



Biden's Supreme Court Commission: Who's On It and Why Explained

Kimberly Strawbridge

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President Joe Biden created a 36-member bipartisan commission to study potential changes to the U.S. Supreme Court, fulfilling a promise he made on the campaign trail.

The Presidential Commission on the Supreme Court of the United States will look at “the contemporary public debate for and against Supreme Court reform,” the White House said in a [statement](#) April 9.

Here's what you need to know.

1. Who is on the Commission?

The commission skews left, with progressives holding a 3:1 ratio to conservatives, according to Ilya Shapiro, of the libertarian Cato Institute think tank.

Still, the conservatives on the commission include heavy-hitters like former D.C. Circuit Judge Thomas Griffith, Harvard Law's Jack Goldsmith, and the University of Chicago's William Baude.

The panel also leans heavily on professors, with just a handful of members whose experience isn't primarily in legal or political academics. Moreover, approximately 80% are graduates or otherwise affiliated with just two schools—Harvard and Yale.

Exceptions to the academic-heavy list include former Clinton Solicitor General Walter Dellinger and now-professor David Strauss, both of whom have argued a number of cases before the court. Other non-academics are Sherrilyn Ifill of the NAACP Legal Defense & Educational Fund and former federal judges David F. Levi (E.D. Cal.), Nancy Gertner (D. Mass.), and Griffith.

2. Why a Commission?

President Joe Biden faced intense pressure during his 2020 campaign from progressives to endorse the idea of adding additional justices to the Supreme Court.

Progressives seethed as President Donald Trump added three justices, giving conservatives one of the most lopsided majorities in modern history at 6-3.

Their outrage was fueled by Mitch McConnell's refusal as Senate majority leader to let Barack Obama fill the seat of conservative icon Antonin Scalia in the last year of his presidency. McConnell then pushed through Trump nominee Amy Coney Barrett to replace liberal superstar Ruth Bader Ginsburg just before the 2020 presidential election.

Biden, the longtime chairman of the Senate Judiciary Committee that plays a starring role in Supreme Court confirmations, said he wasn't "a fan" of so-called court packing—or expanding the number of justices. But promising to study potential changes if elected by forming a commission was a classic Washington way to dodge the issue during the campaign.

3. What Will the Commission do?

The commission has a broad mandate beyond just exploring the idea of adding more justices, dismissed as "court packing" by opponents.

The panel's to-do-list includes exploring "the Court's role in the Constitutional system; the length of service and turnover of justices on the Court; the membership and size of the Court; and the Court's case selection, rules, and practices," the White House said.

Assuming that most conservative members oppose adding justices, there are also several liberals—including co-chair Bob Bauer and noted Harvard constitutional law professor Laurence Tribe—who are on record opposing the idea, wrote libertarian law professor Ilya Somin, of George Mason University. That suggests a court expansion might be dead on arrival.

But the White House also mentioned another less extreme measure: term limits. Several academics have endorsed an 18-year rotating term for justices. Set terms could help lower the stakes of each confirmation battle and make the number of appointments for each president more predictable.

The commission is likely to debate whether such a change can be done legislatively—like expanding the number of justices—or whether it would require a constitutional amendment.

Another possible change is limiting the kinds of cases that justices can hear. Advocates of "jurisdiction stripping" argue that nine unelected judges shouldn't have so much power over American life.

Importantly, however, the commission isn't expected to consider changes to other parts of the judiciary, such as adding more district court seats to understaffed courts or splitting up the mammoth U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit, which encompasses California and much of the western U.S., hears about 20% of appellate cases heard between the 13 federal circuit courts.

4. What's Been the Reception?

The commission is getting mixed reviews from both progressives and conservatives.

On the right, Somin praised the membership as "a genuinely bipartisan and cross-ideological group." Even though they make up a minority of the commission, the conservative faction "will be large enough to have some real clout," Somin said.

But Carrie Severino, of the conservative Judicial Crisis Network, tweeted that "Biden has recruited a bunch of moderate Republicans to put lipstick on the ideas of hardened radicals like

Larry Tribe,” referring to the outspoken Harvard professor. “But a pig with lipstick is still a pig,” Severino said.

And McConnell, now Senate minority leader, called the move “a direct assault on our nation’s independent judiciary” and “another sign of the far left’s influence over the Biden administration.”

The left isn’t 100% behind the commission either.

Demand Justice, a vocal progressive group behind calls to tinker with the court’s structure, acknowledged that the commission was “a major nod” to the importance of those efforts.

But a “commission made up mostly of academics, that includes far-right voices and is not tasked with making formal recommendations, is unlikely to meaningfully advance the ball on Court reform,” it said.

Another progressive group, The People’s Parity Project, took aim at the composition of the commission, noting the lack of those impacted by the court’s decisions beyond academics.

“The urgency of court reform should not be treated as an intellectual exercise, but as something that has a direct impact on the lives of real people,” it said.

5. What’s Next?

The commission will hold public hearings “to hear the views of other experts, and groups and interested individuals with varied perspectives on the issues it will be examining.”

Within 180 days of the first meeting, the commission is to submit a report on its findings.

The Biden administration didn’t provide any details on the timeline for that first meeting.