

Court Reform

What LGBTQ+ People and Everyone Living with HIV Should Know About Restoring Balance to the Supreme Court

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Our democracy relies on a judicial system that is non-ideological in order to ensure fairness and impartiality and make good on the constitutional promise of equal access to justice for all. However, as most strongly evidenced by the Supreme Court's recent 2021-2022 term, especially with its decision to gut abortion rights on legally unsound grounds, it is clear that a majority of Justices on our nation's highest court [are more loyal to an extreme far-right conservative agenda](#) than they are to the Constitution. The clearest way to restore the integrity of our democracy and protect our civil rights is through court reform.

Here's what you need to know about court reform and why it is essential to protecting the civil rights of LGBTQ+ people and everyone living with HIV.

What is court reform?

Court reform is the idea of restoring legitimacy to the judicial system through policy reforms and legislative action in order to ensure equal access to justice for all — a promise made to everyone in the United States by our Constitution.

Why is Lambda Legal calling for court reform? Why does this matter?

Our democracy is crumbling. During the end of the Obama Administration and throughout the Trump presidency, then-Senate Majority Leader Mitch McConnell and then-Senate Judiciary Committee Chairman Chuck Grassley abandoned important Senate norms and corrupted the confirmation process. They essentially stole a Supreme Court seat from each of Presidents Obama and Biden and oversaw confirmation hearings for judicial nominees at all levels that were not thorough and ensured only the most committed ideologues were confirmed to the federal bench. As a result, the public no longer has confidence in the courts, especially the Supreme Court, to be non-partisan. Furthermore, the Supreme Court itself has eroded its own legitimacy. Unless faith is restored in the Supreme Court and the rest of the federal judiciary through court reform, our civil rights — including the right to access non-discriminatory health care, bodily autonomy, the right to engage in private consensual sexual relationships, the right to marry a person of the same sex, and all the rights and benefits that flow from those fundamental liberties — can be taken away. Our families, our relationships, our self-determination, our privacy, and our very identities, are all under threat.

While most of these rights are still recognized as constitutionally guaranteed, the threat is very real. In *Dobbs v. Jackson Women's Health*, the majority opinion relied on cramped, selective history to justify its decision to

revoke the fundamental right to abortion. This ideological approach leaves the door wide open to take away other constitutionally protected rights, like the freedom to decide who to have sex with, who to marry, or what health care we can access. Additionally, in a chilling concurring opinion, Justice Clarence Thomas reinforced that danger, writing, "We should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*," making it explicit that overturning the right to use contraception, the right to engage in private consensual sexual activity with a same-sex partner, and the right to marry a person of the same-sex is firmly within his sights. We must reform our courts now.

What reforms does Lambda Legal support?

At Lambda Legal, [we have called](#) for immediate, essential reforms of the U.S. Supreme Court, including adding additional seats to match the number of federal Circuit Courts of Appeals and adopting an enforceable ethics code for Supreme Court Justices. We are also calling for expansion of the lower federal courts in accordance with the increased caseloads these courts have come to bear as our society has grown, causing unreasonable workloads, backlogs, and barriers to access to justice.

Additionally, we have called for reforming the filibuster to allow Senate consideration of court reform and voting rights legislation such as the Judiciary Act of 2021, which would add those additional seats to the Supreme Court; the For the People Act of 2021, which would make federal elections fairer, safer, and more accessible and would strengthen government and judicial ethics rules; the John R. Lewis Voting Rights Advancement Act of 2021, which would prevent voter suppression efforts, most of which target communities of color; and the Washington, D.C. Admission Act, which would enfranchise the citizens of our nation's capital by making it the 51st state.

What is the filibuster?

The filibuster is a tactic used by minority members of the U.S. Senate to prolong debate and delay or prevent a vote on a piece of legislation. It is a procedural move that requires 60 votes to end debate and allow a vote to be taken on a legislative proposal. Historically, it was understood that this counter-majoritarian tactic was only to be used sparingly for the most contentious proposals. And the history of its use is deeply steeped in racism as it was used to protect slavery in the early 1800s and then, systematically, to protect Jim Crow laws and to block civil rights advances in the 1990s. It has come to be used routinely by the current minority party to prevent the party in the majority from advancing legislation with a simple majority vote of at least 51 but less than 60 votes. The way to end a filibuster is by a vote of at least 60 members, known as a cloture vote. Because the minority party has been using the filibuster this way, many pieces of legislation need 60 votes — a supermajority — to end the filibuster and pass. This has led to entrenched stalemates on important and popular pieces of legislation and some key nominations.

There are, however, exceptions to the rule. The two major political parties have agreed that the filibuster cannot be used to block Presidential appointments, federal court nominations, the annual budget reconciliation process, certain trade agreements, and certain other types of legislation. While the current filibuster rule requires 60 votes to invoke cloture before allowing legislation to move forward to a floor vote, only 51 votes are needed to change the filibuster rule. This approach could be used to allow the Senate to consider court reform and voting rights legislation. The recent practice of filibuster abuse further exacerbates the counter-majoritarian power wielded by states with small populations but equal representation in the Senate. By requiring 60 votes to allow consideration of broadly popular legislation, including democracy-restoring legislation, the minority party has come to hold our democracy hostage. This must end.

Has the Supreme Court ever been expanded before?

Yes! The idea to add seats to the Supreme Court is not novel. The Constitution does not prescribe the number of Justices on the Supreme Court and gives Congress the power to add seats. Since the first Judiciary Act in 1789, which established six Supreme Court seats, Congress has added or removed seats to or from the Court five times. The last time it did so was in 1869 when Congress created nine seats to match the nine Circuit Courts of Appeals existing at the time. Today's Court still has nine Justices on the bench but there are now 13 federal Circuit Courts of Appeals. Court reform would not only help restore the

legitimacy of the Supreme Court, but also improve the administration of justice by again staffing each Circuit with its own designated Justice to consider emergency appeals in the first instance and to handle other matters.

Who else supports court reform?

Lambda Legal is far from alone in calling for court reform. LGBTQ+ litigating organizations GLBTQ Legal Advocates & Defenders, the National Center for Lesbian Rights, and the Transgender Law Center [joined our call for court reform](#). Additionally, organizations and civic leaders who are concerned about a variety of public issues such as abortion rights and reproductive justice, gun control, the environment, immigration, and many others [have joined the call to reform the Supreme Court](#) by expanding the number of Justices on the bench.

The writing is on the wall: protecting our democratic system of government, the rule of law, and the public welfare, requires immediate action to reel in a Court that is deeply partisan and out of control. Because the Court's new super-majority is destabilizing our legal system so rapidly — overturning decades of settled protective case law with cherry-picked historical references and disregard of obvious facts — many have called for court reform already and the list is growing.

What can I do to support court reform?

There are many things you can do to support court reform. One easy and important place to start is by helping others understand and become comfortable with the idea of court reform. You can do that by sharing this FAQ and talking to your friends and family about it.

You can also contact your members of Congress and urge them to cosponsor the [Judiciary Act of 2021](#), which would expand the number of seats on the Supreme Court to equal the number of Circuit Courts of Appeals in the federal judiciary.

And finally, sign up for Lambda Legal updates at <http://www.lambdalegal.org/signup> as we go all in to save our democracy and defend LGBTQ+ civil rights and the rights of everyone living with HIV.

Please note:

This document only provides general legal information and is not intended as legal advice. For individual legal advice, please contact an attorney.