

April 2, 2023

Chair Dick Durbin
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Durbin:

We write to urge you to use your power as chair of the Senate Judiciary Committee to address the practice known as “judge shopping,” which, as you know, enables plaintiffs to handpick the judge they feel is most likely to rule in their favor. We thank you for your recent support of policy changes announced by the United States Judicial Conference to address the practice – and now, recent events demonstrate that further action is necessary.

We are deeply concerned that, after announcing efforts to combat this practice, the Judicial Conference appears to have watered down its commitment to addressing judge shopping in response to attacks from Republican senators and their allies in their right-wing legal movement. We believe that in the short-term you must use your oversight powers to ensure transparency into any next steps the Judicial Conference and individual jurisdictions take on judge shopping moving forward. In the long-term, it is clear that congressional action is needed to ensure America’s courts operate fairly and in the interests of justice.

Judge shopping has increasingly become a favorite tactic of the right-wing legal movement seeking to enact extreme policies through the courts, contrary to the values of the American people, and it must be addressed. By inventing reasons to file cases in single-judge divisions where assignment to an ideologically-motivated judge is all but assured, right-wing legal groups have successfully undermined Americans’ rights and the legitimacy of the court system. Calls for reform have been growing from members of Congress and legal experts across the ideological spectrum. Both the [Justice Department](#) and [American Bar Association](#) have expressed concern about the abuse of the practice.

In apparent recognition of the threat to the integrity of the judiciary, on March 12, the Judicial Conference of the United States [announced](#) a new policy meant to deter judge shopping and to promote “the impartiality of proceedings and bolster public confidence in the federal Judiciary.”

Despite the fact that the Judicial Conference is led by a Republican-appointed Chief Justice of the United States and the policy was announced by a Republican-appointed Court of Appeals Judge – underscoring that judge shopping is not a partisan issue – the policy came under immediate attack from the right-wing legal movement and its supporters in Congress. Senate Minority Leader [Mitch McConnell](#) (R-KY) and Sens. Cornyn (R-TX) and Tillis (R-NC) wrote a letter to judges across the country urging them to defy the policy.

Troublingly, the Judicial Conference appeared to bow down to this opposition just three days later by stressing it was merely providing optional guidance that courts could do with as they will. As one appellate judge known for his far-right views and who criticized the initial policy [told](#) *The Washington Post*: “folks appear to be backing off.” And, in fact, Republican senators

[sent](#) a follow-up letter praising the Conference's actions in this regard that stated: "It is our expectation that this is the last we hear about this issue from the Judicial Conference."

We are concerned by the precedent this sets: allowing bad faith actors to improperly distort the administration of justice and operation of the courts. Indeed, an anti-judge shopping policy that is applied inconsistently across the country has the potential to deepen, rather than solve, concerns about the partisan and ideological imbalances in the judiciary.

As you know, judge shopping is not just an obscure procedural question about how cases are assigned. Just this week the U.S. Supreme Court heard oral arguments in a legally dubious case that seeks to ban the most common form of abortion – *U.S. Food & Drug Administration v. Alliance for Hippocratic Medicine* – in perhaps the most dramatic example of judge shopping in recent years.

In that case, far-right activists went to extreme lengths to ensure Judge Matthew J. Kacsmaryk, a Trump appointee with a long record of opposition to abortion, would oversee the early stages of the suit. Now, in large part because Judge Kacsmaryk allowed the case to move forward despite substantive and procedural deficiencies, women across America must wait once again for the Supreme Court to decide whether, when, or how they can make critical decisions about their futures and health.

We urge you to use your power as chair of the Judiciary Committee to combat these attacks on the courts' legitimacy and impartiality. The judicial branch is just one of three co-equal branches of government. Congress has both the tools, and responsibility, to ensure our federal courts are operating to faithfully serve the public and interests of justice. In this case, we believe oversight and congressional legislation are needed to ensure a uniform approach that bolsters the administration of justice across the country and finally ends the abusive practice of judge shopping. We are glad to see attention to the issue in Congress, as shown by bills introduced in [both chambers](#) to combat the problem.

If the judiciary alone will not stand up to right-wing pressure and solve this problem, then Congress must act swiftly.

Sincerely,

- All* Above All Action Fund
- Alliance for Justice
- American Atheists
- American Humanist Coalition
- Citizens for Responsibility and Ethics in Washington (CREW)
- Demand Justice
- Demos Action
- End Citizens United//Let America Vote Action Fund
- Freedom From Religion Foundation
- Houston Immigration Legal Services Collaborative
- Indivisible
- League of Conservation Voters
- Mexican American Legal Defense and Education Fund (MALDEF)

- National Association of Consumer Advocates
- National Council of Jewish Women
- National Association of Social Workers
- National Partnership for Women & Families
- People for the American Way
- People's Parity Project
- Public Advocacy for Kids (PAK)
- Reproductive Freedom for All (formerly NARAL Pro-Choice America)
- Stand Up America
- Take Back the Court Action Fund