

Restoring Judicial Separation of Powers Act Summary

In theory, the fundamental promise of our democracy rests upon trust that the government fulfills the will of the people.

In practice, there is a growing list of issues – from campaign finance reform to gun control to access to healthcare to voting rights – where the federal government has consistently failed to deliver that will.

Under the current system of judicial selection, there are incentives to influence the composition of the Supreme Court, thereby affecting the resolution of disputes in a manner that furthers specific policy objectives and politics. This process distorts the actual and 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.

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 introduces elements of randomization to deter the effects of gaming the courts for political advantage.

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 in which the United States or a Federal agency is a party, cases concerning constitutional or statutory interpretation of Federal law, or cases to clarify the functions or actions of an executive order. The bill also includes language to address concerns regarding nationwide injunctions and the shadow docket.

Restoring Judicial Separation of Powers Act Section-by-Section

Title I – Direct Appeals

- Section 101: Direct Appeals
 - Allows for any party to appeal to the U.S. Court of Appeals for the District of Columbia to be heard and determined by a district court of three-judges.
- Section 102: Courts of Appeals Review
 - Cases in the courts of appeals may be reviewed by the United States Court of Appeals for the District of Columbia Circuit by 1) writ of certiorari and by 2) certified questions that are not heard by the multi-circuit panel.
- Section 103: Final Decisions of District Courts
 - Establishes the U.S. Court of Appeals for the District of Columbia as the final decision body for District Courts.
- Section 104: Jurisdiction for the United States Court of Appeals for the District of Columbia Circuit
 - Creates a 13-judge multi-circuit panel 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.
 - This panel will consist of 1 judge randomly selected from each circuit court of appeals (minus the federal circuit) and 1 chief judge randomly selected from the same circuit courts of appeals.
 - Each judge of the multi-circuit panel shall serve during the period beginning at 10amET on the first Monday in October and ending at 9:59amET on the first Monday in October of the following year.
 - A supermajority of not less than 70% of judges shall be required to affirm any decision which holds that any Act of Congress is unconstitutional, unlawful, or otherwise invalid.
- Section 106: Effective Date
 - This title shall apply in October of the year following the date of enactment of this Act.

Title II – Injunctions and Court Dockets

- Section 201: Anti-Nationwide Injunction

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6TH DISTRICT OF ILLINOIS

- Actions before a court of the United States seeking injunctive relief restraining the enforcement of any Federal statute, regulation or order against a nonparty will be transferred to the U.S. Court of Appeals of the District of Columbia Circuit.
 - The Courts shall have the power to consolidate several cases concerning the same matter.
- Section 202: Shadow Docket Limitation
 - The SCOTUS, U.S. Court of Appeals for the D.C. Circuit, and Multi-circuit panel will have to issue a written explanation supporting decisions which shall be published on the respective websites and must be signed by the judge or judges.
- Section 203: Effective Date
 - This title shall take effect on the date of enactment of this Act.