, partisan confirmation fights, heightening the politicization of the Court.[5]

Ethics scandals have further roiled the Court. Reports of justices accepting lavish trips and expensive gifts cumulating in millions of dollars, including from people with business before the Court, as well as engaging in political fundraising activities and controversial displays of partisanship, have led to public outrage yet no meaningful accountability.[6]

In recent decades, the Court has exercised extraordinary influence in a way that would have been unrecognizable to the framers. Alexander Hamilton called the judiciary the "least dangerous" branch.[7] Throughout the first century of the United States, the Court was largely limited in its role and modest in its ambitions. Then, through a few notable periods — during the Taney Court, which issued the *Dred Scott* decision; the Progressive Era, when justices blocked decades' worth of social legislation; and the Warren and Burger Courts of a half century ago, with their sweeping rulings on civil rights and criminal procedure — the Court played an increasingly central role in political life.[8] Each of these instances resulted in strong public backlash.

The Roberts Court has thrust the institution into the center of public controversy again. It has dismantled laws

that protected against the corrupting influence of money in politics, which has led to the domination of wealth in U.S. elections and policymaking.[9] It has gutted landmark pieces of legislation, including core provisions of the Voting Rights Act.[10] It has struck down acts of Congress at a rapid pace.[11] Recent rulings have led to the nullification of many state and federal laws regulating gun safety and have aggressively curbed the power of regulatory agencies to protect public health and the environment.[12] It has eroded individual rights and liberties — including a federal right to an abortion — in a way that is unmoored from public values.[13] And most recently, with some notable exceptions, it has enabled an unaccountable executive to run roughshod over the U.S. system of checks and balances, often with no explanation for its rulings.[14] These decisions have similarly provoked immense public backlash.

The Court today can appear to operate more like an ideologically committed legislature than a restrained judicial body. As Justice Elena Kagan has observed, "The way the Court retains its legitimacy and fosters public confidence is by acting like a court." Otherwise, the justices are simply "nine unaccountable people, people who haven't been elected" who "make the rules for a democracy."[15]

We need a strong Supreme Court to play its proper role in our democracy, protecting democratic institutions, upholding the rule of law, and safeguarding individual rights. But this Court no longer operates as the framers envisioned, nor as it should. Reforms can rebuild the public's trust and restore balance in our system of government. That requires recognizing that the Supreme Court is an equal branch of government, and as such, it can and should be criticized with rigor. That is the American way. The good news is that sensible, popular solutions can make a difference.

Numerous reforms should also be considered for lower federal courts, such as increasing the number of judges to keep pace with our growing population or reforming the processes around nationwide injunctions. But this moment demands immediate reform of the Supreme Court, where significant questions concerning our democracy are playing out and will meaningfully shape our government for decades to come.

Many may view the Court as impossible to reform. But it can be done. Article III of the Constitution, which establishes the federal judicial branch, leaves Congress with enormous control over the Court's structure and operations. It has changed the makeup and rules of the Court many times before.[16] It has modified justices' duties and the Court's docket, created recusal standards, and even altered the Court's size and jurisdiction.

It is time for Congress to act once again and return the Court to its proper place in the U.S. constitutional system. Congress must pass urgently needed reforms, including the following.

>> Enact 18-year term limits for Supreme Court justices.

Today, individual justices have the power to shape the law for generations. That was not always the case. For nearly two centuries, justices served an average of around 15 years.[17] In the 1970s, however, tenure began to balloon. The average Supreme Court term since 1993 is 28 years, and this is expected to lengthen.[18] Several current justices could hold office across as many as nine presidential terms. No other major democracy in the world provides life tenure for high court judges who hear constitutional cases.[19] At the state level, only Rhode Island has life tenure with no age limit.

Nobody should hold that much power for so long. This reflects a core element of democratic accountability, a lesson taught by George Washington when he established the two-term tradition for presidents.

Congress should enact 18-year term limits for active service by Supreme Court justices. After 18 years, justices would assume senior status, during which they would hear cases by designation on the lower courts, step in to hear cases on the Court during a recusal or unexpected vacancy, and assist with the management of federal courts.[20] A form of senior status is common practice among lower court judges and has been an option for Supreme Court justices for nearly 90 years.[21] As notable legal scholars and retired federal and state judges have confirmed, Congress has the authority to enact this reform by statute, consistent with the Constitution's requirement that justices "shall hold their Offices during good Behaviour," as senior status allows justices to continue their tenure with modified duties.[22]

Term limits should be accompanied by a system of regular appointments. With an appointment every two years, each president would name two justices per presidential term, infusing the institution with fresh perspectives and lowering the stakes of each confirmation process, all while enhancing the democratic link between the Court and the public. It would lessen incentives for justices to time retirements for political advantage or to stay on the Court in anticipation of a president from their preferred party taking office.[23] And it would ensure that every president has an equal opportunity to influence the composition of the Court during a single term in office.

Term limits are widely popular. A 2024 Fox News poll found that 78 percent of Americans are in favor of limiting justices to an 18-year term.[24]

This reform would curb unchecked power. At the same time, it would augment the Court's independence in the political process — a key way to ensure it will stand up for the Constitution when other branches abuse power. And it would help realign the Court with public values and rebuild public trust.

>> Hold justices to the highest ethical standards.

Every court in the United States is required to abide by a binding code of conduct — except for the Supreme Court. Justices have largely enjoyed immunity from ethics oversight. In recent years, reports of justices accepting luxury vacations or expensive gifts (often without required disclosure), engaging in political convenings or fundraisers, or failing to recuse themselves despite conflicts of interest have tarnished the Court's reputation.[25]

In 2023, after public outcry, the Court adopted a voluntary code of ethics to clear up what it called a "misunderstanding" that it was "unrestricted by any ethics rules."[26] This code is more loophole than law.[27] It has no mechanism to file a complaint or launch an investigation in response to allegations of wrongdoing, and findings from investigations can be kept secret. It is enforced only by the justices themselves. And while it requires justices to recuse themselves from a case when there is a conflict of interest, they can ignore that obligation if they think their vote is needed, and they need not explain their reasoning. Neither the code nor federal law imposes meaningful limits on receiving gifts. And the code did not tighten financial disclosure rules, despite justices having flouted existing disclosure requirements.

No individual is wise enough to be the judge in their own case. Congress should require a binding and enforceable code of ethics for Supreme Court justices. Such a code should establish a clear mechanism for enforcement and for the investigation of alleged violations, with findings of serious misconduct made public, as happens in the systems that govern lower federal court judges, state judges, and members of Congress.[28] Justices should also be required, without exception, to issue a brief written explanation when they deny a request for recusal. And Congress should bar the acceptance of gifts (with commonsense exceptions, such as gifts from family members) and ban justices from engaging in stock trading or owning individual stocks. Binding ethics safeguards would not only ensure that justices are held accountable but also help prevent conflicts of interest.

>> Curb abuses of the shadow docket.

The Supreme Court's emergency docket, dubbed the "shadow docket," allows the Court to quickly halt lower court rulings in order to stop immediate harm.[29] Historically, its use was limited to true emergencies, such as cases when an execution was imminent. But recently, the Supreme Court has used the shadow docket more as an instrument to green-light President Trump's agenda than to intervene in emergencies.[30]

As of March 2026, the second Trump administration has asked the Court to intervene when lower courts have blocked parts of its agenda 34 times — more than the Biden, Obama, and George W. Bush administrations combined.[31] Of those 34 requests, the Court has issued 25 decisions on the shadow docket and ruled in the administration's favor 80 percent of the time, sometimes overturning decades of precedent.[32] In *Trump v. Wilcox*, for instance, the Supreme Court used the shadow docket to allow Trump to fire members of two independent agencies, even though 90 years of precedent had affirmed the illegality of such firings.[33]

On the shadow docket, the Supreme Court often rules without public hearings and with limited briefing. It often takes years before the Court hears these cases in full, if at all.[34] By the time it does, in many cases the damage wrought by its shadow docket decisions will be irreparable — the Trump administration will have already dismantled entire government agencies and wrongfully deported individuals to countries where they will face serious danger.[35]

Shadow docket rulings often include no explanation or vote counts.[36] By not explaining itself, the Court abdicates a principal expectation of judicial bodies: that they disclose their rationales.[37] As Justice Kagan plainly put it, "Courts are supposed to explain things."[38] It's an essential protection against arbitrary power and an important way to ensure that like cases are treated alike. Lower court judges have expressed frustration over the lack of transparency, and they are often unsure how to follow new legal standards with no guidance.[39]

The Court is not a secret tribunal. Congress should pass legislation reforming the shadow docket to prevent future abuse. First, Congress should codify standards to ensure that the Court takes up a case only when there is a true emergency. It is hard to understand why lower court rulings that have blocked the Trump administration from dismantling an agency or freezing scientific research grants require emergency Supreme Court intervention that bypasses the normal processes and safeguards of ordinary appeals. Second, Congress should require justices to issue brief written and signed opinions in shadow docket cases, which would provide clarity, increase transparency, and boost confidence in the fair operation of the Court.

>> Fast-track Congress's response to rulings.

Congress's failure to assert its authority as a lawmaking body has created a vacuum filled by executive abuse and Supreme Court overreach. Elected lawmakers should exercise primary authority over the design and enactment of public policy. Yet in recent years, the Court has repeatedly gutted landmark pieces of democratically enacted legislation that had earlier survived the Court's scrutiny. For example, *Citizens United v. FEC* in 2010 overturned parts of the Bipartisan Campaign Reform Act and laws dating back a century.[40] *Shelby County v. Holder* in 2013 suspended a key provision of the Voting Rights Act.[41] And

McCutcheon v. FEC in 2014 struck down a federal contribution limit for the first time.[42]

At other times, the Court has openly invited Congress to respond with new legislation, often to clarify muddy statutes or fill in gaps with respect to constitutional protections; for example, Chief Justice John Roberts wrote in the 2019 *Rucho v. Common Cause* case that the question of partisan gerrymandering was one that "only Congress can resolve," even though Justice Kagan wrote that "the partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process."[43]

Congress should be able to respond quickly to misinterpretations or misguided rulings, especially when they roll back constitutional rights or undermine federal statutes. Once, such legislative responses were common. But as the Court has grown more aggressive, lawmakers have done *less* to respond in recent decades.[44] Congress should create an expedited process for responding to rulings that upend federal laws or constitutional rights. It should allow the Senate to pass laws responding to such rulings by a simple majority, while also permitting the minority to offer input, within a certain number of days. The House should also have expedited options. This type of reform would be akin to the Congressional Review Act, which gives Congress a fast path to respond to federal agency regulations. A similar law for judicial decisions would return Congress — the most democratic branch of government — to its proper place as the principal policymaking body.[45]

>> Improve the confirmation process.

Supreme Court nominations have often sparked debate. But they are increasingly marked by toxic partisan division.[46] That grew much worse when Senate Majority Leader Mitch McConnell blocked President Obama's Supreme Court nominee, Merrick Garland, from receiving even a hearing in 2016, claiming it was too close to the election taking place nearly nine months later.[47] The vacancy lasted 422 days, the longest in the Supreme Court in more than 150 years.[48] Yet in 2020, McConnell rushed through the confirmation of Amy Coney Barrett after early voting in that year's election had already started.

The Constitution requires the Senate to provide "advice and consent" to confirm a nominee. But the nomination process shouldn't be at the whim of the party in power. Every nominee deserves a fair hearing and an up-or-down vote.

Congress should update its rules to restore the norm that Supreme Court nominations receive timely and effective consideration by senators and prohibit the practice of denying a nominee a vote. It should change Senate rules so that if a nomination is delayed by Senate Judiciary Committee inaction, a critical mass of senators can call for a nomination to be discharged from the committee and force a debate and a vote.

Alternatively, Congress could enact a fast-track mechanism by statute, a common vehicle that it uses to prevent certain measures — such as trade agreements, budgets, and military base closures — from being obstructed.[49] After a Supreme Court nominee is referred to the Senate Judiciary Committee, the committee would have a fixed number of days to act on the nomination. Failure to do so would lead to an automatic discharge from the committee, with the nomination placed on the Senate calendar and a floor vote required. These reforms would ensure that nominees receive rightful consideration, avoid an escalation in partisan tactics, and allow the Senate to fulfill its constitutional duty.

>> Allow cameras in the courtroom.

There has long been a debate over whether to broadcast Supreme Court hearings and decisions for public viewing. As public trust in the Supreme Court plunges to an all-time low, broadcasting hearings and decisions would be an important step toward transparency. It would also help Americans better understand how the Court reaches decisions that affect their lives.

The Court already broadcasts audio of hearings (although not of its opinion announcements), and all 50 state supreme courts allow video.[50] Nearly two in three voters support allowing television coverage of Court oral arguments, and seven in ten believe that television coverage would build trust in the Court's process.[51]

The Supreme Court has repeatedly ruled in favor of a public right to attend trials, which allows people to "have confidence that standards of fairness are being observed."[52] Justices themselves have said before they were confirmed that they support or would be open to considering cameras, only to oppose such an idea after joining the Court.[53] The justices should match their rhetoric with action. If not, Congress has the power to act. Sens. Dick Durbin (D-IL) and Chuck Grassley (R-IA), for instance, have introduced the Cameras in the Courtroom Act to require cameras in the Supreme Court.[54]

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