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The Supreme Court must affirm its own decision to broadcast oral arguments

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The pandemic forced many things, including our most staid institutions, to change. Even the US Supreme Court, which has long successfully fought off efforts to bring its marbled chamber into the modern era of live broadcasting, for the first time conducted oral arguments via telephone and carried live for the public to hear.

The experiment proved successful. Since May of 2020, any American with an interest in a case before the court and access to C-SPAN or an internet connection could hear the matter being argued in real time. Those cases ranged from banal interpretations of the federal tax code to major rulings on voting rights, free speech and religious liberty, and LGBTQ protections.

The Supreme Court has not yet made any announcement about whether it will continue the practice. But it has run out of excuses why it shouldn't. As public confidence in high court and the justice system as a whole wanes, the need to continue live broadcasting audio of arguments could not be stronger — not only to improve the public's understanding of how the Supreme Court works but also to increase transparency in a process that is almost entirely shielded from public view.

Calls for the court to allow cameras in the chamber to televise oral arguments and opinion announcements, led by media organizations and advocacy groups like Fix The Court, have been made for decades. And the court, in its resistance to change the way it operates in any way, right down to banning all electronic devices in its courtroom, has been steadfastly opposed.

In a 2012 C-SPAN interview, the late Justice Antonin Scalia scoffed at the idea that televising arguments would help the public better understand the court. Instead, he said, it would create media sound bites that would only serve to misrepresent it.

“What most of the American people would see would be 30-second, 15-second take-outs from our argument, and those take-outs would not be characteristic of what we do,” Scalia said. They would be uncharacteristic.”

Opponents of bipartisan legislation that would mandate cameras in the court say televised arguments will only invite showboating by the justices and attorneys, or protests and other antics from members the audience.

“I think it is better for our country if the Supreme Court is a little more boring and doesn’t have Judge Judy as the dynamic in the courtroom,” Senator Ted Cruz, the Texas Republican who has argued before the court, said of the bill. Still, the measure was advanced by the Senate Judiciary Committee last month for the first time in a decade, a sign that lawmakers across the street from the court are growing more committed to forcing transparency measures upon it.

“There is a risk that if they just keep dragging their feet, that Congress interjects and then the Court has to deal with that,” said Josh Blackman, law professor at the South Texas College of Law Houston and an adjunct scholar at the Cato Institute, who has also urged the court to keep streaming sound of arguments.

While we agree that the court’s hearings should be televised, for the more reluctant justices on the bench, choosing to make audio simulcasts permanent could serve to stem the appetite for congressional intervention. Over the years the court has, on a case-by-case basis, released same-day audio of arguments in high profile cases, as well as made audio recordings publicly available at the end of each argument week — moves that have reduced some of that pressure.

That is, until now. Keeping in place a practice that has worked for the last year and a half could benefit justices who prefer self-imposed incremental change to statutory mandates.

The fact that the court has rescinded previous pandemic-related rules — such as allowing attorneys arguing before the court to submit some filings electronically instead of the time-consuming and expensive process of filing all documents in paper form, hints at the likelihood that at least the justices themselves could return to the courthouse to meet in person this fall. We must wait to see if those arguments will be only in the presence of the lawyers arguing the cases, or if reporters or other members of the public will return to the chamber.

But even if full in-person arguments resume, it’s hard to imagine a justification to cut off audio access to the public. This is one judgment the court should affirm.