

A Common-Sense Vision for American Democracy

Restoring Judicial Separation of Power Act

THE PROBLEM

In theory, the fundamental promise of a democracy is to fulfill the will of the people. In practice, there are a growing list of issues – from campaign finance reform to gun control to access to healthcare to voting access – where the federal government has consistently failed to deliver the will of the people.

Under the present system of judicial selection, there are incentives to control the composition of the Supreme Court to affect the resolution of disputes in a way that furthers specific policy objectives and politics. This process distorts the actual and the perceived fairness and independence of the Court.

But the Republic is not defenseless. The Constitution gives our elected officials the power to address the structural concerns of the Supreme Court. The Supreme Court exists to serve American democracy, and when it does not, then it can and must be checked by us, the people.

THE SOLUTION

Article III, Section 2 states that the Supreme Court shall have “original jurisdiction” in all cases affecting “Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party.” And in all other cases, the Supreme Court shall have “appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.”

The Restoring Judicial Separation of Power Act fundamentally changes the court system to introduce elements of randomization to deter the effects of gaming the courts for political advantages. It restores the Supreme Court of the United States’ jurisdiction to align with Article III of the Constitution and creates a 13-judge multi-circuit panel that will be randomly chosen to hear cases that the United States or a Federal agency is a party, or a case concerning constitutional interpretation, statutory interpretation of Federal law, or the functions or actions of an executive order.