

WE THE PEOPLE

REINFORCING THE COURT



ACLU


PACKED COURTS

The judicial system is one of the easiest for our political process to manipulate. Political parties attempt to pack the courts with judges they align with, and those judges serve those appointments for life (Matthews, 2018). Each party is guilty of corrupting what should be a fair, impartial, a-political judicial process (*What is court packing?*). Reform is necessary, and doing so is in the best interest of the people.



THE ACLU'S ROLE

ACLU's mission has, and will continue to be, to **defend** and **preserve** individual rights and liberties (FAQs).



Our judicial system is broken. The ACLU has done incredible work protecting rights and liberties, but we are limited by our fractured judicial system. To continue to expand and protect the people's rights and liberties, comprehensive reform is needed.

FLAWED IDEAS



Fixed Appointments

The Brennan Center for Justice, a law and policy think tank, proposes a fixed number of Supreme Court appointments. Each President would have 2 appointments to the Supreme Court, regardless of any potential vacancies, and these appointments do not rollover from term to term. The intention is to depoliticize the appointment process and incorporate some consistency (Bannon, 2021).

Flaws

While setting a fixed number of appointments every President has available could certainly depoliticize our current process, there are a number of inherent problems. First, every four years we will certainly see another 2 appointments to the Supreme Court, expanding the size of the court. The first few Presidents who do so would not pose any type of issue, but 10 Presidents later and we will have another 20 Supreme Court Justices. Secondly, this system does not address the current and immediate need to reform and balance the Supreme Court and the entire judicial system to be non-partisan.

RECOMMENDATIONS FOR THE PEOPLE

Nomination Commission

The President should no longer directly nominate Supreme Court Justices for appointment. Rather, the President would have the ability to appoint a portion of a non-partisan commission, with the other portion appointed by a Joint Resolution of Congress. This non-partisan commission would not only depoliticize the appointment process, but also balance the powers that Congress and the President have to be closer to the Founder's intention.

Immediate Expansion

The Supreme Court is in a dire position right now, due to the numerous appointments from President Trump. No President, of any party, should have such a long-lasting influence on the makeup of the Supreme Court, as the Supreme Court is a lifetime appointment. An immediate expansion comes in two parts: first, we had additional seats for the Nomination Commission to fill, increasing the Supreme Court's size from 9 to 21; second, we introduce age limits and term limits, for a maximum age of a serving justice at 80 and a term limit of 12 years.

Nomination Guidelines

We need to implement set guidelines for when a Supreme Court nomination may occur. As seen most recently with Amy Comey Barrett, our judicial process has become so skewed that it is destined to remain a forever politically-charged moment whenever a seat is open (Sprunt, 2020). A universal guideline, regardless of political party, is that no nomination may occur within 6 months of an election. The upcoming President and Congress may have a different composition, leading to a different Nomination Commission and different results. This would more accurately reflect the People's will and desire, and limit partisan games.

NOMINATION COMMISSION

Proposal

A non-partisan Nomination Commission is the best overall option to immediately addressing the imbalances of our current Supreme Court, the powers of the President and Congress, and depoliticizing an unbiased and inherently a-political process. This would be the bare minimum reform, and the backbone of the rest of the ACLU's recommendations. Here's what this reform would look like:

1

Effective immediately, any President of the United States no longer has the power to directly nominate Supreme Court Justices. Rather, they can appoint 5 Nomination Commissioners, unilaterally, who will sit on the commission for the remainder of the President's term, and may be reappointed.

2

Through a Joint Resolution passed through the House and Senate, Congress appoints the other 5 Commissioners to serve for 2 year terms, to match the revolving Congressional classes from each election. This requires cooperation regardless if Congress is split along party lines.

3

The Nomination Commission will develop bylaws, and implement procedural rules. This would include how close to an election they may nominate, standardized criteria for evaluating potential nominees, and making any recommendations to the President and Congress to improve the Judicial System.

4

The Nomination Commission will accept public, Congressional, and Presidential comments and have built-in procedures in case something is missed during the vetting process. The Nomination Commission would be subject to oversight from a Joint Committee from the House, Senate, and President's administration.

COMMISSION FEASIBILITY

Logistics

Implementing a Nomination Commission would be a drastic change for the political structure of the United States, and one for the better. The support of upcoming Presidential candidates and the majority of both the House and Senate would be necessary. A large-scale field campaign would need to be done to make the Commission a common voter's priority, regardless of political party, and the voter's priority should become their elected official's priority.

This field campaign would have multiple prongs.

1. Voter education would be critical, as this would be a radical change and there will be many questions that the average voter has (FAQs to be addressed shortly). This could be done through town halls, forums, Reddit-style Ask Me Anything (also known as AMAs), social media, phone banking, and door knocking.
2. Lobbying Presidential and Congressional officials, the Democratic and Republican parties, local and state officials, and the candidates for these various positions.
3. If enough time has passed once a voter consensus has been established, protests, rallies, and marches could be staged as well. The ACLU stands for the people, and while we believe this will be the best solution for our splintered Judicial System, we also will not push for this change without the approval of the People.

Precedents

A change to a Judicial System to this degree has not been attempted before, except in the examples of revolutions. There is no precedent to base this change on. It is possible to create precedent, however. The ACLU can push for this type of a change on a smaller level first, with local and state Judicial systems. This would allow for the testing of this system before the ACLU, among other organizations, devotes time, resources, and people to campaign for the Commission.

COMMISSION FAQs

Q: Does the President have the power to nominate from the Constitution?

Yes, in Article II, section 2 of the United States Constitution states that the nomination and appointment is done with the "Advice and Consent of the Senate." The Nomination Commission fits and even exemplifies the "Advice" portion of this clause and is a better fit than our current system.

Q: How long will it take to make this kind of sweeping change?

An optimistic estimate would be within 5-8 years for state judicial system, 8-12 for the Supreme Court. The gears of change are constant, but slow. Research and case studies would be necessary to determine the efficacy of this proposal, and that will only be possible on a local level first.

Q: Who could be on the commission?

The commission could consist of a variety of different stakeholder groups, but the most likely would include individuals from Congress, the President's administration, and tenured legal and Constitutional scholars. The goal would be a diverse group, in all regards, with individuals qualified to evaluate nominees.

Q: How much will the campaign cost and who are likely partners?

The field campaign and lobbying could vary quite a bit in cost. A strong social media presence would be required, but due to this change it's possible to go "viral" and therefore not need a field campaign or lobbying. There are litany of potential partner organizations, those focused on criminal justice reform and social justice would be ideal candidates.

BENEFITS & SUMMARY

Benefits

The Nomination Commission would be a major victory. Of course, as the organization behind it the ACLU will receive a plethora of positive press coverage. More important than the ACLU's image is the benefit the Commission will give to the People. More research is required, but it is extremely likely the People's confidence in the Supreme Court, Congress, and the Presidency will increase dramatically as the political circus quiets down. Their faith in our institutions is critical to the continuation of the democratic republic that is the United States.

Summary

A Nomination Commission should be created for the Supreme Court. This would depoliticize the nomination and appointment process, allow for uniformity and consistency, and create standardized criteria to evaluate potential nominees. The President and Congress each appoint an equal number of members of the Commission, thereby requiring the House and Senate to cooperate and still maintaining the President's role. There are many other reforms such as term and age limits, and expanding the court; however, these are dependent on the solid foundation the Nomination Commission would provide.

TRANSPARENCY

Sources

The ACLU believes in transparency of information. That's why we ensure that any information we use in our evaluations, reports, and proposals is included and cited.

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