Majority Staff Report

AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT

U.S. SENATE COMMITTEE ON THE JUDICIARY
Chair Dick Durbin

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EXECUTIVE SUMMARY

A. The Senate Judiciary Committee's Investigation

On April 6, 2023, *ProPublica* published the first of several major exposés revealing extensive allegations of apparent ethical misconduct by sitting and former justices of the Supreme Court of the United States.[1] Following the publication of this article, Senator Richard J. Durbin, Chair of the Senate Judiciary Committee, again renewed his call for the Supreme Court to adopt an enforceable code of conduct[2]—a step he first advocated over 12 years ago on February 13, 2012, with then-Chairman Patrick Leahy and Senators Sheldon Whitehouse, Al Franken, and Richard Blumenthal.[3] Chair Durbin also directed his staff to begin this investigation.

This investigation has involved Committee oversight requests, open-source research, and other investigative methods. The Committee made oversight requests to the following individuals, holding companies, and organizations:

- Harlan Crow: May 8, 2023
- Holding companies controlled by Mr. Crow that own his private jet, his superyacht (the *Michaela Rose*), and Topridge Camp (a 105-acre property located on Upper St. Regis Lake, New York)
    - HRZNAR LLC: May 8, 2023
    - Rochelle Marine LTD: May 8, 2023
    - Topridge Holdings, LLC: May 8: 2023
- Leonard Leo: July 11, 2023
- Paul Singer: July 11, 2023
- Robin Arkley, II: July 11, 2023
- The Supreme Court Historical Society: July 11, 2023
- David Sokol: September 13, 2023
- Paul Anthony Novelly: September 13, 2023

[1] Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023), https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow.
[2] Office of Senator Richard J. Durbin, Press Release, Durbin Statement on Reports of Justice Clarence Thomas' Acceptance of Undisclosed Luxury Gifts from Republican Megadonor (Apr. 6, 2023), https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-reports-of-justice-clarence-thomas-acceptance-of-undisclosed-luxury-gifts-from-republican-megadonor.
[3] Letter from the Honorable Patrick Leahy, Chairman, Senate Committee on the Judiciary, *et al.* to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (Feb. 13, 2012), Appendix A, Key Document A.

The Supreme Court Historical Society complied with the Committee's requests[4] and subsequently updated its productions.[5] Mr. Novelly substantially complied with the Committee's requests.[6] Mr. Singer and Mr. Sokol made baseless arguments objecting to the Committee's legitimate oversight authority, but nevertheless partially complied with the Committee's requests.[7] Mr. Leo and Mr. Arkley rejected the Committee's requests in their entirety, relying on baseless arguments objecting to the Committee's legitimate oversight authority.[8] Mr. Crow, on behalf of himself and his holding companies, also rejected the Committee's requests and publicly made similar objections, but privately proposed a limited production to the Committee, which the Committee found insufficient.[9]

Due to the noncompliance of Mr. Leo, Mr. Arkley, Mr. Crow, and Mr. Crow's holding companies, Chair Durbin requested that the Committee provide him subpoena authority to compel their responses.[10] The day before the Committee's consideration of this subpoena

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[4] Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Federal Courts, Oversight, Agency Action, and Federal Rights Subcommittee [hereinafter Courts Subcommittee] Chair, Senate Committee on the Judiciary, on behalf of the Supreme Court Historical Society (Aug. 7, 2023), Appendix D, Key Document B; Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of the Supreme Court Historical Society (Sep. 6, 2023), Appendix D, Key Document C.

[5] Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of the Supreme Court Historical Society (Jul. 1, 2024), Appendix D, Key Document D.

[6] Letter from Dennis J. Block, Greenberg Traurig, LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Anthony Novelly (Sep. 21, 2023), Appendix H, Key Document B; Letter from Dennis J. Block, Greenberg Traurig, LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Anthony Novelly (Oct. 31, 2023), Appendix H, Key Document C.

[7] Letter from Robert K. Kelner & Nick Xenakis, Covington & Burling LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Singer (Aug. 14, 2023), Appendix F, Key Document B; Letter from Matthew Schneider, Honigman LLP, the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of David Sokol (Sep. 27, 2023), Appendix I, Key Document B.

[8] Letter from David B. Rivkin, Baker Hostetler LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Leonard Leo (Jul. 25, 2023), Appendix G, Key Document B; Letter from Samuel E. Clark, Erickson & Sederstrom PC, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Robin P. Arkley, II (Jul. 25, 2023), Appendix E, Key Document B; Letter from Samuel E. Clark, Erickson & Sederstrom PC, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Robin P. Arkley, II (Oct. 18, 2023), Appendix E, Key Document D; Letter from David B. Rivkin, Baker Hostetler LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Leonard Leo (Oct. 19, 2023), Appendix G, Key Document D.

[9] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (May 22, 2023), Appendix C, Key Document E; Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 5, 2023), Appendix C, Key Document J; Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Oct. 19, 2023), Appendix C, Key Document L.

[10] *See* Revised Agenda, Executive Business Meeting, Senate Committee on the Judiciary (Nov. 2, 2023), https://www.judiciary.senate.gov/committee-activity/hearings/10/26/2023/executive-business-meeting.

authorization, Mr. Arkley complied with the Committee's request and made a production Chair Durbin deemed sufficient.[11] On November 30, the Senate Judiciary Committee authorized Chair Durbin to issue subpoenas to Mr. Leo, Mr. Crow, and Mr. Crow's holding companies.[12] On January 4, 2024, Chair Durbin provided Mr. Leo, Mr. Crow, and Mr. Crow's holding companies a final opportunity to comply with the Committee's requests before utilizing compulsory process.[13] Following negotiations with representatives for Mr. Crow, Mr. Crow and his holding companies obliged and, following negotiation, made a production to the Committee on June 6, 2024, which Chair Durbin deemed sufficient.[14] Mr. Leo continued to reject the Committee's requests, prompting Chair Durbin to subpoena Mr. Leo for the requested documents and records on April 11, 2024.[15] Mr. Leo failed to comply with the subpoena.

This report summarizes the findings of the Senate Judiciary Committee Majority Staff to date, including the information produced by the individuals, holding companies, and organizations detailed above. It also provides historical context for alleged misconduct by Supreme Court justices over the last several decades and explains the lack of adequate guardrails to prevent and police this misconduct.

This report does not include any direct testimony from Chief Justice John Roberts, whose Court has been embroiled in an ethical crisis of its own making for well over a decade. The impetus for the February 13, 2012 letter referenced above was the 2011 Year-End Report on the Federal Judiciary, which declared that "the Court has had no reason to adopt the [Judicial Conference's] Code of Conduct through a formal resolution,"[16] despite "[t]he ethical conduct of the Supreme Court [being] under growing scrutiny" in 2011 due to "[q]uestions[] raised over Justice Clarence Thomas's appearances before Republican-backed groups and his acceptance of favors from a contributor in Texas, Harlan Crow."[17]

Twelve years have passed, and the same problem persists with some of the same offenders. But the public is now far more aware of the extent of the largesse certain justices have received and how these justices and their billionaire benefactors continue to act with impunity. On April 10, 2023, every Senate Judiciary Committee Democrat joined Chair Durbin to request that Chief Justice Roberts begin an investigation into this ethical misconduct on behalf of the

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[11] Letter from Samuel E. Clark, Erickson & Sederstrom PC, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Robin P. Arkley, II (Nov. 6, 2023), Appendix E, Key Document E.

[12] *See* Results of Executive Business Meeting, Senate Committee on the Judiciary (Nov. 30, 2023), https://www.judiciary.senate.gov/download/2023-11-30-ebm-results.

[13] Letter from the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, to Harlan Crow (Jan. 4, 2024) (on file with Committee); Letter from the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, to Leonard Leo (Jan. 4, 2024), Appendix C, Key Document M.

[14] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024), Appendix C, Key Document R.

[15] Subpoena Duces Tecum, Senate Committee on the Judiciary to Leonard Leo (Apr. 11, 2024), Appendix G, Key Document G.

[16] JOHN ROBERTS, U.S. SUP. CT., 2011 YEAR-END REPORT ON THE FEDERAL JUDICIARY 5 (2011), https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf.

[17] Emmarie Huetteman, *Breyer and Scalia Testify at Senate Judiciary Hearing,* N.Y. TIMES (Oct. 5, 2011), https://www.nytimes.com/2011/10/06/us/politics/breyer-and-scalia-testify-at-senate-hearing.html.

Court.[18] On April 20, Chair Durbin asked Chief Justice Roberts to appear before the Committee to examine ways the Court could address this persistent problem.[19] Chief Justice Roberts refused to appear before the Committee, and, rather than investigate the misconduct consuming the Court, produced a nonbinding "Statement on Ethics Principles and Practices" that the justices purported to follow.[20] Over a year and several additional exposés later, Chief Justice Roberts continues to refuse to act or to appear before Congress to take any responsibility for the impropriety he has let persist in the highest court in the land.

B. Key Findings

Chief Justice Roberts's continued unwillingness to implement the only viable solution to the Court's ethical crisis—an enforceable code of conduct—requires Congress to act to restore the public's confidence in the highest court in the land. This report and its findings make clear that passage of the *Supreme Court Ethics, Recusal, and Transparency Act*, which was reported by the Senate Judiciary Committee on September 5, 2023, is a necessary step.

FINDING 1: The Supreme Court has mired itself in an ethical crisis of its own making by failing to address justices' ethical misconduct for decades. Despite post-Watergate Congressional efforts to renew faith in all three branches of the federal government through ethics legislation, the Supreme Court has allowed a culture of misconduct to metastasize into a full-blown crisis that has driven public opinion of the Court to historic lows. Justices appointed by presidents of both parties have engaged in conduct that ranges from questionable to clearly violative of federal ethics laws, and several justices have done so consistently without suffering negative consequences.

FINDING 2: Justice Scalia accepted lavish gifts from billionaires and others with business before the Court for more than a decade. The late Justice Scalia regularly accepted luxury travel and lodging from wealthy benefactors and failed to report these gifts in his financial disclosures, in violation of federal law. He traveled on hundreds of subsidized trips, including several dozen hunting and fishing trips with prominent Republican donors and politicians, that he obfuscated by only disclosing the portions of the trips that related to his judicial duties.

FINDING 3: Justice Scalia misused the "personal hospitality" exemption to the Ethics in Government Act to hide or obscure lavish gifts. The Ethics in Government Act requires federal officials, including Supreme Court justices, to file financial disclosure reports. The law includes certain exemptions for what must be included in these reports, including a limited exemption for personal hospitality that applies only to food, lodging, or entertainment received from an individual. Justice Scalia regularly misused the personal hospitality exemption

[18] Letter from the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, *et al.* to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (Apr. 10, 2023), Appendix A, Key Document D.
[19] Letter from the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (Apr. 20, 2023), Appendix A, Key Document E.
[20] Letter from the Honorable John Roberts, Chief Justice, U.S. Supreme Court, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary (Apr. 25, 2023), Appendix A, Key Document H.

to improperly characterize travel-related gifts as reimbursements and failed to disclose transportation and trips in part or in whole.

FINDING 4: Justice Thomas has accepted lavish gifts from billionaires with business before the Court for almost his entire tenure as a justice. Since his confirmation to the Supreme Court in 1991, Justice Thomas has accepted millions of dollars in gifts from wealthy benefactors, several of whom had business before the Court, and nearly all of whom first met Thomas after he joined the Court. The number, value, and extravagance of the gifts accepted by Justice Thomas have no comparison in modern American history.

FINDING 5: Justice Thomas chose to ignore legal obligations to disclose lavish gifts after media scrutiny over his disclosures in 2004. During his early years on the Court, Justice Thomas disclosed some of the lavish gifts from billionaires and their corporate entities as required by law. However, following public reporting in 2004 about this extreme largesse, Justice Thomas stopped disclosing the vast majority of gifts he received. This change in Justice Thomas's behavior was not accompanied by any significant change in federal ethics law, and his failure to disclose gifts he received constitutes a violation of federal law.

FINDING 6: Justice Alito misused the "personal hospitality" exemption when he did not disclose gifts of transportation and lodging he received for a luxury fishing trip to Alaska in 2008. Justice Alito failed to properly report gifts of transportation and lodging he received for a 2008 luxury Alaskan fishing trip. Following investigative reporting on the trip, he wrote an opinion piece in *The Wall Street Journal* in which he defended his failure to disclose the gifts he received. Arguing that he was not required to report gifts of lodging or private jet transportation under the personal hospitality exemption, Justice Alito relied on flawed reasoning that illustrated his apparent misinterpretation of federal law and relevant rules and regulations relating to his ethics obligations. Justice Alito's failure to report gifts he accepted constitutes a violation of federal law.

FINDING 7: Individuals seeking to influence the Court have used gifts to gain private access to the justices. Gifts—particularly gifts of transportation and lodging—can be used to gain private access to Supreme Court justices. This private access can create the appearance of impropriety that justices must avoid in order to fulfill their judicial obligations. Individuals with business before the Court have given numerous gifts to organizations, political activists, and justices and their families as part of apparent efforts to gain private access to the justices. These apparent influence operations create the appearance of impropriety, even when they do not change justices' conduct.

FINDING 8: Leonard Leo has made a career of advancing corporate and conservative movement interests by facilitating lavish gifts and private access to the justices. For decades, Leonard Leo has connected conservative attorneys and activists with Republican-appointed justices and their families in an apparent effort to advance conservative causes. In addition to playing an outsized role in the selection and confirmation of every Republican-appointed justice over the past 20 years, Mr. Leo has directed money to organizations led by Justice Thomas's wife, Ginni Thomas. Mr. Leo also facilitated or participated in several undisclosed trips taken by Justices Scalia, Thomas, and Alito.

FINDING 9: The justices regularly fail to identify obvious conflicts of interest that require their recusal under federal law. Justices have repeatedly failed to identify conflicts of interest that they face in cases before the Court. These conflicts often involve the financial interests of justices, including real estate deals, publishing contracts, and stock ownership. Other conflicts are rooted in personal relationships between justices and their families and parties with interests before the Court. Contrary to their legal obligations, justices have repeatedly failed to recuse themselves from cases involving conflicts of interest due both to inadequate conflict-screening processes and willful refusal. These failures demonstrate the need for less subjectivity and more transparency in recusal determinations.

FINDING 10: Justices treat their "duty to sit" as a license for the appearance of impropriety, rather than a constraint on their conduct. Unlike district and circuit court judges, Supreme Court justices cannot be replaced by another sitting judge when they recuse, creating a prudential "duty to sit" unique to the justices. However, this "duty to sit" imposes an obligation on the justices to refrain from engaging in conduct that creates an appearance of impropriety—otherwise it can be used as a license to act with impunity. Despite this, several justices have engaged in conduct that creates the appearance of impropriety and refuse to recuse in cases involving the resulting conflicts of interest, citing their duty to sit as the justification.

FINDING 11: Justice Alito has created the appearance of impropriety in several instances that necessitate his recusal in specific cases under federal law. On several occasions, Justice Alito or his wife have engaged in conduct that created an appearance of impropriety. This included the display of flags associated with the January 6 insurrection outside their homes and his interview with an attorney who had a case pending before the Court. Despite the appearance of impropriety, Justice Alito refused to recuse himself from cases concerning the 2020 election and January 6 and the case involving the attorney who interviewed him.

FINDING 12: Justice Thomas has violated federal law on multiple occasions by refusing to recuse himself in cases where his wife's interests could be substantially affected by the outcome of the proceeding. Justice Thomas's wife, Ginni Thomas, is active politically and regularly works on issues being litigated before the Court and with the attorneys and parties who bring those issues before the Court. She was also involved in efforts to subvert the 2020 presidential election as part of the "Stop the Steal" movement, including direct engagement with Trump Administration and state legislative officials. Federal law prohibits a justice from hearing a case in which the justice's spouse has any interest that could be substantially affected by the outcome of the proceeding. Despite the interests of Ms. Thomas in every case concerning the 2020 election and the January 6 insurrection, Justice Thomas has inappropriately participated in all but one such case before the Court.

FINDING 13: The Judicial Conference has failed to enforce financial disclosure regulations and properly review financial disclosure reports of the justices. The Judicial Conference of the United States and the Administrative Office of the U.S. Courts administer a range of ethics policies for the judiciary. For decades, the Judicial Conference has failed to adequately perform financial disclosure reviews, conduct investigations, and respond appropriately to ethical misconduct complaints against the justices. Although the Judicial

Conference has the ability to hold justices accountable for their ethics violations, it has not taken any meaningful steps to do so.

FINDING 14: Having refused to address these myriad ethical issues, the Court has demonstrated its inability or unwillingness to police its own ethical conduct. The Supreme Court has refused to investigate or cooperate in investigations into reported ethical misconduct by sitting justices. Any claim that the Court can adequately police itself is belied by the fact that the Court has not taken meaningful action to address ethical misconduct and no justice has faced consequences for unethical behavior—despite dozens of credible allegations of misconduct by multiple justices over decades. An enforceable code of conduct for the Supreme Court is essential in light of the Court's failure to police itself.

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The Committee's investigation demonstrates that the Supreme Court's current approach to ethics is fundamentally flawed. These shortcomings stem from several issues: (1) the willingness of some justices to violate federal law governing ethical conduct; (2) decades of organizational failure by the Court and individual chambers to adequately prepare the justices' financial disclosures or perform routine recusal reviews on pending matters; (3) decades of organizational failure by the Judicial Conference to adequately perform financial disclosure reviews; and (4) the abject failure of the Judicial Conference to treat ethical misconduct complaints against the justices seriously and conduct any—let alone thorough—investigations.

The Supreme Court is the highest court in the land, and as the head of the federal judiciary both figuratively and literally maintains the rule of law. Our system of government requires a Court that maintains the trust of the public. Yet, the Roberts Court has lost the confidence of the public. The public's view of the Supreme Court hit a historic low in 2023 as reports of ethical misconduct by the justices were regularly published, and the Court repeatedly refused to acknowledge the problem or take meaningful steps to address it.[21] As of August 2024, a majority of the public continues to have an unfavorable view of the Court.[22] Yet, several justices reportedly continue to believe that voluntary compliance with a code of conduct with no enforcement mechanism is sufficient to address this crisis.[23] Their belief stands in stark contrast to all 50 states and the District of Columbia adopting "some mechanism for enforcing judicial codes of conduct and ethics rules" against the state supreme court justices or their equivalent.[24]

While the justices interpret the law, they are not above it. The Roberts Court has seemingly forgotten this, and the only way forward is the implementation of an enforceable code of conduct. Every day that the justices exercise the judicial power entrusted to them, they must

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[21] *Favorable views of Supreme Court edge up from 2023 but are still close to historic low*, PEW RSCH. CTR. (Aug. 8, 2024), https://www.pewresearch.org/?p=184142.
[22] *Id.*
[23] *See* Jodi Kantor & Abbie VanSickle, *Inside the Supreme Court Ethics Debate: Who Judges the Justices?*, N.Y. TIMES (Dec. 3, 2024), https://www.nytimes.com/2024/12/03/us/supreme-court-ethics-rules.html.
[24] OFFICE OF SENATOR SHELDON WHITEHOUSE, REPORT: JUDICIAL MISCONDUCT PROCEDURES IN ALL FIFTY STATES AND THE DISTRICT OF COLUMBIA 1 (Nov. 2024), https://www.whitehouse.senate.gov/wp-content/uploads/2024/12/2024-11-26-Judicial-Ethics-50-State-Survey.pdf.

conduct themselves in a manner that demonstrates they are worthy of the public's trust. They have failed to do so, and the state of the judiciary is worse for it.

REPORT

I. Modern History of Supreme Court Ethics

The modern American understanding of the ethical standard for the conduct of public officials, and the legal framework to enforce it, grew out of political scandals in the late 1960s and early 1970s. The most notable of these scandals was, of course, Watergate, which related to the Nixon Administration's involvement in the 1972 break-in at the Democratic National Committee headquarters and its subsequent efforts to conceal that involvement. Additionally, there were judicial scandals involving misconduct that likewise informed the legal framework imposed on justices and judges and helped illustrate clear red lines that should not be crossed.

A. The Resignation of Associate Justice Abe Fortas

In May 1969, Associate Justice Abe Fortas resigned from the Supreme Court following allegations of ethical impropriety. Fortas had served on the Court since 1965, when he was confirmed by the Senate by voice vote after President Lyndon Johnson nominated him to succeed Justice Arthur Goldberg. Fortas and Johnson had maintained a close relationship going back decades, and Fortas continued to advise Johnson on a variety of matters even after his appointment to the Court. In June 1968, Johnson nominated Fortas to replace Earl Warren as Chief Justice of the United States.

The nomination was controversial, due both to Fortas's liberal jurisprudence and his close relationship with Johnson. During the course of his nomination, it was revealed that Fortas had accepted $15,000 for teaching a summer seminar at American University.[25] The arrangement was coordinated by Fortas's former law partner, Paul Porter, and the funds were provided by five business executives with corporate interests that could potentially come before the Court.[26] The teaching payment constituted nearly 40 percent of Fortas's $39,500 annual salary as a Supreme Court justice.[27] Although his nomination was favorably reported by the Senate Judiciary Committee in September 1968, a subsequent failed cloture vote by the full Senate made it clear that Fortas did not have sufficient support to be confirmed, and Johnson withdrew the nomination. Warren Burger later replaced Earl Warren as Chief Justice in June 1969.

In May 1969, *Life* magazine published a story detailing an arrangement Fortas had entered into with financier Louis Wolfson.[28] Fortas had received a $20,000 check in January 1966 from the philanthropic Wolfson Family Foundation in exchange for advising the foundation,[29] which would be the equivalent of $197,823.90 in purchasing power today.[30] Under the terms of the arrangement, Fortas would also receive a $20,000 retainer from the foundation every subsequent year, with Fortas's wife receiving the $20,000 annual payment until her death

[25] BRUCE ALLEN MURPHY, FORTAS: THE RISE AND RUIN OF A SUPREME COURT JUSTICE 498–502 (1988).
[26] *Id.* at 499–500.
[27] *See* ROBERT SHOGAN, A QUESTION OF JUDGMENT 192 (1972).
[28] *Id.* at 234–235.
[29] *Id.* at 196.
[30] According to the Bureau of Labor Statistics. *See* CPI Inflation Calculator from January 1966 to July 2024, U.S. BUREAU OF LABOR STATISTICS, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=20%2C000.00&year1=196601&year2=202407.

if Fortas predeceased her.[31] The payments to Fortas were not wholly unique or unprecedented; Fortas's fellow Associate Justice William O. Douglas received $12,000 a year from another charitable organization.[32] However, Fortas's arrangement was complicated by the fact that Wolfson and his companies had been under investigation for several years by the U.S. Securities and Exchange Commission (SEC) for securities violations. Wolfson had approached Fortas's law firm in June 1965 for help with his legal issues.[33] Shortly thereafter, Wolfson encouraged Fortas to accept his Supreme Court nomination and offered to financially support Fortas if he was confirmed to the Court.[34] In 1966, the SEC referred multiple matters involving Wolfson to the Department of Justice for prosecution, and Wolfson was indicted and convicted on multiple charges between 1966 and 1968. Wolfson petitioned the Supreme Court for certiorari to review one of his convictions, but the Court rejected his petition in April 1969.[35] Fortas recused himself from the certiorari decision without explanation, although he generally recused himself from matters involving clients of his former law firm.[36]

Fortas had stopped advising Wolfson and the Wolfson Family Foundation in June 1966, and in December 1966, he returned the $20,000 payment he had received earlier that year.[37] Fortas did not pay income tax on the $20,000, and in late 1968, he explained to then-Attorney General Ramsey Clark that he had not paid taxes on the $20,000 because he had received and returned the payment within the calendar year.[38] In early 1969, the Nixon Administration's Department of Justice launched an investigation of Fortas in light of the possibility that he had practiced law on Wolfson's behalf while serving as a justice or attempted to influence the prosecution of Wolfson.[39]

Life published its story on the $20,000 check Fortas had received from the Wolfson Family Foundation on May 4, 1969.[40] On the same day the story was published, Fortas released a statement in response to the allegations, writing that he had returned the payment and denying that he had advised Wolfson or his associates after joining the Court.[41] The Justice Department continued to investigate Fortas and Wolfson, and Attorney General John Mitchell met with Chief Justice Warren on May 7 to discuss the investigation.[42] Between May 5 and May 14, members of Congress of both parties called for Fortas's resignation.[43] Fortas resigned from the Court on May 14. He remains the only Supreme Court justice to have resigned following allegations of impropriety.[44]

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[31] SHOGAN, *supra* note 27, at 195.
[32] *Id.* at 193–194.
[33] Bob Woodward, *Fortas Tie to Wolfson Is Detailed*, WASH. POST (Jan. 22, 1977), https://wapo.st/4f6mokI.
[34] SHOGAN, *supra* note 27, at 191–192.
[35] Alan M. Weinberger, *What's in a Name?—The Tale of Louis Wolfson's Affirmed*, 39 HOFSTRA L. REV. 645, 671 (2011).
[36] SHOGAN, *supra* note 27, at 224.
[37] *Id.* at 211–212.
[38] MURPHY, *supra* note 25, at 547; SHOGAN, *supra* note 27, at 218.
[39] SHOGAN, *supra* note 27, at 228.
[40] *Id.* at 235.
[41] Statement from Abe Fortas (May 4, 1969), https://www.nytimes.com/1969/05/05/archives/fortass-statement-on-article-in-life.html.
[42] SHOGAN, *supra* note 27, at 246, 248–249.
[43] *Id.* at 238–242, 256–257.
[44] *See id.* at 7.

B. Post-Watergate Government Ethics Movement

In the decade that followed Fortas's resignation, and particularly in response to the Watergate scandal, Congress passed major reforms addressing government ethics and transparency, campaign finance, foreign bribery, governmental abuses of power, and exercises of presidential power. Key government ethics and transparency legislation included: the 1974 amendments to the Freedom of Information Act (FOIA); the Government in the Sunshine Act of 1976; the Inspector General Act of 1978; the Civil Service Reform Act of 1978; the Presidential Records Act of 1978; and the Ethics in Government Act of 1978 (EIGA).[45]

The EIGA was of particular significance for Supreme Court justices and other judicial officers and employees. One of the EIGA's stated purposes was "to preserve and promote the integrity of public officials and institutions."[46] The EIGA is discussed in greater detail in Section II.B.1, but the legislation notably established financial disclosure reporting requirements for many government officials and employees. Disclosure requirements and gift rules for individuals vary in part depending on the branch of government in which they work. Judicial officers, including Supreme Court justices, are subject to the EIGA and regulations administered by the Judicial Conference of the United States, as discussed in Section II.C; members of Congress and their staff are subject to the EIGA and rules administered by the House and Senate Ethics Committees, as well as the Office of Congressional Ethics in the House. As a result of the EIGA, Supreme Court justices, federal judges, and other covered filers are required to file publicly available financial disclosure statements that report income, gifts, and reimbursements, among other reportable items.

C. Modern Judicial Impeachment

All federal judges, including the justices of the Supreme Court, "hold their office during good behavior."[47] This protection means that federal judges are free from removal except through impeachment and conviction.[48] Ten judicial impeachments occurred between the nation's founding and 1936. There was then a 50-year gap in judicial impeachments until the post-Watergate government ethics movement.[49] Since 1986, the House of Representatives has impeached five federal judges and the Senate has convicted four; one resigned from office prior to his Senate trial, leading to the dismissal of the case.[50]

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[45] Sam Berger & Alex Tausanovitch, *Lessons from Watergate: Preparing for Post-Trump Reforms*, CTR. FOR AMER. PROG. (Jul. 30, 2019), https://www.americanprogress.org/article/lessons-from-watergate/.
[46] Pub. L. 95-521 (Oct. 26, 1978).
[47] U.S. Const. Art. III, § 1, cl. 10.
[48] As a matter of historical practice, Congress has used impeachment as the mechanism to remove Article III judges for misconduct, but there is some debate on whether the Constitution permits other forms of removal for judges, who serve "during good behavior." *See, e.g.*, Saikrishna Prakash & Steven D. Smith, *How to Remove a Federal Judge*, 116 YALE L. J. 72 (2016).
[49] *About Impeachment | Senate Trials*, U.S. SENATE, https://www.senate.gov/about/powers-procedures/impeachment/impeachment-list.htm.
[50] *Id.*

1. Harry E. Claiborne

In 1984, district judge Harry E. Claiborne was convicted in federal court of falsifying his income tax returns. He was sentenced to two years in prison, but he did not resign his seat and he continued to collect his judicial salary.[51] The House unanimously voted to impeach Claiborne in July 1986. The Senate created a 12-member panel to hear evidence in the impeachment trial, and the panel reported its findings to the full Senate in October 1986. Later that month, the Senate voted to convict Claiborne, and he was removed from his judicial office.[52]

2. Alcee L. Hastings

In 1981, district judge Alcee L. Hastings was indicted on conspiracy and obstruction of justice charges for soliciting a $150,000 bribe in return for reducing the sentences of two convicted felons.[53] Hastings was acquitted in federal court in 1983 and continued to serve as a district judge. Subsequent investigations by a special committee of the Eleventh Circuit Court of Appeals led to the Judicial Conference informing the House of Representatives in March 1987 that Hastings should be impeached and removed from office.[54] In August 1988, the House overwhelmingly voted to approve 17 articles of impeachment against Hastings. The Senate again created a 12-member committee to hear evidence in the impeachment trial, and the committee reported its findings to the full Senate in October 1989. The Senate voted to convict Hastings later that month, and he was removed from his judicial office.[55] However, the Senate did not vote to disqualify Hastings from holding future office, and he later served as a member of the House of Representatives from 1993 until his death in 2021.

3. Walter L. Nixon

In 1986, district judge Walter L. Nixon was convicted in federal court of making false statements before a federal grand jury.[56] He was sentenced to five years in prison, but he did not resign his seat and continued to collect his judicial salary. Following his conviction, the Judicial Conference forwarded a recommendation of impeachment to the House of Representatives.[57] In May 1989, the House unanimously voted to impeach Nixon. In November 1989, the Senate voted to convict Nixon, and he was removed from his judicial office.

4. Samuel B. Kent

In February 2009, district judge Samuel B. Kent pleaded guilty to obstruction of justice charges after sexually abusing two female employees and lying to investigators.[58] In May 2009, Kent was sentenced to 33 months in prison. The House voted to impeach Kent in June 2009.

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[51] *Impeachment Trial of Judge Harry E. Claiborne, 1986*, U.S. SENATE, https://www.senate.gov/about/powers-procedures/impeachment/impeachment-claiborne.htm.
[52] *Id.*
[53] *Id*.
[54] *Id.*
[55] *Id.*
[56] *Walter L. Nixon*, LIBRARY OF CONG., https://guides.loc.gov/federal-impeachment/walter-nixon.
[57] *Id.*
[58] *Samuel B. Kent*, LIBRARY OF CONG., https://guides.loc.gov/federal-impeachment/samuel-kent.

Kent resigned from the bench later that month, thereby avoiding a Senate impeachment trial.[59] The articles of impeachment were dismissed in July 2009.

5. Thomas Porteous, Jr.

In June 2008, the Judicial Conference informed the House of Representatives that consideration of impeachment of district judge G. Thomas Porteous, Jr. was warranted.[60] The certificate from the Judicial Conference noted substantial evidence that Porteous repeatedly committed perjury by signing false financial disclosure forms under oath and presided over litigation in violation of the federal recusal statute and ethical canons, among other instances of misconduct both before and during his tenure as a federal judge. In March 2010, the House unanimously voted to impeach Porteous. The Senate voted to convict Porteous in December 2010. He was removed from office and disqualified from holding future federal offices.[61]

6. Joshua Michael Kindred

On May 23, 2024, the Judicial Council of the Ninth Circuit filed a judicial misconduct order against Judge Michael Kindred of the United States District Court for the District of Alaska for creating a hostile work environment for his law clerks by "engaging in unwanted, offensive, and abusive conduct," for "having an inappropriately sexualized relationship with one of his law clerks during her clerkship and…while she practiced as an Assistant United States Attorney in the District of Alaska," and for "deliberately" lying "to the Chief Judge, the Special Committee, and the [Judicial] Council" during his misconduct proceedings.[62] The Ninth Circuit Judicial Council certified to the Judicial Conference of the United States that Judge Kindred "engaged in conduct that might constitute one or more grounds for impeachment."[63] Judge Kindred resigned when the internal investigation became public.[64] On August 22, the Judicial Conference's Committee on Judicial Conduct and Disability affirmed the Ninth Circuit Judicial Council's order.[65] On September 12, 2024, the Judicial Conference informed the House of Representatives that consideration of impeachment of Judge Kindred was warranted.[66]

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[59] *Id.*
[60] *G. Thomas Porteous, Jr.*, LIBRARY OF CONG., https://guides.loc.gov/federal-impeachment/thomas-porteous.
[61] *ArtII.S4.4.10 Judicial Impeachments*, U.S. CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S4-4-10/ALDE_00000697/.
[62] *In re Complaint of Judicial Misconduct*, No. 22-9012 (Jud. Council 9th Cir. 2024).
[63] *Id.* at 2.
[64] Tobi Raji, *Trump-appointed judge in Alaska resigns over sexual misconduct*, WASH. POST (Jul. 8, 2024), https://www.washingtonpost.com/national-security/2024/07/08/alaska-judge-joshua-kindred-resign-misconduct/.
[65] *In re Complaint of Judicial Misconduct*, C.C.D. No. 24-02 (U.S. Jud. Conf. 2024).
[66] Letter from the Honorable Robert J. Conrad, Jr., Secretary, Jud. Conf. of the U.S., to the Honorable Mike Johnson, Speaker, U.S. House of Representatives (Sep. 12, 2024) (enclosed with certificate executed September 10, 2024 certifying the Judicial Conference's determination that impeachment might be warranted), Appendix A, Key Document Q.

II. Applicable Legal Requirements

A. Constitutional Law Governing Judicial Ethics

1. *Foreign Emoluments Clause* (U.S. Const. Art. I, § 9, cl. 8)

The Foreign Emoluments Clause of the U.S. Constitution provides that "no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."[67] The prevailing understanding is that the Foreign Emoluments Clause applies to federal officeholders, including Supreme Court justices.[68] The Supreme Court's Commentary to its *Code of Conduct*, discussed further in Section III.B, states that the justices comply with the U.S. Constitution, including the Foreign Emoluments Clause.[69]

B. Statutes Governing Judicial Ethics

Several provisions of federal law govern ethical requirements for Supreme Court justices, including the below statutory provisions. This section provides an overview of the requirements concerning financial and gift disclosures, financial and gift restrictions, and recusal standards. It also summarizes the role the Judicial Conference of the United States plays in administering the disclosure system, addressing noncompliance with federal law, and referring misconduct to the U.S. Department of Justice.

1. *Ethics in Government Act* (5 U.S.C. §§ 13101-13111, 13141-13145)

The Ethics in Government Act of 1978 (EIGA) requires certain federal officials, including Supreme Court justices, to file financial disclosure reports.[70] The EIGA further specifies that, for judicial officers, the statute is subject to the rules and regulations of, and administered by, the Judicial Conference of the United States.[71] Among other reporting requirements, the EIGA requires covered individuals to report gifts worth more than a minimal value.[72] The reporting threshold for gifts is established under the EIGA, which in turn ties the threshold to a "minimal value" threshold for foreign gifts established by the Foreign Gifts and Decorations Act or a lower-value amount set by an employing agency.[73]

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[67] U.S. Const. Art. I, § 9, cl. 8.
[68] KEVIN J. HICKEY & MICHAEL A. FOSTER, CONG. RSCH. SERV., IF11086, THE EMOLUMENTS CLAUSES OF THE U.S. CONSTITUTION 1 (Jan. 27, 2021), https://crsreports.congress.gov/product/pdf/IF/IF11086.
[69] CODE OF CONDUCT FOR JUSTICES OF THE SUP. CT. OF THE U.S. 13 (Nov. 13, 2023) [hereinafter *Supreme Court Code of Conduct*], https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.
[70] 5 U.S.C. app., § 101, 109.
[71] 5 U.S.C. app., § 503.
[72] 5 U.S.C. app., § 102.
[73] 5 U.S.C. app., § 102(a)(2)(A); 5 U.S.C. § 7342(a)(5). The amount for the "minimal value" is set by the General Services Administration in consultation with the Secretary of State, although employing agencies—in this instance, the Administrative Office of the U.S. Courts (which is supervised by the Judicial Conference)—may define a lower minimal value.

In April 2023, the Court noted that the justices "comply with the substance" of the Judicial Conference's regulations for lower court federal judges relating to outside earned income, honoraria, and employment.[74] The Supreme Court's Commentary to its *Code of Conduct* states that the justices comply with the EIGA.[75] Although Supreme Court justices are explicitly covered by the EIGA, the EIGA is subject to the rules and regulations of the Judicial Conference and Chief Justice Roberts, among others, has questioned whether the Judicial Conference's regulations apply to the Supreme Court. For example, in his 2011 Year-End Report, Roberts wrote that "[b]ecause the Judicial Conference is an instrument for the management of the lower federal courts, its committees have no mandate to prescribe rules or standards for any other body."[76]

2. *Stop Trading on Congressional Knowledge Act* (Pub. L. 112-105, §§ 12, 17, 126 Stat. 291) and *Courthouse Ethics and Transparency Act* (Pub. L. 117-125, 136 Stat. 1205)

The bipartisan Stop Trading on Congressional Knowledge (STOCK) Act of 2012, which passed both houses of the 112th Congress with overwhelming bipartisan support,[77] amended the EIGA to require covered filers to report securities transactions that exceed $1,000 within 45 days of the transaction.[78] In May 2022, the Courthouse Ethics and Transparency Act extended these requirements to judicial officers, including Supreme Court justices, lower court federal judges, bankruptcy judges, and U.S. magistrate judges. [79] This legislation, led by Senators John Cornyn and Chris Coons in the 117th Congress, also passed both houses with overwhelming bipartisan support.[80] The STOCK Act also included provisions that addressed judicial officers' purchases of initial public offering (IPO) stock and created filing requirements for judicial officers negotiating post-judicial employment. In April 2023, the Court noted that the justices follow the statute.[81] The Supreme Court's Commentary to its *Code of Conduct* likewise states that the justices comply with the statute.[82]

The Courthouse Ethics and Transparency Act also amended the EIGA to require the online publication of judicial officers' financial disclosure reports. Supreme Court justices, lower court federal judges, bankruptcy judges, and U.S. magistrate judges are all covered by the law.

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[74] Attachment to Letter from the Honorable John Roberts, Chief Justice, U.S. Supreme Court, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary 5 (Apr. 25, 2023) [hereinafter *Statement on Ethics*] at 4, https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20Chairman%20Durbin%2004.25.2023.pdf.
[75] *Supreme Court Code of Conduct* at 13.
[76] ROBERTS, *supra* note 16, at 4.
[77] S. 2038, https://www.congress.gov/bill/112th-congress/senate-bill/2038.
[78] Pub. L. 112-105, §§ 12, 17, 126 Stat. 291.
[79] Pub. L. 117-125, 136 Stat. 1205.
[80] S. 3059, https://www.congress.gov/bill/117th-congress/senate-bill/3059.
[81] *Statement on Ethics* at 5.
[82] *Supreme Court Code of Conduct* at 13.

3. *Federal Recusal Statute* (28 U.S.C. § 455)

The federal recusal statute requires Supreme Court justices and lower court judges to recuse themselves from cases under certain circumstances.[83] The statute establishes that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."[84] The statute also requires justices and judges to disqualify themselves under other circumstances, including when they have "a personal bias or prejudice concerning a party," "personal knowledge of disputed evidentiary facts concerning the proceeding," prior engagement with the case while in private practice or in government, a financial interest in the case, or significant personal connections to a case.[85] The statute further requires judges to inform themselves about their financial interests, defines certain terms, and outlines narrow exceptions to recusal requirements.[86]

In April 2023, the Court's *Statement on Ethics* quoted Chief Justice Roberts in noting that "the limits of Congress's power to require recusal have never been tested. The Justices follow the same general principles as other federal judges, but the application of those principles can differ due to the unique circumstances of the Supreme Court."[87] The Supreme Court's Commentary to its *Code of Conduct* states that the justices comply with the federal recusal statute.[88]

4. *Federal Gift Statute* (5 U.S.C. § 7353)

The federal gift statute prohibits various government officers and employees from soliciting or accepting "anything of value from a person . . . seeking official action from [or] doing business with . . . the individual's employing entity; or . . . whose interests may be substantially affected by the performance or nonperformance of the individual's official duties."[89] The statute defines "officers and employees" as "an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government," which facially includes the justices.[90] The Supreme Court's Commentary to its *Code of Conduct* states that the justices comply with the federal gift statute.[91]

5. *Foreign Gifts and Decorations Act* (5 U.S.C. § 7342)

The Foreign Gifts and Decorations Act generally prohibits various government officials and employees from accepting gifts of more than minimal value from a foreign government.[92]

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[83] 28 U.S.C. §455.
[84] 28 U.S.C. §455(a).
[85] 28 U.S.C. §455(b).
[86] 28 U.S.C. §455(c)–(f).
[87] *Statement on Ethics* at 5 (quoting ROBERTS, *supra* note 16, at 7).
[88] *Supreme Court Code of Conduct* at 13.
[89] 5 U.S.C. § 7353(a).
[90] 5 U.S.C. § 7353(d)(2).
[91] *Supreme Court Code of Conduct* at 13.
[92] 5 U.S.C. § 7342.

The act also imposes certain reporting requirements for accepting gifts.[93] Supreme Court justices are included among the employees covered by the act.[94]

In April 2023, the Court noted that the justices "resolved to comply" with the statute.[95] The Supreme Court's Commentary to its *Code of Conduct* states that the justices comply with the statute.[96]

6. *Honorary Club Membership Restriction* (Pub. L. 110-402, § 2(b), 122 Stat. 4255)

Since 2008, federal judicial officers have been statutorily prohibited from accepting a gift of an honorary club membership valued at over $50 per calendar year.[97] Supreme Court justices are included among the judicial officers covered by the statute.[98] In April 2023, the Court noted that the justices comply with the statute.[99] The Supreme Court's Commentary to its *Code of Conduct* states that the justices comply with the statute.[100]

C. The Role of the Judicial Conference

Congress created the Conference of Senior Circuit Judges in 1922, to "serve as the principal policymaking body concerned with the administration of the United States Courts."[101] Congress changed the organization's name to the Judicial Conference of the United States in 1948. The presiding officer of the Judicial Conference is the Chief Justice of the United States.[102] Other members of the Judicial Conference include the chief judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit. The Judicial Conference's duties include: surveying the conditions of business in federal courts; preparing plans for the assignment of judges; submitting suggestions to the federal courts; reviewing conduct and orders filed under 28 U.S.C. §§351–364; and studying the operation and effect of rules of practice and procedure.[103] The Judicial Conference also supervises and directs the Director of the Administrative Office of the United States Courts, as established under 28 U.S.C. § 604.

The Judicial Conference operates through a network of committees that focus on specific topics. There are currently 20 committees, which derive their jurisdiction from the Judicial Conference and the Chief Justice. The Chief Justice is authorized to make committee

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[93] 5 U.S.C. § 7342(c).
[94] 5 U.S.C. §§ 7342(a)(1)(A); 2105(a)(2).
[95] *Statement on Ethics* at 4.
[96] *Supreme Court Code of Conduct* at 13.
[97] Pub. L. 110-402, § 2(b), 122 Stat. 4255.
[98] Pub. L. 110-402, § 2(a)(2), 122 Stat. 4255; 5 U.S.C. app., § 109(10).
[99] *Statement on Ethics* at 5.
[100] *Supreme Court Code of Conduct* at 13.
[101] *FAQs: The Judicial Conference*, ADMIN OFF. OF THE U.S. COURTS, https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference/faqs-judicial.
[102] *About the Judicial Conference*, ADMIN OFF. OF THE U.S. COURTS, https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference.
[103] *FAQs: The Judicial Conference*, ADMIN OFF. OF THE U.S. COURTS, https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference/faqs-judicial.

appointments. The committees review issues within their established jurisdictions and make policy recommendations to the Judicial Conference.[104]

The EIGA authorizes the Judicial Conference to administer the financial disclosure requirements for judicial officers and employees. It further authorizes the Judicial Conference to delegate any authority it has under the EIGA to an ethics committee established by the Judicial Conference.[105] In 1990, the Judicial Conference delegated its authority under the EIGA to what became the Committee on Financial Disclosure.[106]

The Administrative Office of the U.S. Courts (AO) is the agency within the judicial branch that provides support services to federal courts and the Judicial Conference. The Judicial Conference's committees advise the AO, and the AO is responsible for carrying out Judicial Conference policies. Together, the Judicial Conference's Committee on Financial Disclosure and the AO administer a range of ethics policies. One important activity is publishing and updating the *Guide to Judiciary Policy*, which covers ethics policies and guidance, among other subjects. These ethics policies include codes of conduct for federal judges and judicial employees; regulations on gifts, outside earned income, honoraria, and employment; judiciary financial disclosure regulations; and mandatory conflict-screening policies.

The Committee on Financial Disclosure is responsible for reviewing judiciary financial disclosure reports. Reviewing officials are empowered to request additional information or take action to bring reports and filers into compliance with applicable laws and regulations.[107] The EIGA authorizes the Committee on Financial Disclosure to refer to the U.S. Attorney General the name of any individual that the Committee has reasonable cause to believe has willfully failed to file a report, willfully falsified a report, or willfully failed to file information required to be reported.[108]

D. The Ethical Canons of the Code of Conduct for United States Judges

The *Code of Conduct for U.S. Judges* governs all federal judges with the exception of Supreme Court justices. The *Code of Conduct for U.S. Judges* is "a set of ethical principles and guidelines adopted by the Judicial Conference of the United States" that "provides guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even its appearance."[109] The *Code of Conduct for U.S. Judges* consists of five ethical canons. Those canons are:

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[104] *About the Judicial Conference*, ADMIN OFF. OF THE U.S. COURTS, https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference.
[105] 5 U.S.C. app., § 111.
[106] *Report of the Proceedings of the Judicial Conference of the United States* (Sep. 12, 2017) at 13, https://www.uscourts.gov/sites/default/files/17-sep_final_0.pdf.
[107] 2 GUIDE TO JUDICIARY POLICY, pt. D, § 420 (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.
[108] 2 GUIDE TO JUDICIARY POLICY, pt. D, § 620 (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf; 5 U.S.C. app., § 104(b).
[109] *Ethics Policies*, ADMIN OFF. OF THE U.S. COURTS, https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies.

- Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary;
- Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities;
- Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently;
- Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office; and
- Canon 5: A Judge Should Refrain From Political Activity.

Each of the canons contains more detailed provisions and commentary on the canon. Canon 1 emphasizes the importance of judges' conduct—and the provisions of the *Code of Conduct for U.S. Judges*—in preserving the integrity and independence of the judiciary.[110]

Canon 2 provides that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[111] It further provides that "[a] judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment" and "[a] judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge."[112] Canon 2 also provides that judges should not voluntarily testify as character witnesses or "hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin."[113]

Canon 3 addresses the duties of judicial office and professional standards and responsibilities. It also provides that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" and lists various instances which merit disqualification consistent with the federal recusal statute.

Canon 4 addresses engagement in extrajudicial activities and certain reimbursement and financial disclosure restrictions.[114]

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[110] CODE OF CONDUCT FOR U.S. JUDGES Canon 1 (JUD. CONF. OF THE U.S. Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

[111] CODE OF CONDUCT FOR U.S. JUDGES Canon 2A (JUD. CONF. OF THE U.S. Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

[112] CODE OF CONDUCT FOR U.S. JUDGES Canon 2B (JUD. CONF. OF THE U.S. Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

[113] CODE OF CONDUCT FOR U.S. JUDGES Canon 2B–C (JUD. CONF. OF THE U.S. Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

[114] CODE OF CONDUCT FOR U.S. JUDGES Canon 4 (JUD. CONF. OF THE U.S. Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf

Canon 5 generally prohibits political activity and provides specific guidance for certain circumstances.[115]

Judges who violate the *Code of Conduct for U.S. Judges* risk judicial discipline (such as censure, reprimand, or temporary prohibition from receiving new cases) or disqualification from an ongoing case.[116] Although the *Code of Conduct for U.S. Judges* applies only to lower court federal judges, in April 2023, the Supreme Court noted that the Court "nevertheless takes guidance from the Code."[117] The Supreme Court's November 2023 Commentary to its own *Supreme Court Code of Conduct* states that the Court's *Code of Conduct* "is substantially derived from the Code of Conduct for U.S. Judges, but adapted to the unique institutional setting of the Supreme Court."[118]

[115] CODE OF CONDUCT FOR U.S. JUDGES Canon 5 (JUD. CONF. OF THE U.S. Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf

[116] *See, e.g.*, JOANNA R. LAMPE, CONG. RSCH. SERV., LSB10255, A CODE OF CONDUCT FOR THE SUPREME COURT? LEGAL QUESTIONS AND CONSIDERATIONS 2 (Apr. 6, 2022), https://crsreports.congress.gov/product/pdf/LSB/LSB10255/3; 28 U.S.C. § 354.

[117] *Statement on Ethics* at 5.

[118] *Supreme Court Code of Conduct* at 10.

III. The U.S. Supreme Court's Statement on Ethics and Code of Conduct

The Supreme Court has never had an enforceable code of conduct. In recent years, the Court has publicly released documents related to ethics for Supreme Court justices, and the justices have purported to subscribe to certain ethical obligations. This section summarizes those documents and obligations—as well as their shortcomings. The unavoidable conclusion is that the Court's recent efforts to address its ethical crisis are plainly inadequate.

A. *Statement on Ethics Principles and Practices*

In his April 2023 letter to Chair Durbin, Chief Justice Roberts provided the Supreme Court's *Statement on Ethics Principles and Practices* (*Statement on Ethics*) to which all current Supreme Court justices purported to subscribe.[119] The *Statement on Ethics* provided history and background of the Court's approach to ethics and noted how former and current justices had agreed to comply with Judicial Conference regulations applicable to lower court judges, including financial disclosure requirements and gift rules. The *Statement on Ethics* also briefly addressed certain ethics issues, such as income restrictions, extrajudicial activities, appearances of impropriety, and recusal policies for justices. Notably, the *Statement on Ethics* stated that "[i]ndividual Justices, rather than the Court, decide recusal issues."[120]

B. *Code of Conduct for Justices of the Supreme Court of the United States*

On November 13, 2023, the Supreme Court announced that it had promulgated a *Code of Conduct for Justices of the Supreme Court of the United States* (*Supreme Court Code of Conduct*). The *Supreme Court Code of Conduct* effectively supersedes the Court's earlier *Statement on Ethics*. Despite the Court's historic and ongoing ethical failures, the Court acknowledges in its accompanying *Statement of the Court Regarding the Code of Conduct* that "[f]or the most part these rules and principles are not new."[121]

Large sections of the *Supreme Court Code of Conduct* and its accompanying Commentary adopt language from the *Code of Conduct for U.S. Judges* and the Court's earlier *Statement on Ethics*, particularly in its Commentary on financial disclosure requirements, engagement in extrajudicial activity, and appearances of impropriety. However, the *Supreme Court Code of Conduct* departs from the *Statement on Ethics* in two ways. First, the *Supreme Court Code of Conduct* includes new prohibitions on judges speaking at certain events. Specifically, it prohibits a justice from speaking at or participating in events that promote commercial products or services, with the exception of events related to books authored by a justice; and prohibits a justice from speaking at or participating in events with groups that have substantial financial interests in cases before the Court or likely to come before the Court.[122] Relatedly, the *Supreme Court Code of Conduct* and its Commentary clarify that a justice generally may not use court resources for unofficial purposes.[123]

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[119] *See Statement on Ethics*.
[120] *Statement on Ethics* at 2.
[121] *Supreme Court Code of Conduct*.
[122] *Id.* at 4–5.
[123] *Id.* at 8, 12.

Second, the *Supreme Court Code of Conduct* includes a number of canons, or principles, modeled primarily after the *Code of Conduct for U.S. Judges*, rather than the *Statement on Ethics*, including: (1) upholding the integrity and independence of the judiciary; (2) avoiding impropriety and the appearance of impropriety; (3) performing the duties of office; (4) engaging in extrajudicial activities; and (5) refraining from political activity.

However, the *Supreme Court Code of Conduct* departs from the *Code of Conduct for U.S. Judges* in several key ways. Most significantly, the Court states that the *Supreme Court Code of Conduct* "does not adopt the extensive commentary from the lower court Code [of Conduct for U.S. Judges], much of which is inapplicable."[124] Importantly, this commentary effectively ties the *Code of Conduct for U.S. Judges* to statutory provisions that create processes for complaints and disciplinary actions against lower court judges. In contrast, the *Supreme Court Code of Conduct* and its Commentary do not tie the *Supreme Court Code of Conduct* to statutory provisions to which the justices are subject. The *Supreme Court Code of Conduct* and its Commentary also do not subject the justices to enforcement mechanisms that apply to lower court judges, and the *Supreme Court Code of Conduct* does not establish any enforcement mechanism of its own. Rather, the Supreme Court's Commentary to its *Code of Conduct* simply states that: "the Justices also comply with:

- "The Constitution of the United States, see, e.g., U.S. Const. Art. I, § 9, cl. 8 (foreign emoluments clause); Amdt. 5 (due process clause).

- "Current laws relating to judicial ethics including, but not limited to 28 U.S.C. §§ 455, 2109; the Ethics in Government Act, 5 U.S.C. §§ 13101 – 13111, 13141 – 13145; the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342; Pub. L. 110-402, § 2(b), 122 Stat. 4255; and the Stop Trading on Congressional Knowledge Act of 2012, Pub. L. 112-105, §§ 12, 17, 126 Stat. 303; and

- "Current Judicial Conference Regulations on: Gifts; Foreign Gifts and Decorations; Outside Earned Income, Honoraria, and Employment; and Financial Disclosure."[125]

This lack of enforcement mechanisms is a common failure of the *Supreme Court Code of Conduct*. For example, although it proscribes the appearance of impropriety, it continues to allow individual justices to determine if such an appearance has been created. Similarly, recusal decisions are left to the discretion of individual justices.[126] Although the text of the *Supreme Court Code of Conduct* largely mirrors the *Code of Conduct for U.S. Judges*, the Court's Commentary emphasizes a justice's duty to sit and highlights the risks of recusal—namely, that a disqualified justice cannot be replaced by another judge. While this is a legitimate concern, the risk of excessive recusals could be mitigated by justices avoiding conduct that requires recusal and by enacting certain recusal review processes.

[124] *Id.* at 10.
[125] *Id.* at 13.
[126] *Id.* at 11.

The *Supreme Court Code of Conduct* also departs from both the *Code of Conduct for U.S. Judges* and the *Statement on Ethics* in its Commentary on amicus briefs. Neither the *Code of Conduct for U.S. Judges* nor the *Statement on Ethics* addressed amicus briefs. In contrast, the *Supreme Court Code of Conduct* provides that "[n]either the filing of a brief amicus curiae nor the participation of counsel for amicus curiae requires a Justice's disqualification."[127] In its Commentary, the Court notes that, in light of the Court's permissive approach to amicus filings, "amici and their counsel will not be a basis for an individual Justice to recuse."[128]

Several provisions of the *Supreme Court Code of Conduct* appear to have been drafted in response to recent reporting on Supreme Court justices' conduct. For example, Canon 4G states that "[a] Justice should not to any substantial degree use judicial chambers, resources, or staff to engage in activities that do not materially support official functions or other activities permitted under these Canons."[129] This provision was absent from the *Statement on Ethics* and is largely in line with the *Code of Conduct for U.S. Judges*. On its face, the provision appears to prevent a justice from using court resources to advance sales of their books, among other activities; Justice Sotomayor's alleged use of staff to help promote sales of her book would thus seem to violate the *Supreme Court Code of Conduct*. However, among the "other activities permitted under these Canons" are unlimited compensation for writing a book and a justice attending and speaking at events where the justice's book is for sale, thereby limiting the scope and effectiveness of the new prohibition.[130]

In addition, the *Supreme Court Code of Conduct* prohibits "knowingly mak[ing] public comment on the merits of a matter pending or impending in any court," yet permits such public statements if they are made as part of official duties and allows a justice to describe issues in a pending or impending case "[f]or scholarly, informational, or educational purposes."[131] The *Supreme Court Code of Conduct* also includes law-related activities among its approved extrajudicial activities, and merely advises justices to consider appearances of impropriety when speaking or appearing before a group if "the group has a substantial financial interest in the outcome of a case that is before the Court or is likely to come before the Court in the near future."[132] Nor may a justice "knowingly be a speaker, a guest of honor, or featured on the program" of a fundraising event.[133] These provisions appear to be an attempt to address appearances like those of Justices Scalia and Thomas at multiple Koch political network summits.

The *Supreme Court Code of Conduct* additionally states that "[a] Justice should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Regulations on Gifts now in effect."[134] This is consistent with language from the *Statement on Ethics* codifying an admonition that had previously proved inadequate to ensure ethical behavior by the Court. Justices Thomas and Alito repeatedly failed to comply with

[127] *Id.* at 3.
[128] *Id.* at 11.
[129] *Id.* at 8.
[130] *Id.* at 5, 13.
[131] *Id.* at 2.
[132] *Id.* at 5.
[133] *Id.*
[134] *Id.* at 7.

prior gift disclosure rules, and it appears unlikely that the *Supreme Court Code of Conduct*, with its identical disclosure requirements but no new enforcement mechanisms or penalties, will lead to significant disclosure improvements by the justices.

The *Supreme Court Code of Conduct* does not provide any information, or any means of gaining additional information, on past misconduct by justices or their benefactors in violation of earlier ethics requirements. It also does not create any means of investigating misconduct or any enforcement mechanism to prevent justices from violating the *Supreme Court Code of Conduct*. Finally, it does not authorize penalties or disciplinary action for a justice who violates the *Supreme Court Code of Conduct*. Accordingly, the *Supreme Court Code of Conduct* is not an enforceable code of conduct, and it is not likely to resolve the Court's ethics crisis.

IV. The Judicial Conference's Clarification of Gift Disclosure Requirements

As detailed in Section II.B.1, the EIGA requires federal officials, including Supreme Court justices, to file financial disclosure reports. The law includes certain exemptions from what must be included in these reports, including for "personal hospitality." The "personal hospitality" exemption is a limited one, and applies only to "food, lodging, or entertainment" received from an individual.[135] "Personal hospitality" is further defined by federal law as "hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the individual's family or on property or facilities owned by that individual or the individual's family."[136] This definition has remained unchanged since the EIGA's enactment in 1978.[137]

This section summarizes certain clarifications regarding financial disclosures issued by the Judicial Conference's Administrative Office of the United States Courts (AO) in 2023 and 2024 to bring the instructions in line with federal law in light of the decades of inappropriate gifts that Justices Thomas, Scalia, and others accepted without disclosing as required by federal law, as detailed in Section V.

A. March 2023 Revisions

In March 2023, the AO published its revised *Guide to Judiciary Policy*.[138] The guide includes financial disclosure regulations for judicial officers and employees, including Supreme Court justices. Notably, the March 2023 revisions included notes that accompanied the definition of "[p]ersonal hospitality of any individual." The March 2023 definition read: "Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his or her family or on property or facilities owned by that individual or his or her family."[139] This largely mirrored the previous year's definition. However, new notes accompanying the definition included the following:

> (1) The personal hospitality gift reporting exemption applies only to food, lodging, or entertainment and is intended to cover such gifts of a personal, non-business nature. Therefore, the reporting exemption does not include:
>
> - gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation;
> - gifts extended for a business purpose;
> - gifts extended at property or facilities owned by an entity, rather than by an individual or an individual's family, even if the entity is owned wholly or in part by an individual or an individual's family;

[135] 5 U.S.C. § 13104(a)(2)(A).
[136] 5 U.S.C. § 13101(14).
[137] *Compare* Ethics in Government Act, Pub. L. 95-521, § 107(6), 82 Stat. 1824, 1834 (1978) *and* 5 U.S.C. § 13101(14).
[138] 2 GUIDE TO JUDICIARY POLICY, pt. D ((Admin. Off. of the U.S. Cts. rev. Mar. 23, 2023), Appendix B, Key Document B.
[139] *Id.* at § 170.

- gifts paid for by any individual or entity other than the individual providing the hospitality, or for which the individual providing the hospitality receives reimbursement or a tax deduction related to furnishing the hospitality; or
- gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.

(2) A judicial officer or employee is not permitted to solicit or accept anything of value from a person seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judge's official duties, but a judicial officer or employee may accept a gift authorized by the Judicial Conference's regulations. **See:** 5 U.S.C. § 7353; Guide, Vol. 2C, Ch.6.[140]

These notes simply made explicit the longstanding statutory requirements for covered individuals to disclose private transportation and stays at commercial properties or properties or facilities owned by an entity. This clarification came after Justices Thomas and Alito both improperly invoked the personal hospitality exemption in defending their earlier failures to disclose transportation and lodging they had received. Under the updated regulations, Justice Thomas would unquestionably have to report private jet travel like that he received from Mr. Crow. Justice Thomas would also have had to report lodging he received at Mr. Crow's Topridge Camp, which is owned by an entity, Topridge Holdings, LLC. Similarly, Justice Alito would have to report gifts like the private jet travel and the stay at a luxury fishing resort he received on his luxury fishing trip to Alaska in 2008.

In a March 2023 letter, the then-Director of the AO, Roslynn R. Mauskopf, wrote that the revised regulations took effect on March 14, 2023.[141] In August 2023, Justice Thomas filed his 2022 financial disclosure report and included three trips on Mr. Crow's private jet.[142] Thomas also noted that, in light of the revised regulations, he would "report any such trips beginning with this filing for calendar year 2022."[143] However, he listed these trips in the reimbursements section of his financial disclosure report rather than the gifts section, thereby allowing him to omit the value of his transportation, food, and lodging.[144]

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[140] *Id.*

[141] Letter from the Honorable Roslynn R. Mauskopf, Director, Admin. Off. of the U.S. Courts, to the Honorable Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary (Mar. 23, 2023), Appendix A, Key Document C.

[142] Abbie VanSickle, *Justice Thomas Reports Private Trips With Harlan Crow*, N.Y. TIMES (Aug. 31, 2023), https://www.nytimes.com/2023/08/31/us/thomas-financial-disclosures-scotus.html.

[143] Clarence Thomas, *Financial Disclosure Report for Calendar Year 2022* (Aug. 9, 2023) [hereinafter *Financial Disclosure Report for Calendar Year 2022*] at 7, Appendix J, Key Document Q.

[144] *Financial Disclosure Report for Calendar Year 2022*, at 2.

B. March 2024 Revisions

In March 2024, the AO published another revised *Guide to Judiciary Policy*[145] which includes financial disclosure regulations for judicial officers and employees, including Supreme Court justices.

Most notably, the March 2024 regulations clarified financial disclosure rules for travel-related gifts. The revised regulations removed a line from the 2023 regulations that stated: "[f]or in-kind travel-related gifts, include travel locations, dates, and nature of expenses provided."[146] The revised regulations also clarified that the "personal hospitality" exemption and "aggregation rule" (under which gifts valued under $192 from a single source need not be aggregated in determining whether all gifts from that single source exceed the minimal value) applied to gifts but not reimbursements.[147] The revised regulations more clearly established that filers must disclose travel-related gifts and their value, rather than omitting the value of travel-related gifts by characterizing them as "in-kind travel-related gifts" or reimbursements. Although some media coverage characterized the revised regulations as new disclosure rules for free trips, the updated language simply clarified preexisting requirements.[148] As the AO itself explained in March 2024, the disclosure policies were updated to "reflect past statutory changes more clearly and help ensure complete reporting of gifts and reimbursements consistent with statutory requirements."[149] One law professor and ethics expert described the updated policy as "a clarification of an existing rule that should not have needed clarifying."[150]

Despite such travel-related gifts previously being reportable like any other gifts, certain Supreme Court justices had repeatedly failed to disclose such gifts altogether (occasionally invoking the personal hospitality exemption) or had improperly reported them as reimbursements rather than gifts. For example, Justice Alito did not report his 2008 private jet transportation to Alaska in his financial disclosures, and Justice Thomas failed to disclose his 2019 travel on Mr. Crow's superyacht or jet. In his 2022 financial disclosures, Justice Thomas listed a weeklong trip to Mr. Crow's upstate New York retreat as a reimbursement, which allowed Thomas to avoid disclosing the value of the trip.[151] Justices Breyer and Ginsburg also listed trips as "reimbursements" and did not disclose their value.[152] The March 2024 revised regulations more explicitly established that individuals filing financial disclosure reports must disclose travel-related gifts and their value.

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[145] 2 GUIDE TO JUDICIARY POLICY, pt. D (Admin. Off. of the U.S. Cts. rev. Mar. 15, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d_1.pdf.
[146] 2 GUIDE TO JUDICIARY POLICY, pt. D, ch. 3, § 330.10 (Admin. Off. of the U.S. Cts. rev. Mar. 23, 2023).
[147] 2 GUIDE TO JUDICIARY POLICY, pt. D, ch. 3, §§ 330.30(b), 330.40(a) (Admin. Off. of the U.S. Cts. rev. Mar. 15, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d_1.pdf.
[148] *See, for example,* Kimberly Strawbridge Robinson, *Judiciary Adopts New Financial Disclosure Rules for Free Trips*, BLOOMBERG LAW (Mar. 18, 2024), https://news.bloomberglaw.com/us-law-week/judiciary-adopts-new-financial-disclosure-rules-for-free-trips; Nate Raymond, *US Supreme Court justices, judges face new rules for disclosing free trips*, REUTERS (Mar. 18, 2024), https://www.reuters.com/world/us/us-supreme-court-justices-judges-face-new-rules-disclosing-free-trips-2024-03-18/.
[149] *Judiciary Policy Update: Ethics*, ADMIN. OFF. OF THE U.S. CTS. (Mar. 15, 2024), Appendix B, Key Document C.
[150] Raymond, *supra* note 148.
[151] *Financial Disclosure Report for Calendar Year 2022*, at 2. *See also* Raymond, *supra* note 148.
[152] Karl Evers-Hillstrom, *Supreme Court Justices Continue to Rack Up Trips on Private Interest Dime*, OPEN SECRETS (Jun. 13, 2019), https://www.opensecrets.org/news/2019/06/scotus-justices-rack-up-trips/.

The revised regulations also provided new guidance to filers on how to value gifts of travel, noting that:

> In the case of gifts related to travel, the filer's estimate of value should be made in reference to the most analogous commercially available substitute (e.g., transportation aboard a private aircraft should be valued at the cost of a first-class ticket for a similar route on a commercial air carrier; travel aboard a private yacht should be valued according to the cost of a ticket on a commercial cruise with similar destinations, duration, and accommodations).[153]

These instructions for estimating value are virtually certain to lead to significant undervaluation of travel-related gifts, as private transportation is typically far more expensive than any commercially available substitute. For example, according to an April 2024 search of Google Flights, the cost of a roundtrip first-class ticket in July 2024 from Dulles International Airport to King Salmon, Alaska is $2,715.[154] In their August 2023 response to a July 2023 letter from the Senate Judiciary Committee, Paul Singer's attorneys estimated the *pro rata* cost of Justice Alito's 2008 travel to and from Alaska at $23,776.11 per passenger.[155] Adjusted for inflation, the estimated value of private jet transportation like Alito's is more than 12 times the value of a first-class ticket.[156] Other estimates have placed the actual value of the kinds of private transportation the justices have enjoyed at nine to 48 times the amount that would be reported under the revised regulations.[157] Accordingly, while the revised regulations may lead to increased transparency surrounding certain details of travel-related gifts, they permit obfuscation of the true value of these gifts.

C. September 2024 Revisions

In September 2024, the AO published an updated version of the *Guide to Judiciary Policy*.[158] The updated version reflected several revisions approved by the Judicial Conference Committee on Financial Disclosure. The September 2024 revisions notably included new guidance in the definition of "[p]ersonal hospitality of any individual," noting that:

> The reporting exemption applies to stays extended for a nonbusiness purpose at a personal residence of the host, even if the personal

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[153] 2 GUIDE TO JUDICIARY POLICY, pt. D, ch. 3, § 330.50(c)(2) (Admin. Off. of the U.S. Cts. rev. Mar. 15, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d_1.pdf.

[154] Searched for roundtrip first-class flights from Dulles International Airport to King Salmon Airport (departing July 9, 2024; returning July 12, 2024) via Google Flights on Apr. 30, 2024.

[155] Letter from Robert K. Kelner & Nick Xenakis, Covington & Burling LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Singer (Aug. 14, 2023) (on file with Committee).

[156] *$23,776.11 in 2008 Equals $34,723.70 in 2024*, https://www.saving.org/inflation (last visited Apr. 30, 2024).

[157] Gabe Roth, *New Judiciary Regulations May Help Judges and Justices Hide the True Value of Their Luxury Trips*, FIX THE COURT (Mar. 21, 2024), https://fixthecourt.com/2024/03/new-judiciary-regulations-may-help-judges-and-justices-hide-the-true-value-of-their-luxury-trips/.

[158] 2 GUIDE TO JUDICIARY POLICY, pt. D (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024) https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.

> residence is owned by an entity, provided that the residence is not regularly rented out to others for a business purpose and there are no indicia that the residence is commercial.[159]

Under this new guidance, justices and judges would not have to report gifts of food, lodging, or entertainment they received at certain properties owned by an entity rather than by an individual or an individual's family. This contrasts starkly with the guidance prior to September 2024, which explicitly excluded "gifts extended at property or facilities owned by an entity" from the personal hospitality gift reporting exemption. The application of this new guidance remains to be seen, and its language is open to various interpretations as it fails to define the meaning of "regularly" or "indicia that the residence is commercial." However, the new guidance plainly expands the application of the personal hospitality exemption and allows a judge or justice to stay at more places without having to report those stays.

Although the language of the new guidance is vague with regard to certain terms, it is oddly specific in expanding the personal hospitality exemption. Under the new guidance, Justice Thomas would arguably not have to report gifts provided to him at a property owned by an entity controlled by Mr. Crow—such as Camp Topridge—so long as the property is deemed a "personal residence" that is "not regularly rented out to others for a business purpose" and "there are no indicia that the residence is commercial." The likely applicability of the new guidance to Justice Thomas's situation led one attorney to remark, "They might as well call it the Clarence Thomas exemption."[160]

One stated purpose of the Judicial Conference's September 2024 revisions was to "clarify application of the personal hospitality exemption to gifts received at personal residences owned by corporate entities."[161] However, in light of how the revisions significantly alter and expand the personal hospitality exemption, the revisions would be more accurately characterized as a substantive change rather than a clarification. The Judicial Conference's decisions to expand the personal hospitality exemption and characterize that expansion as a mere clarification are cause for concern.

Even more concerning are the potential effects of the revisions. One potential effect is the expanded ability of judges and justices to accept gifts provided by wealthy individuals without reporting them. Another potential effect is the revisions' ratification of Justice Thomas's past failures to report gifts he accepted, as the revisions could facilitate the retroactive approbation of his prior violations of federal law. Notably, the Judicial Conference could conclude its current investigation of Justice Thomas by applying its new standards of review to past conduct that violated then-applicable regulations. The September 2024 revisions are a step in the wrong direction by the Judicial Conference, as the revisions seem more likely to absolve past misconduct and facilitate the acceptance of future largesse than strengthen judicial ethics.

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[159] 2 GUIDE TO JUDICIARY POLICY, pt. D, Ch. 1, § 170 (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024) https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.
[160] Nate Raymond, *US Supreme Court justices, other judges can stay at corporate-owned homes without disclosure*, REUTERS (Sep. 24, 2024), https://www.reuters.com/world/us/us-supreme-court-justices-other-judges-can-stay-corporate-owned-homes-without-2024-09-24/.
[161] *Judiciary Policy Update: Ethics*, ADMIN. OFF. OF THE U.S. CTS. (Sep. 23, 2024), Appendix B, Key Document F.

V. Misconduct by Supreme Court Justices in Accepting and Failing to Disclose Extravagant Gifts

The use of gifts to bribe, attempt to bribe, or generally influence official acts of public officials is an existential threat to any functioning democracy. Such acts both corrupt the relevant government action or policy and break down public trust that the government is responsive to the people and not moneyed interests. To avoid even the appearance of impropriety, federal law could prohibit public officials from accepting all gifts, no matter their source or value. But federal law recognizes that certain relationships, particularly longstanding relationships established before an official entered public office, and other specific circumstances, including the type of gift and the relative value, do not present the same ethical issues as captains of industry buying the favor of government officials with extreme largesse. Some officials nonetheless take a more cautious approach. For example, Justice Kagan reportedly turned down a gift of bagels and lox from high school friends, due to her personal stance on gifts.[162]

Transparency is one way the system achieves a middle ground. By requiring disclosure of gifts above a certain amount and outside income earned through employment, honoraria, and other means, federal law allows the press and the public to scrutinize gifts and voice concerns about their propriety. How public officials react to such scrutiny may increase or decrease trust in them individually, but transparency enhances public trust in the ability for government to function impartially. On the other hand, a lack of transparency, especially when seemingly willful, destroys trust not only in the public official at issue, but in government institutions more generally by exacerbating the public's reasonable fears that government officials use their offices not to further the common good, but to enrich themselves.

Over the past several decades, Supreme Court justices have made questionable—and in some cases unacceptable—decisions to accept gifts and outside income. This section will detail those gifts and outside income and examine whether they were properly disclosed under federal law, as outlined in Sections II and IV.

A. Justice Scalia Established the Practice of Accepting Gifts of Luxury Travel and Failing to Disclose It as Required by Federal Law

Justice Scalia regularly accepted luxury travel and lodging from wealthy benefactors and failed to report the gifts on his financial disclosures, in contravention of federal law. From his confirmation in 1986 until his death in 2016, Justice Scalia took at least 258 subsidized trips, more than any other justice.[163] Despite all of these trips being funded by private donors, many were only partially disclosed, while several dozen others appear to have never been disclosed.[164] For instance, Justice Scalia would often disclose trips to give speeches, but fail to disclose

[162] Beth Harpaz, *Is it OK for a Supreme Court justice to accept bagels and lox from her high school friends?*, FORWARD (May 9, 2023), https://forward.com/fast-forward/546201/elena-kagan-clarence-thomas-bagels-and-lox/.
[163] Eric Lipton, *Scalia Took Dozens of Trips Funded by Private Sponsors*, N.Y. TIMES (Feb. 26, 2016), https://www.nytimes.com/2016/02/27/us/politics/scalia-led-court-in-taking-trips-funded-by-private-sponsors.html.
[164] The Editorial Board, *The Ethics of Nine of the Most Powerful People in America*, N.Y. TIMES (Apr. 14, 2023), https://www.nytimes.com/2023/04/14/opinion/editorials/clarence-thomas-trips-supreme-court.html.

hunting trips.[165] Justice Scalia tragically passed away during one of these undisclosed hunting trips.[166]

During the final two decades of his tenure on the Supreme Court, Justice Scalia became a frequent hunter, traveling around the country on multi-day hunting trips.[167] According to prior reviews of his travels, Justice Scalia never disclosed several dozen of his hunting and fishing trips.[168] His trips were especially prevalent throughout the Deep South due to his "circuit justice" duties for the Fifth Circuit, where he was assigned to cover the appeals courts for Texas, Mississippi, and Louisiana.[169] These hunting trips would frequently be tied to a speaking engagement or appearance nearby, the expenses for which were eligible for reimbursement.[170] The people accompanying Justice Scalia on these trips were often judges, lawyers, "prominent Republican donors, politicians, and those with business before the court."[171] Notably, wealthy hosts paid for "[a]ll or practicably all of Justice Scalia's hunting trips," none of which Justice Scalia disclosed publicly.[172]

1. Timeline of Undisclosed Travel

What follows is a non-comprehensive list of Justice Scalia's partially or fully undisclosed travel to highlight the breadth of this issue:

2001

- After speaking at the University of Kansas Law School in November 2001,[173] Justice Scalia went on a hunting trip arranged by Stephen McCallister, the dean of the law school and Kansas's State Solicitor.[174] Justice Scalia flew from Lawrence, Kansas on a state plane to Ringneck Ranch to go hunting with Republicans Bill Graves, the then-Governor of Kansas, and Dick Bond, the former State Senate President.[175] Mr. McAllister has stated that he "had worked for a couple of years on getting [Justice Scalia] to come here…."[176] According to Justice Scalia's financial disclosure report, Scalia's travel, food, and lodging were paid for by the University of Kansas.[177] For his hunting trip, Justice Scalia reportedly paid the state of Kansas $121.97 for the airfare and paid the owner of

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[165] *Id.*
[166] *See, e.g.*, Molly Hennessy-Fiske, *Scalia's last moments on a Texas ranch; quail hunting to being found in 'perfect repose'*, L.A. TIMES (Feb. 14, 2016), https://www.latimes.com/local/lanow/la-na-scalia-ranch-20160214-story.html.
[167] Stephen R. Bruce*, "Any Good Hunting?": When a Justice's Impartiality Might Reasonably Be Questioned*, SSRN 10 (Oct. 5. 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2782170.
[168] *See generally, id.*
[169] Bruce, *supra* note 167, at 10.
[170] *Id.* at 12.
[171] *Id.* at 10.
[172] *Id.*
[173] *Id.* at 13.
[174] Richard A. Serrano & David G. Savage, *Scalia Took Trip Set Up by Lawyer in Two Cases*, L.A. TIMES (Feb. 27, 2004), https://www.latimes.com/archives/la-xpm-2004-feb-27-na-scalia27-story.html.
[175] Bruce, *supra* note 167, at 13, 35; *see also id.*
[176] Bruce, *supra* note 167, at 13–14.
[177] Serrano & Savage, *supra* note 174.

the ranch "several hundred dollars."[178] Two weeks before the trip and again two weeks after it, Mr. McAllister was the lead attorney in two separate cases before the Supreme Court: *Kansas v. Crane*, 534 U.S. 407 (2002) and *McKune v. Lile*, 536 U.S. 24 (2002).[179] Justice Scalia did not recuse himself in either case and "sided with Kansas in both."[180] Kansas prevailed in *McKune*, the latter case.[181]

2002

- In January 2002, hosted by former U.S. Senator Kaneaster Hodges, Justice Scalia went hunting in Arkansas with the then-Governor of Arkansas, Mike Huckabee, and the then-Governor of Oklahoma, Frank Keating.[182] In 2005, Justice Scalia spoke at the American Council of Life Insurers, of which Governor Keating was President at the time.[183]

2003

- In 2003, Justice Scalia went hunting with Glen Summers,[184] a former clerk for Justice Scalia and a partner at law firm Bartlit Beck Herman Palenchar & Scott's Denver, Colorado office.[185] On their 2003 trip, Justice Scalia killed an elk that was later displayed in his Supreme Court chambers, but this trip does not appear to be included on his 2003 financial disclosure report.[186] According to Mr. Summers, he and Justice Scalia went on "dozens of hunting and fishing outings," and began taking annual hunting trips with one another "a few years" after his 1996-1997 clerkship.[187]

2004

- In January 2004, Justice Scalia and then-Vice President Cheney traveled together on Air Force Two to a hunting lodge on Little Pecan Island in Louisiana for a hunting trip hosted by the lodge's owner, Wallace Carline, a multimillionaire who also owned an oil services company.[188] Also on this trip were Justice Scalia's son and son-in-law.[189] Notably, while

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[178] *Id.*
[179] Bruce, *supra* note 167, at 13, 35; Serrano & Savage, *supra* note 174.
[180] *See* Serrano & Savage, *supra* note 174.
[181] *See* Bruce, *supra* note 167, at 36. Justice Scalia released a written statement saying "I do not think that spending time at a law school in which the counsel in pending cases was the dean could reasonably cause my impartiality to be questioned. Nor could spending time with the governor of a state that had matters before the court." Serrano & Savage, *supra* note 174.
[182] Bruce, *supra* note 167, at 32.
[183] *Id.*
[184] Throughout his practice, Summers has litigated cases involving "Amazon, DuPont, Hewlett Packard, Siemens AG, Tyco, and William Koch, the now-deceased brother of Charles and David Koch." *Id.* at 33. His litigation experience also includes the 2000 Florida election case for then-Texas Governor George W. Bush, where "he represented Governor Bush and former Secretary of Defense Cheney in both the election contest filed about the results of the Presidential election in Florida, and a separate case seeking recognition of disqualified overseas military ballots." *Id.* at 33.
[185] *Id.* at 33.
[186] *Id.*; *see* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2003* (May 15, 2004), Appendix J, Key Document C.
[187] Bruce, *supra* note 167, at 33.
[188] *Id.* at 3, 25.
[189] *Id.* at 25.

on this trip, a case involving Vice President Cheney was pending before the Supreme Court.[190]

2005

- In 2005, Justice Scalia and his former law clerk, Glen Summers, were hosted by James A. Rose, former U.S. Marshal and Wyoming state legislator, for an antelope hunting trip in Wyoming when Rose was the state's U.S. Marshal.[191] Not including lodging, food, and travel, it costs at least $1,500 per person for a two-day guided trip in Wyoming to hunt for deer and antelope.[192] This trip does not appear on Justice Scalia's 2005 financial disclosure report.[193]
- On June 20, 2023, *ProPublica* reported that in 2005, Robin Arkley, II—a wealthy Republican donor who owns a mortgage business in California—flew Justice Scalia on his private jet to Kodiak Island, Alaska, where Arkley rented a fishing lodge that cost $3,200 per week per person.[194] This trip began the day after a speaking engagement by Justice Scalia in Napa, California for the Federalist Society.[195] While Justice Scalia's 2005 financial disclosure report shows he was reimbursed for his transportation, food, and lodging related to the speaking engagement,[196] he did not disclose the Alaska trip.[197] During the trip, Scalia and Arkley were joined by Judge A. Raymond Randolph, who stayed with the party and flew back with them on Mr. Arkley's private jet.[198] Reportedly on a group-chartered boat excursion touring Yakutat Bay, Arkley, who has previously bragged about his relationship with one-third of the Supreme Court, discussed with Justice Scalia "whether Senate Republicans, then in a contentious fight over judicial confirmations, should abolish the filibuster to move forward."[199] According to materials Mr. Arkley provided to the Committee, Leonard Leo was also a guest on this trip and flew with Justice Scalia and lodged with the party.[200] Mr. Arkley confirmed that he paid "all expenses" for his guests on this "four to five day" trip.[201]

2006

- In September 2005, Justice Scalia missed the swearing in of Chief Justice Roberts to provide a lecture funded by the Federalist Society at the Ritz-Carlton luxury resort in Bachelor Gulch, Colorado. During this trip, he also participated in a fly-fishing

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[190] *Id.* at 3.
[191] *Id.* at 33.
[192] *Id.*
[193] *See* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2005* (Aug. 8, 2006), Appendix J, Key Document D.
[194] Justin Elliot, Joshua Kaplan & Alex Mierjeski, *Justice Samuel Alito Took Luxury Fishing Vacation With GOP Billionaire Who Later Had Cases Before the Court*, PROPUBLICA (Jun. 20, 2023), https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court.
[195] *Id.*
[196] *See Financial Disclosure Report for Calendar Year 2005*.
[197] Elliot, Kaplan & Mierjeski, *supra* note 194.
[198] *Id.*
[199] *Id.*
[200] Letter from Samuel E. Clark, Erickson & Sederstrom PC, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Robin P. Arkley, II (Nov. 6, 2023).
[201] *Id.*

expedition. Justice Scalia reported the reimbursement for transportation, food, and lodging for the lecture, but did not report the fly-fishing trip.[202]

2007

- In January 2007, Justice Scalia attended the Koch political network's annual retreat and fundraiser at a time when Koch was bankrolling several litigants with cases before the Supreme Court.[203] In 2011, Justice Scalia publicly acknowledged his speaking role at a dinner during this retreat. Justice Scalia's travel and accommodations for this engagement, according to a Supreme Court spokeswoman, "were paid by the Federalist Society, a conservative legal organization."[204] This event was not included on Justice Scalia's 2007 disclosure form.
- In April 2007, Justice Scalia gave a lecture at Stetson University College of Law, for which he was reimbursed for his transportation, according to his 2007 financial disclosure report.[205] However, after this engagement he also reportedly went on a hunting trip in Florida,[206] which does not appear on his financial disclosure report.[207]

2008

- In January 2008, Justice Scalia spoke at Mississippi State University in Starkville, Mississippi, and was reimbursed for his transportation, food, and lodging, according to his 2008 financial disclosure report.[208] This speech was organized by Bobby Shackouls, a graduate of Mississippi State, an operating executive at Carlyle Group, and the former CEO of Burlington Resources.[209] However, the day before the speech, Justice Scalia reportedly went on a hunting trip with former Judge Charles W. Pickering of the Southern District of Mississippi at the Fighting Bayou Hunting Club[210] in Leflore County, Mississippi, which was not disclosed.[211]

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[202] Rhonda Schwartz & David Scott, *Exclusive: Supreme Ethics Problem?*, ABC NEWS (Jan. 24, 2006), https://abcnews.go.com/GMA/Investigation/story?id=1534470.
[203] R. Jeffrey Smith, *Professors ask Congress for an ethics code for Supreme Court*, WASH. POST (Feb. 23, 2011), https://www.washingtonpost.com/wp-dyn/content/article/2011/02/23/AR2011022304975.html; Robert Barnes, *Supreme Court won't be fully represented*, WASH. POST (Jan. 25, 2011), https://www.washingtonpost.com/wp-dyn/content/article/2011/01/24/AR2011012406917.html.
[204] The Associated Press, *2 justices spoke at dinners hosted by donor Koch*, SAN DIEGO UNION-TRIBUNE (Jan. 20, 2011), https://www.sandiegouniontribune.com/sdut-2-justices-spoke-at-dinners-hosted-by-donor-koch-2011jan20-story.html.
[205] *See* Bruce, *supra* note 167, at 36; *see also* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2007* (May 15, 2008) [hereinafter *Financial Disclosure Report for Calendar Year 2007*], Appendix J, Key Document E.
[206] Bruce, *supra* note 167, at 36.
[207] *See Financial Disclosure Report for Calendar Year 2007*.
[208] Bruce, *supra* note 167, at 22; *see also* Antonin Scalia, *Justice Scalia's Financial Disclosure Report for Calendar Year 2008* (May 15, 2009) [hereinafter *Financial Disclosure Report for Calendar Year 2008*], Appendix J, Key Document F.
[209] Bruce, *supra* note 167, at 22.
[210] The Fighting Bayou Hunting Club was owned by nine individuals, including "Arthur (Skip) Jernigan, a lawyer who is now the chairman of the board of Baptist Health Systems in Mississippi," and who "represented the Republican voters" in Judge Pickering's son's 2003 case before the Supreme Court and in another case involving the same issue in 2011. *Id.*
[211] *Id.*; *see Justice Scalia's Financial Disclosure Report for Calendar Year 2008*.

- In April 2008, Justice Scalia spoke at St. Mary's University in San Antonio, Texas,[212] for which he was reimbursed for his transportation and food.[213] According to the *San Antonio Express-News*, he reportedly had a coinciding wild-turkey hunting trip, but no details about the trip have been made public.[214]
- In November 2008, Justice Scalia spoke at a lecture series at Texas Tech University.[215] Following this speaking engagement, Justice Scalia flew on a plane chartered by Mark Lanier, a lawyer and Texas Tech alumnus who underwrote the lecture series, to go hunting on a private ranch.[216] Then-Justice Sandra Day O'Connor reportedly told Lanier that Justice Scalia would "do anything if you take him hunting."[217] Justice Scalia's 2008 financial disclosure report indicates he was reimbursed for his transportation, food, and lodging for the lecture series but does not include the hunting trip.[218]

2009

- In January 2009, Justice Scalia continued his "pattern of combining speaking and hunting invitations" when he spoke at the Safari Club International convention.[219]
- In November 2009, Justice Scalia went on a hunting trip in Nebraska after giving a lecture at Creighton University.[220] His 2009 financial disclosure report indicates he was reimbursed for his transportation, food, and lodging, but does not include the hunting trip.[221] According to Patrick Borchers, a law professor at Creighton University, "[o]ne of the ways we were able to lure him out to Creighton [in 2009] was that we knew people with an acreage where he could hunt [pheasant]."
- According to Cobb County Superior Court Judge Gregory Poole, he, Justice Scalia, and other lawyers went on a guided hunting trip near Sylvester, Georgia in 2009.[222] There are no trips to Georgia reported on Justice Scalia's 2009 financial disclosure report.[223]

2010

- In October 2010, Justice Scalia spoke at the St. Thomas More Society in Green Bay, Wisconsin.[224] To "entice" Justice Scalia to agree to the speaking engagement, the Bishop of the Catholic Dioceses of Green Bay later confirmed that he arranged for Justice Scalia to go hunting with "judges and lawyers" as an "additional incentive."[225] Justice Scalia reportedly went duck hunting with Wisconsin Circuit Judge William Atkinson on his

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[212] Bruce, *supra* note 167, at 19; *see also Justice Scalia's Financial Disclosure Report for Calendar Year 2008*.
[213] *Justice Scalia's Financial Disclosure Report for Calendar Year 2008*.
[214] Bruce, *supra* note 167, at 19–20.
[215] *Id.* at 13; *Justice Scalia's Financial Disclosure Report for Calendar Year 2008*.
[216] Bruce, *supra* note 167, at 13.
[217] *Id.*
[218] *See Justice Scalia's Financial Disclosure Report for Calendar Year 2008*.
[219] Bruce, *supra* note 167, at 14; *see also* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2009* (May 15, 2010) [hereinafter *Financial Disclosure Report for Calendar Year 2009*], Appendix J, Key Document G.
[220] Bruce, *supra* note 167, at 36.
[221] *See Financial Disclosure Report for Calendar Year 2009*.
[222] Bruce, *supra* note 167, at 30.
[223] *See Financial Disclosure Report for Calendar Year 2009*.
[224] *See* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2010* (May 13, 2011) [hereinafter *Financial Disclosure Report for Calendar Year 2010*], Appendix J, Key Document H; *see also* Bruce, *supra* note 167, at 14.
[225] Bruce, *supra* note 167, at 14.

property called Little Tail Point.[226] Justice Scalia's 2010 financial disclosure report indicates he was reimbursed for his transportation and food related to the speaking engagement, but does not include the hunting trip.[227]

- In March 2010, Justice Scalia went on a guided hunting trip in Virginia with Judge Henry Hudson of the Eastern District of Virginia and other "high-power lawyers."[228] Justice Scalia did not report any travel in the month of March on his 2010 financial disclosure report.[229] Notably, Judge Hudson ruled in December 2010 that the Affordable Care Act's insurance mandate was unconstitutional.[230] In June 2012, Justice Scalia took the same position.[231]

2012

- In 2012, Justice Scalia reportedly went on a hunting trip to Doug's Lodge in Klondike, Louisiana, which is owned by Doug and Mary Sonnier.[232] This trip does not appear on Justice Scalia's 2012 financial disclosure report.[233]
- In February 2012, Justice Scalia continued his "pattern of combining speaking and hunting invitations" when he spoke at the National Wild Turkey Federation (NWRT) convention.[234] Mandy and Jonathon Harling, both of whom worked for NWRT, hosted Justice Scalia for a hunting trip in Edgefield, South Carolina, where NWRT's headquarters are located. According to his 2012 financial disclosure report, Justice Scalia was reimbursed for his transportation, food, and lodging.[235] However, no hunting trip is mentioned.[236]
- In the fall of 2012, according to Justice Kagan, she and Justice Scalia went hunting for deer and antelope in Wyoming.[237] However, she did not indicate if anyone hosted them or if anyone else was in the hunting party.[238] Justice Scalia's 2012 financial disclosure report includes reimbursement for transportation and food relating to an October 2012 trip to Laramie, Wyoming to give a lecture at the Federalist Society; it does not include a hunting trip.[239] Justice Kagan's 2012 financial disclosure form does not list this trip or any other hunting trips with Justice Scalia.

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[226] *Id.* at 35.
[227] *See Financial Disclosure Report for Calendar Year 2010*.
[228] Bruce, *supra* note 167, at 28–29.
[229] *See Financial Disclosure Report for Calendar Year 2010*.
[230] Bruce, *supra* note 167, at 29.
[231] *Id.*
[232] *Id.* at 28.
[233] *See* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2012* (May 15, 2013) [hereinafter *Financial Disclosure Report for Calendar Year 2012*], Appendix J, Key Document I.
[234] Bruce, *supra* note 167, at 14; *see also Financial Disclosure Report for Calendar Year 2012*.
[235] *Financial Disclosure Report for Calendar Year 2012*.
[236] *See id.*
[237] Bruce, *supra* note 167, at 33.
[238] *Id.*
[239] *See Financial Disclosure Report for Calendar Year 2012*.

2013

- In January 2013, Justice Scalia gave a speech at the First Baptist Church of Jackson, Mississippi.[240] Judge Pickering was a deacon at this church.[241] While the church paid for Justice Scalia's travel, Judge Pickering planned a coinciding hunting trip.[242] According to Judge Pickering, Justice Scalia only accepted his invitations to speak in Mississippi once he added a hunting trip to the offer.[243] Justice Scalia's 2013 financial disclosure report indicates he was reimbursed for transportation and food but does not include the hunting trip.[244]
- In April 2013, Justice Scalia traveled to Vero Beach, Florida to give a speech to the John's Island Club, "an exclusive gated community."[245] Notably, the developer of the John's Island Club, the Lost Tree Village Corp., had been involved in litigation with the federal government since 2008,[246] and was represented by Greenberg Traurig, where Justice Scalia's son was a partner until 2013.[247] Following his speaking engagement, Justice Scalia went on a hunting trip on Brahma Island on Lake Kissimmee, which spans 3,300 acres and can only be accessed by boat.[248] Justice Scalia was hosted by the owners of this private island, Cary and Layne Lightsey.[249] Justice Scalia's 2013 financial disclosure report indicates he was reimbursed for the transportation and food for his speaking engagement, but does not include the hunting trip.[250]
- In November 2013, Justice Scalia went on another guided hunting trip in Virginia with Judge Henry Hudson and other "high-power lawyers"—similar to his hunting trip in May 2010.[251] Justice Scalia's 2013 financial disclosure report does not include any trips in Virginia for the month of November according to.[252]
- In December 2013, Justice Scalia spoke at the University of Memphis,[253] as reported on his 2013 financial disclosure report.[254] However, he did not include in his report a subsequent hunting trip to Galena Plantation, a private hunting lodge in Holly Springs, Mississippi.[255] Justice Scalia's son and grandson, and Judge Pickering joined him on this trip.[256]

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[240] Bruce, *supra* note 167, at 12.
[241] *Id.*
[242] *Id.*
[243] *Id.* at 13.
[244] *See* Antonin Scalia, *Financial Disclosure Report for Calendar Year 2013* (May 15, 2014) [hereinafter *Financial Disclosure Report for Calendar Year 2013*], Appendix J, Key Document J.
[245] Bruce, *supra* note 167, at 31; *see also Financial Disclosure Report for Calendar Year 2013*.
[246] Bruce, *supra* note 167, at 31.
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] *See Financial Disclosure Report for Calendar Year 2013*.
[251] Bruce, *supra* note 167, at 28–29.
[252] *See Financial Disclosure Report for Calendar Year 2013*.
[253] Bruce, *supra* note 167, at 24; *see also Financial Disclosure Report for Calendar Year 2013*.
[254] *Financial Disclosure Report for Calendar Year 2013*.
[255] Bruce, *supra* note 167, at 22; *see also Financial Disclosure Report for Calendar Year 2013*.
[256] *Id.* at 23.

2014

- Justice Scalia continued his "pattern of combining speaking and hunting invitations" when he spoke at the Ducks Unlimited convention in St. Louis, Missouri in May 2014.[257]
- In December 2014, Justice Scalia went on another undisclosed trip to the Galena Plantation in Mississippi.[258] The trip followed a speaking engagement at the University of Mississippi.[259] Justice Kagan joined Justice Scalia for both the speaking engagement and hunting trip. Both reported being reimbursed for the speaking engagement on their 2014 financial disclosure reports, but neither included the hunting trip.[260]
- Justice Scalia spoke at a constitutional symposium in Atlanta, Georgia.[261] When Ken Shigley and Charles Ruffin, President-elect of the Georgia Bar at the time, initially asked Justice Scalia to participate, he responded that "I've always enjoyed hunting quail in Georgia."[262] Accordingly, a quail hunting trip for Justice Scalia was planned at the Rio Piedra Plantation, in Camilla, Georgia, where it costs $2,500 for a two-night stay.[263] David Nahmias, then-Georgia Supreme Court Justice and former law clerk for Justice Scalia, reportedly helped seal the deal on this trip and stated that "[t]he way you got Justice Scalia to speak was to offer him a good hunting trip."[264] Justice Scalia's 2014 financial disclosure report shows he was reimbursed for transportation, food, and lodging, but does not include the hunting trip.[265]
- Justice Scalia was also hosted by James Farrenkopf, owner of a credit and collections business and leader of the Tea Party in Wyoming and Nebraska, for a hunting trip on his land in Western Nebraska.[266] There is no trip to Nebraska reported on Justice Scalia's 2014 financial disclosure report.[267]

2015-2016

- Justice Scalia went on several similar trips in 2015 and 2016. Because he died prior to the filing deadline for his 2015 financial disclosure report, there are no financial disclosures for either year. For completeness, these trips are included in Appendix K.

B. Justice Clarence Thomas Flouted Federal Law by Failing to Disclose Millions of Dollars in Gifts and Other Items of Value

Since April 2023, *ProPublica* and other outlets have published several reports outlining millions of dollars in gifts and other income that Justice Thomas has received during his time on the Court. While the nature and extent of the gifts identified in these reports are shocking, Justice Thomas has faced criticism for violating his ethical obligations by accepting inappropriate gifts

[257] *Id.* at 14; *see also* Antonin Scalia, *Justice Scalia's Financial Disclosure Report for Calendar Year 2014* (May 15, 2014) [hereinafter *Financial Disclosure Report for Calendar Year 2014*], Appendix J, Key Document K.
[258] Bruce, *supra* note 167, at 23.
[259] *Id.*
[260] *Justice Scalia's Financial Disclosure Report for Calendar Year 2014*.
[261] Bruce, *supra* note 167, at 12.
[262] *Id.* at 12–13.
[263] *Id.* at 13, 30.
[264] *Id.* at 13.
[265] *See Justice Scalia's Financial Disclosure Report for Calendar Year 2014*.
[266] Bruce, *supra* note 167, at 34.
[267] *See Justice Scalia's Financial Disclosure Report for Calendar Year 2014*.

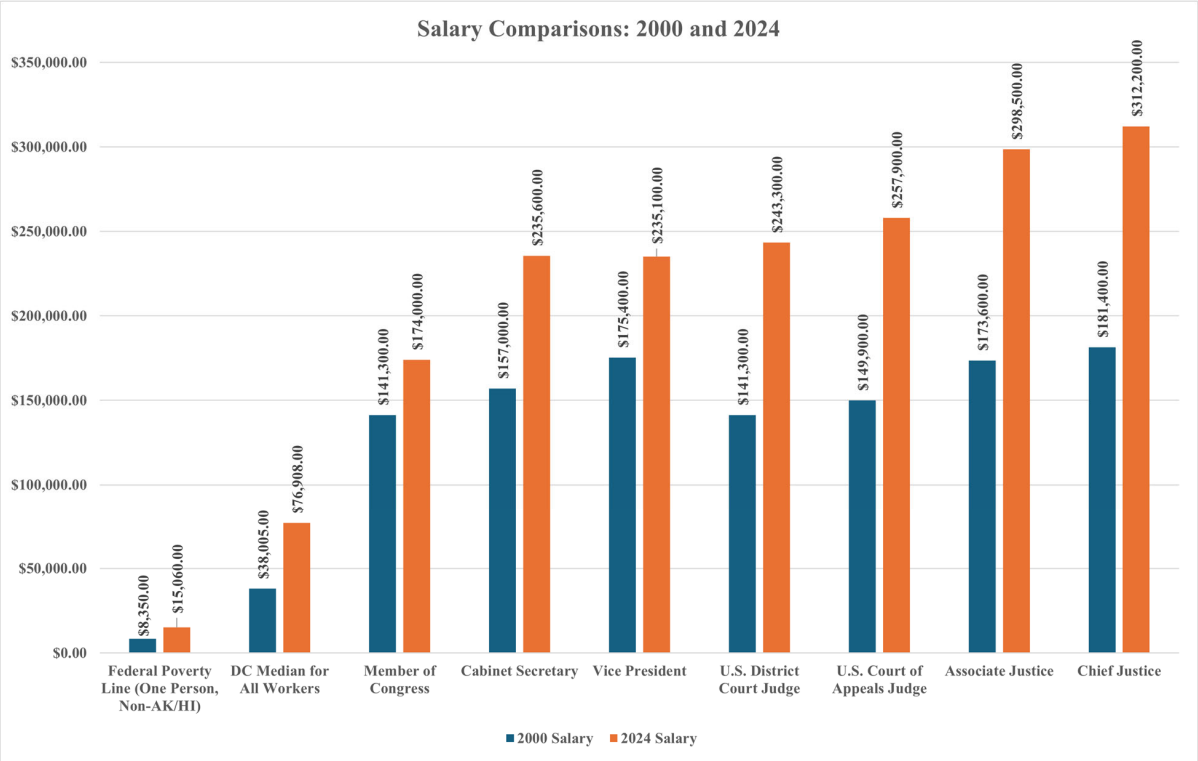
for decades. Confirmed in 1991, Justice Thomas began accepting lavish gifts from billionaires and their corporate entities as early as 1992. While in his early years on the Court he disclosed some of these gifts as required by law, after receiving scrutiny in 2004, Justice Thomas stopped disclosing the vast majority of gifts he received. This section will catalogue these violations of federal gift disclosure requirements.

Justice Thomas has accepted largesse from benefactors in amounts that have no comparison in modern American history. These benefactors are billionaires whom, with one exception, he has met since becoming an Associate Justice of the Supreme Court. Many of these benefactors have business before the Court during Justice Thomas's tenure. Additionally, Justice Thomas's wife, Ginni Thomas, makes a living supporting individuals and organizations that regularly have business before the Court, and there are substantial allegations that her work has been used as a cover to funnel money to the couple by those who seek to influence the Court's decisions.

In 2000, Justice Thomas reportedly told then-Representative Cliff Stearns that Congress should raise the salary for the justices "or one or more justices will leave soon."[268] Notably, the justices' salaries at the time were in the top five percent of income in the United States.[269] Today, the justices' salaries remain in the top 10 percent of income nationwide.[270] For Justice Thomas's entire tenure as a judge on the D.C. Circuit and the U.S. Supreme Court, he has earned more money in salary than most Americans will ever see. As the graph below illustrates, his income as an Associate Justice has been higher than every cabinet secretary during his entire time on the Court and is currently higher than the salary for the Vice President. His salary puts the scale of the largesse Justice Thomas has accepted in even greater relief, because, while he does not come from wealth, his time as a jurist has not left him wanting financially.

"Justice Thomas has accepted largesse from benefactors in amounts that have no comparison in modern American history."

[268] Justin Elliott, Joshua Kaplan, Alex Mierjeski & Brett Murphy, *A "Delicate Matter": Clarence Thomas' Private Complaints About Money Sparked Fears He Would Resign*, PROPUBLICA (Dec. 18, 2023), https://www.propublica.org/article/clarence-thomas-money-complaints-sparked-resignation-fears-scotus.
[269] In 2000, households in the 95th percentile received $145,526 in income. Carmen DeNavas-Walt, Robert W. Cleveland & Marc I. Roemer, U.S. Census Bureau, Money Income in the United States: 2000, 7 (Sep. 2001).
[270] Gloria Guzman & Melissa Kollar, U.S. Census Bureau, Income in the United States: 2023, 32 (Sep. 2024).



1. Justice Thomas Accepted and Failed to Report Gifts of Luxury Travel Worth Millions of Dollars

Much of the largesse Justice Thomas has received has been in the form of luxury travel, including by private jet and yacht, and luxury accommodations, all provided by his billionaire benefactors. The value of these gifts is difficult to calculate, particularly because the majority of luxury travel Justice Thomas has accepted over the last two decades remains undisclosed, but some estimates place the value over $4.75 million.[271]

i. Justice Thomas's Decision to Stop Disclosing Gifts of Transportation and Lodging as Required by Law

On December 31, 2004, the *Los Angeles Times* made one of the first reports of excessive gifts accepted by Justice Thomas, including the lavish travel and lodging he received from billionaire benefactors such as Mr. Crow.[272] Covering 1998 through 2003, these include:

- a Bible once owned by Frederick Douglas, valued at $19,000, from Mr. Crow;
- a bust of President Lincoln, valued at $15,000, from the American Enterprise Institute;

[271] *A Staggering Tally: Supreme Court Justices Accepted Hundreds of Gifts Worth Millions of Dollars*, FIX THE COURT (Jun. 6, 2024), https://fixthecourt.com/2024/06/a-staggering-tally-supreme-court-justices-accepted-hundreds-of-gifts-worth-millions-of-dollars/.

[272] Richard A. Serrano & David G. Savage, *Justice Thomas Reports Wealth of Gifts*, L.A. TIMES (Dec. 31, 2004), https://www.latimes.com/archives/la-xpm-2004-dec-31-na-gifts31-story.html.

- a $5,000 cash gift from former Republican Florida state legislator Earl Dixon to "defray" the education costs of Justice Thomas's grandnephew;
- $1,200 worth of batteries from former law clerks;
- $1,200 worth of tires from a trucking executive in Omaha, Nebraska;
- A Daytona 500 commemorative jacket, valued at $800.[273]

The total approximate value of the gifts Justice Thomas received over this six-year period was $42,200.[274] This is over eight times higher than the justice who received the second highest value of gifts during that same time period, Justice O'Connor.[275] Four justices did not report receiving any gifts during this period.[276]

The 2004 article included commentary from legal ethicists questioning the propriety of these gifts and arguing for strengthening ethics rules for the judiciary. Professor John Yoo, a former Justice Department official during the George W. Bush Administration, was the lone voice who defended Justice Thomas, arguing "[i]f one of these people were to appear before the Supreme Court, Justice Thomas would recuse himself."[277] Unfortunately, Justice Thomas' behavior in the following 20 years proved this prediction wrong.

This reporting was based entirely on six annual disclosures Justice Thomas submitted for his first 13 years on the Court.[278] Contrary to Justice Thomas's later claims, over the course of those 13 years, he understood that "free plane trips and accommodations from friends" to Bohemian Grove and $5,000 checks for his grandnephew's tuition were to be included on his yearly financial disclosure forms.[279] After the article brought public scrutiny to Justice Thomas's questionable conduct, he continued the conduct but simply stopped disclosing these items.[280] There is no reasonable explanation for this change in behavior other than Justice Thomas deciding that he would no longer adhere to federal disclosure requirements.

There are several additional extravagant gifts that the 2004 article did not report. Justice Thomas also received and at least partially reported the following prior to 2004:

- 1992: Dallas Cowboys owner Jerry Jones flew Justice Thomas roundtrip from the Washington, D.C. area to Dallas, Texas, on his private jet and provided Justice Thomas tickets to a Dallas Cowboys' game.[281]

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[273] *Id.*
[274] *Id.*
[275] *Id.*
[276] Justices Breyer, Kennedy, Souter, and Stevens. *Id.*
[277] Serrano & Savage, *supra* note 272.
[278] *Id.*
[279] *Id.*
[280] David G. Savage, *Los Angeles Times reported about Justice Thomas' gifts 20 years ago. After that he stopped disclosing them*, L.A. TIMES (Apr. 6, 2023), https://www.latimes.com/politics/story/2023-04-06/the-times-reported-about-justice-thomas-gifts-20-years-ago-after-he-just-stopped-disclosing-them.
[281] Todd J. Gillman, *Dallas Cowboys Super Bowl ring Jerry Jones gave Clarence Thomas could be worth $100k*, DALLAS MORNING NEWS (Jul. 17, 2023), https://www.dallasnews.com/news/politics/2023/07/17/dallas-cowboys-super-bowl-ring-jerry-jones-gave-clarence-thomas-could-be-worth-100k/.

- 1994: Mr. Jones gifted Justice Thomas a replica Super Bowl ring.[282] In 2023, the estimated value for such a ring was $30,000 to $50,000; Justice Thomas listed the value of the ring as $200 in his 1994 disclosure.[283]
- 1999: An unknown source flew Justice Thomas roundtrip from the Washington, D.C. area to Daytona, Florida, on a private jet and provided lodging for the Daytona 500.[284]

Justice Thomas potentially mislabeled gifted private jet travel on disclosures several times prior to 2004. For instance, his 2003 disclosure includes a "reimbursement" from Nova Southeastern University for "transportation, meals and accommodations/speech." However, the *Tampa Bay Times* reported that the plane Justice Thomas flew on was not commercial, but was a "Gulfstream 4 bearing a large Miami Dolphins logo on the tail," indicating Justice Thomas flew on the private jet of either Miami Dolphins owner H. Wayne Huizenga or the franchise itself.[285] Justice Thomas went to the university for an event related to "a lecture series at the H. Wayne Huizenga School of Business and Entrepreneurship."[286] Justice Thomas appears to have received free private jet travel, which he differentiated from commercial travel and mislabeled as reimbursements from universities or other entities he visited that are not likely to provide private jet travel, on the following occasions:

- 2000: A roundtrip "private plane" flight from the Washington, D.C. area to visit Drake University in Des Moines, Iowa.[287]
- 2000: A roundtrip "private plane" flight from the Washington, D.C. area to visit Culver Stockton College in Canton, Missouri.[288]
- 2000: A roundtrip "private plane" flight from the Washington, D.C. area to visit the Oklahoma Council of Public Affairs in Oklahoma City, Oklahoma.[289]
- 2000: A one-way "private plane" flight from the Washington, D.C. area to visit Hillsdale College in Hillsdale, Michigan, followed by another set of "private plane" flights to visit the University of Louisville in Louisville, Kentucky, and then back to the Washington, D.C. area.[290]
- 2002: A roundtrip "private plane" flight from the Washington, D.C. area to visit Drake University in Des Moines, Iowa.[291]

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[282] *Id.*
[283] *Id.*; *see also* Jeffrey May, *How much do the Super Bowl rings cost? What are they made of?*, AS (Feb. 12, 2023), https://en.as.com/nfl/how-much-do-the-super-bowl-rings-cost-what-are-they-made-of-n/.
[284] Brett Murphy & Alex Mierjeski, *Clarence Thomas's 38 Vacations: The Other Billionaires Who Have Treated the Supreme Court Justice to Luxury Travel*, PROPUBLICA (Aug. 10, 2023), https://www.propublica.org/article/clarence-thomas-other-billionaires-sokol-huizenga-novelly-supreme-court.
[285] Molly Moorhead, *Zephyrhills greets another celebrity: Clarence Thomas*, TAMPA BAY TIMES (May 8, 2003), https://www.tampabay.com/archive/2003/05/08/zephyrhills-greets-another-celebrity-clarence-thomas/.
[286] *Id.*
[287] Clarence Thomas, *Financial Disclosure Report for Calendar Year 2000* (May 15, 2001), at 2, Appendix J, Key Document N.
[288] *Id.*
[289] *Id.*
[290] *Id.* at 5.
[291] Clarence Thomas, *Financial Disclosure Report for Calendar Year 2002* (May 15, 2003), at 2, Appendix J, Key Document O.

- 2002: A roundtrip "private plane" flight from the Washington, D.C. area to visit the Omaha Chamber of Commerce in Omaha, Nebraska.[292]
- 2002: A roundtrip "private plane" flight from the Washington, D.C. area to visit St. Benedict's Preparatory School in Newark, New Jersey.[293]
- 2002: A roundtrip "private plane" flight from the Washington, D.C. area to visit Campbell University Norman Adrian Wiggins School of Law in its former location in Buies Creek, North Carolina.[294]
- 2002: A roundtrip "private plane" flight from the Washington, D.C. area to visit the Georgia State Bar Annual Meeting in Amelia Island, Florida.[295]

ii. Timeline of Undisclosed Gifts of Transportation and Lodging

The following timeline lists the known gifts of transportation and lodging that Justice Thomas failed to disclose in the relevant filing year (certain items were subsequently disclosed in amended filings after investigative reporting or the Committee first made them public). This timeline is non-comprehensive because Justice Thomas continues to violate federal law by refusing to disclose all relevant gifts of transportation and lodging.

2007

- March: Mr. Crow hosted Justice Thomas on his superyacht, the *Michaela Rose*, on a trip through the Greek Islands.[296]

2008

- April: Mr. Crow flew Justice Thomas to Savannah, Georgia, on his private jet and provided round-trip accommodations from Savannah to Charleston, South Carolina, on his yacht, the *Michaela Rose*.[297]

2010

- November 19-27: Mr. Crow flew Justice Thomas roundtrip on his private jet from Hawaii to New Zealand, where they sailed for a week on the *Michaela Rose*.[298]

2016

- February 11: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to New Haven, Connecticut, on his private jet for a day trip.[299]

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[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *Id.*
[296] Kaplan, Elliott & Mierjeski, *supra* note 1.
[297] *Id.*; Mike McIntire, *Friendship of Justice and Magnate Puts Focus on Ethics*, N.Y. TIMES (Jun. 18, 2011), https://www.nytimes.com/2011/06/19/us/politics/19thomas.html.
[298] Letter from the Honorable Ron Wyden, Chair, Senate Committee on Finance, to Michael D. Bopp, Gibson, Dunn & Crutcher LLP (Aug. 5, 2024), https://www.finance.senate.gov/chairmans-news/wyden-uncovers-private-jet-travel-still-undisclosed-by-justice-thomas-demands-travel-records-from-thomas-benefactor-harlan-crow; Kaplan, Elliott & Mierjeski, *supra* note 1.
[299] Kaplan, Elliott & Mierjeski, *supra* note 1.

- August 22: Mr. Novelly flew Justice Thomas one-way from Jackson Hole, Wyoming, to Washington, D.C. on his private jet after a social function for members of the Horatio Alger Association.[300]

2017

- May 7-9: Mr. Crow flew Justice Thomas from St. Louis, Missouri, to Kalispell, Montana, and then to Dallas, Texas, on his private jet.[301]
- July 10-15: Mr. Crow hosted Justice Thomas at Camp Topridge.[302]
- July 20-23: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Santa Rosa, California, and provided lodging at the private, all-male resort Bohemian Grove.[303]

2018

- January 3-5: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Dallas, Texas, on his private jet.[304]
- January 25-28[305]: An unknown source flew Justice Thomas on a chartered plane from an unverified location to Palm Springs, California, to attend the Koch brothers' political network's annual retreat.[306]
- March 30: Mr. Novelly flew Justice Thomas one-way from Ft. Lauderdale, Florida, to Washington, D.C. on his private jet after the funeral service for a member of the Horatio Alger Association.[307]
- July 3-10: Mr. Crow hosted Justice Thomas at Camp Topridge.[308]

2019

- March 23: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Savannah, Georgia, on his private jet for a day trip.[309]

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[300] Letter from Dennis J. Block, Greenberg Traurig, LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Anthony Novelly (Oct. 31, 2023). Senator Joe Manchin was also on this flight, and was dropped off in Charleston, West Virginia. *Id.*
[301] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024).
[302] *Id.*
[303] *Id.*
[304] *Id.*
[305] Date approximated based on reporting. *See* James Hohmann & Michelle Ye Hee Lee, *How the Koch network learned to thrive in the Trump era*, WASH. POST (Jan. 29, 2018), https://www.washingtonpost.com/politics/how-the-koch-network-learned-to-thrive-in-the-trump-era/2018/01/28/f71979d0-0448-11e8-b48c-b07fea957bd5_story.html.
[306] Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Secretly Participated in Koch Network Donor Events*, PROPUBLICA (Sep. 22, 2023), https://www.propublica.org/article/clarence-thomas-secretly-attended-koch-brothers-donor-events-scotus.
[307] Letter from Dennis J. Block, Greenberg Traurig, LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Anthony Novelly (Oct. 31, 2023).
[308] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024).
[309] *Id.*

- July 1-9: Mr. Crow flew Justice Thomas roundtrip on his private jet from the Washington, D.C. area to Indonesia, where they sailed for a week on the *Michaela Rose*, and Mr. Crow provided hotel lodging for their final night before returning.[310]
    - Justice Thomas amended his 2019 disclosure in 2024 to include only the hotel lodging—not the private jet and yacht travel—provided by Mr. Crow. However, Justice Thomas incorrectly reported that this occurred on July 12,[311] which only raises further questions about Justice Thomas accurately disclosing required information.
- July 18-21: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Santa Rosa, California, on his private jet and hosted Justice Thomas at Bohemian Grove.[312]
    - Justice Thomas amended his 2019 disclosure to include only the lodging at Bohemian Grove. He did not disclose the private jet travel provided by Mr. Crow.[313]
- July 22-26: Mr. Crow hosted Justice Thomas at Camp Topridge.[314]
- August 31: Mr. Sokol flew Justice Thomas on his private jet from the Washington, D.C. area to Lincoln, Nebraska, where Justice Thomas was treated to former Republican Congressman Tom Osborne's skybox to watch a University of Nebraska football game and volleyball game.[315]
- September 1: Mr. Sokol flew Justice Thomas from Lincoln, Nebraska, to Jackson Hole, Wyoming, on his private jet and hosted Justice Thomas at Paintbrush Ranch.[316]

2020

- July 28-August 2: Mr. Crow hosted Justice Thomas at Camp Topridge.[317]

2021

- June 29: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to San Jose, California, on his private jet for a day trip.[318]
- July 2-7: Mr. Crow flew Justice Thomas from Omaha, Nebraska, to Saranac, New York, on his private jet and hosted him at Camp Topridge.[319]

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[310] *Id.*
[311] Clarence Thomas, *Financial Disclosure Report for Calendar Year 2023* (May 15, 2024) [hereinafter *Financial Disclosure Report for Calendar Year 2023*] at 7, Appendix J, Key Document S.
[312] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024).
[313] *Financial Disclosure Report for Calendar Year 2023*.
[314] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024).
[315] Murphy & Mierjeski, *supra* note 284.
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] *Id.*

- October 16-17: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Teterboro, New Jersey, for the dedication of a statue, and hosted him in New York on the *Michaela Rose*.[320]

2022

- February 5: Mr. Crow flew Justice Thomas from Dallas, Texas, to the Washington, D.C. area on his private jet.[321]
- May 12-14: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Dallas, Texas, on his private jet.[322]
- July 7-13: Mr. Crow flew Justice Thomas roundtrip from the Washington, D.C. area to Saranac, New York, and hosted him at Camp Topridge.[323]

2023

- July 12-18: Mr. Crow hosted Justice Thomas at Camp Topridge.[324]

Unknown Dates

- Mr. Crow hosted Justice Thomas on the *Michaela Rose* for a cruise around Russia and the Baltics, which included a helicopter tour in St. Petersburg, Russia.[325]
- Mr. Crow hosted Justice Thomas on the *Michaela Rose* for a cruise around the Caribbean.[326]
- H. Wayne Huizenga twice flew Justice Thomas to Ft. Lauderdale, Florida, on his private jet.[327]
- Mr. Novelly hosted Justice Thomas on his superyacht, *Le Montrachet*, in the Bahamas.[328] (Note: Mr. Novelly disputes this claim, writing to the Committee: "any claims made by what your letter characterized as 'investigative reporting' sources regarding the presence of Justice Thomas on a yacht owned by Mr. Novelly travelling in the Bahamas are false. Mr. Novelly is not aware of any basis whatsoever to support any suggestion or claim of yacht trips or vacations provided by him to Justice Thomas."[329] On January 9, 2024, *ProPublica* updated its original report to acknowledge Mr. Novelly's dispute of their claim. In the update, *ProPublica* provided "new reporting of an additional witness who

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[320] *Id.*; *see also* Maxim Almenas, *Beloved Franciscan sister, a life-long mentor of Justice Thomas, honored with New Jersey cemetery statue*, JERSEY CATHOLIC (Nov. 16, 2021), https://jerseycatholic.org/beloved-franciscan-sister-a-life-long-mentor-of-justice-thomas-honored-with-new-jersey-cemetery-statue.
[321] Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024).
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] Joshua Kaplan, Justin Elliot & Alex Mierjeski, *Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition.*, PROPUBLICA (May 4, 2023), https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus.
[326] *Id.*
[327] Murphy & Mierjeski, *supra* note 284.
[328] *Id.*
[329] Letter from Dennis J. Block, Greenberg Traurig, LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Anthony Novelly (Oct. 31, 2023).

recalled seeing Justice Clarence Thomas aboard one of Novelly's yachts in the Bahamas" and noted that the outlet reached out to Mr. Novelly, Justice Thomas, and their attorneys for comment about these updates, but "they did not respond."[330]

2. Justice Thomas Failed to Report the Sale of His Georgia Properties to Billionaire Harlan Crow

On April 13, 2023, *ProPublica* reported that Justice Thomas did not disclose the income he received from the 2014 sale of three properties in Savannah, Georgia that he jointly owned with his relatives, including his mother's home.[331] The properties were sold to Mr. Crow. Although Mr. Crow owns the properties, Justice Thomas's mother continues to live in her home rent-free, and Mr. Crow has paid for "tens of thousands of dollars of improvements" to the property.[332] After these revelations, Justice Thomas amended his 2014 financial disclosure to include the income he earned from the sale of the Savannah properties. He claimed his failure to properly disclose this transaction was because he "inadvertently failed to realize that the 'sales transaction' for the final disposition of the three properties triggered a new reportable transaction in 2014, even though this sale resulted in a capital loss."[333]

In materials Mr. Crow made available to the Committee, he claimed "[a]t the time he initiated the discussion [to purchase the properties], Mr. Crow did not know that Justice Thomas had an ownership interest in the propert[ies]." However, by the time the time the sale was finalized, Mr. Crow did know of Justice Thomas's financial interest in the properties, because Justice Thomas was personally involved in several steps of the purchase, including signing the warranty deed on October 15, 2014 ("the 23rd anniversary of Thomas' Oct. 15 confirmation to the Supreme Court"),[334] and the residential sales agreement on October 21, 2014.[335] Because the documents do not indicate this, the Committee subsequently pressed Mr. Crow on when he became aware of Justice Thomas's financial interest in these properties, and he was unable to provide an approximate timeframe. While the precise timing of Mr. Crow's knowledge may illuminate any potential impropriety in this transaction, it nonetheless was Justice Thomas, not Mr. Crow, who had a legal obligation to disclose this transaction, which he did not.

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[330] Murphy & Mierjeski, *supra* note 284.
[331] Justin Elliott, Joshua Kaplan & Alex Mierjeski, *Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn't Disclose the Deal.*, PROPUBLICA (Apr. 13, 2023), https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus.
[332] *Id.*
[333] Clarence Thomas, *Financial Disclosure Report for Calendar Year 2022* (Aug. 9, 2023), at 8, Appendix J, Key Document Q.
[334] Elliott, Kaplan & Mierjeski, *supra* note 331.
[335] *See* Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (Jun. 4, 2024).

3. Justice Thomas Failed to Report His Wife's Income from the Heritage Foundation

Like his decision to stop properly disclosing gifts of transportation and lodging, Justice Thomas abruptly stopped reporting his wife's income for approximately 15 years after 1996.[336] In 2011, a watchdog group reported that Justice Thomas omitted five years of Ginni Thomas's employment income from the Heritage Foundation (2003 to 2007), worth $686,589, on his financial disclosures.[337] Justice Thomas amended his reports in 2011 to disclose a total of $1.6 million earned by Ms. Thomas since 1997, including income for work done on behalf of House Republicans.[338] He also amended the details about his wife's past employment going back to 1989, including employment with the Labor Department, former Representative Richard K. Armey (R-Tex.), The Heritage Foundation, and Hillsdale College. Justice Thomas explained that his wife's employment and income information was "inadvertently omitted due to a misunderstanding of the filing instructions."[339] This explanation does not comport with the facts. Justice Thomas consistently reported Ms. Thomas's income for the first five years of his tenure on the Court. There were no substantive intervening changes in federal law or on the financial disclosure form at any point between his 1991 confirmation and his 2011 amendment that would explain his decision to stop reporting Ms. Thomas's income.[340]

4. Justice Thomas Failed to Report His Forgiven RV Loan

In 1999, Justice Thomas received a personal loan from Anthony Welters, a health care CEO, to finance the purchase of a $267,230 Prevost Le Mirage XL Marathon RV.[341] In August 2023, *The New York Times* revealed that this previously unknown loan was potentially substantially forgiven in 2008 by Mr. Welters, which would constitute income for Justice Thomas—income that he did not report on his 2008 financial disclosure form.[342] In response to this reporting, the Senate Finance Committee investigated this loan.[343] Their investigation found evidence that Justice Thomas may have only paid the interest on the loan, and not paid down the principal, for a number of years, and that in 2008 Mr. Welters forgave the remaining principal of the loan, which may have been equal to the original loan amount.[344] More than failing to disclose this income as required on his financial disclosure form, Justice Thomas may not have properly reported this income on his 2008 tax returns.[345]

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[336] Jennifer Epstein, *Thomas revises disclosure forms*, POLITICO (Jan. 24, 2011), https://www.politico.com/story/2011/01/thomas-revises-disclosure-forms-048086.
[337] Eric Lichtblau, *Thomas Cites Failure to Disclose Wife's Job*, N.Y. TIMES (Jan. 24, 2011), https://www.nytimes.com/2011/01/25/us/politics/25thomas.html.
[338] Epstein, *supra* note 336.
[339] Lichtblau, *supra* note 337.
[340] *See* AO Disclosure Form 1991 and AO Disclosure Form 2010, Appendix B, Key Documents I & J.
[341] Jo Becker & Julie Tate, *Clarence Thomas's $267,230 R.V. and the Friend Who Financed It*, N.Y. TIMES (Aug. 5, 2023), https://www.nytimes.com/2023/08/05/us/clarence-thomas-rv-anthony-welters.html.
[342] *Id.*
[343] Memorandum from Finance Committee Democratic Staff to Chair Ron Wyden, Senate Committee on Finance (Oct. 25, 2023), https://www.finance.senate.gov/imo/media/doc/senate_finance_committee_welters_thomas_memo_102523.pdf.
[344] *Id.* at 3.
[345] *Id.* at 5.

5. Justice Thomas Failed to Report the Tuition Payments Provided to His Grandnephew

Justice Thomas took legal custody of his grandnephew Mark Martin when he was six years old.[346] Mr. Martin lived with Justice Thomas and his wife in the Washington, D.C. area for almost a decade when Mr. Martin began attending Hidden Lake Academy, a private boarding school in Georgia where tuition ran more than $6,000 a month.[347] According to a bank statement and witness interviews, Mr. Crow paid for Mr. Martin's tuition for the year he was enrolled at Hidden Lake. *ProPublica* reporting indicates that Mr. Crow also paid for Mr. Martin's tuition at his prior school, Randolph-Macon Academy.[348] Justice Thomas never disclosed these tuition payments on his financial disclosures for the applicable years, despite having disclosed a similar payment from Earl Dixon, as discussed in Section V.B.1.i.

C. Defenses of Justice Thomas's Misconduct Misstate the Law and Defy Logic

An attorney for Justice Thomas, Elliot Berke, has issued statements and made claims in response to reports of Justice Thomas's ethical misconduct. Mr. Berke's public commentary on behalf of Justice Thomas has been consistently devoid of convincing evidence and sound legal reasoning, and it has failed to satisfactorily respond to concerns over Justice Thomas's conduct and his failure to follow the law.

The most extensive statement by Mr. Berke on behalf of Justice Thomas came in August 2023, after the Judicial Conference released Justice Thomas's financial disclosure report for 2022.[349] Large sections of Mr. Berke's statement were more political invective than legal argument, as he effusively praised Justice Thomas, criticized Justice Thomas's perceived political enemies, and characterized concerns over Justice Thomas's conduct as "calumny," a "partisan feeding frenzy," and "political blood sport."[350]

In his August 2023 statement, Mr. Berke claimed that "[w]e continue to work with Supreme Court and Judicial Conference officials for guidance on whether [Justice Thomas] should further amend his reports from any prior years and have invited them to raise any additional questions."[351] Mr. Berke also claimed that Justice Thomas had previously consulted with the Judicial Conference and was advised at various times by Supreme Court officers, legal counsel, and staff with the Judicial Conference's Committee on Financial Disclosure. The Committee has no opinion as to the veracity of these claims as we have no evidence of these interactions beyond the claims made by Mr. Berke. We can only conclude that many of Mr. Berke's other statements defending Justice Thomas were inaccurate, and that both Mr. Berke and Justice Thomas's purported understanding of the relevant law was incorrect.

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[346] Kaplan, Elliott & Mierjeski, *supra* note 325.
[347] *Id.*
[348] *Id.*
[349] Elliot Berke, *Elliot S. Berke Releases Statement on Behalf of Client Justice Clarence Thomas*, BERKE FARAH LLP (Aug. 31, 2023), https://www.berkefarah.com/news/2023/8/31/elliot-s-berke-releases-statement-on-behalf-of-client-justice-clarence-thomas-1.
[350] *Id.*
[351] *Id.*

In his August 2023 statement, Mr. Berke made numerous claims in defense of Justice Thomas that are not supported by the law or the facts, only some of which are addressed below. In his opening sentence, Mr. Berke wrote that, "Justice Thomas has always strived for full transparency and adherence to the law, including with respect to what personal travel needed to be reported."[352] To the contrary, Justice Thomas has repeatedly failed to comply with the law or provide transparency surrounding gifts he has accepted, as evidenced by his practice of reporting certain gifts prior to 2004 before ceasing to disclose similar gifts in subsequent years, as detailed in Section V.B.1.i. Mr. Berke went on to state: "After reviewing Justice Thomas's records, I am confident there has been no willful ethics transgression, and any prior reporting errors were strictly inadvertent."[353] Yet Mr. Berke provided no evidence of how Justice Thomas's records supported Mr. Berke's claimed confidence, nor did Mr. Berke provide any explanation for why Justice Thomas's reporting practices varied drastically over the course of his tenure on the Supreme Court.

Mr. Berke also repeated the claim by Justice Thomas's defenders that the requirement to report private transportation was not clear until the March 2023 revisions to the *Guide to Judiciary Policy*. Mr. Berke pointed to the actions and May 2006 notes of a lower court judge, A. Raymond Randolph, who allegedly consulted with judicial ethics staff about a trip to Alaska. Yet Mr. Berke did not provide much additional detail on Judge Randolph's consultation, and he did not provide any evidence of consultations involving Justice Thomas. Moreover, the misapprehension of reporting requirements by other judicial officers or staff does not legitimize Justice Thomas's own misconception of his legal obligations.

Later in his statement, as he addressed concerns regarding Justice Thomas's business dealings and relationship with Mr. Crow, Mr. Berke wrote: "Justice Thomas's critics allege that he failed to report gifts from wealthy friends. Untrue. He has never accepted a gift from anyone with business before the Court."[354] To the contrary, as Section V.B.1 of this report details, Justice Thomas has failed to report numerous gifts from "wealthy friends" over the past 20 years, including gifts from Mr. Crow and other billionaires with business before the Court.

Although Mr. Berke's August 2023 statement marked his most extensive commentary and defense of Justice Thomas, he has made additional claims related to Justice Thomas's ethics issues. In October 2023, Mr. Berke said that Justice Thomas's loan from Anthony Welters for a luxury RV "was never forgiven," and that "[t]he Thomases made all payments to Mr. Welters on a regular basis until the terms of the agreement were satisfied in full."[355] However, Mr. Berke did not provide additional information, nor did he respond when *The New York Times* asked him to reconcile his claims with documents obtained by the Senate Finance Committee. Mr. Berke also refused to say whether Justice Thomas had fully repaid the $267,230 he borrowed plus interest.[356]

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[352] *Id.*
[353] *Id.*
[354] *Id.*
[355] Jo Becker, *Justice Thomas's R.V. Loan Was Forgiven, Senate Inquiry Finds*, N.Y. TIMES (Oct. 25, 2023, updated Oct. 26, 2023), https://www.nytimes.com/2023/10/25/us/politics/clarence-thomas-rv-loan-senate-inquiry.html.
[356] *Id.*

Finally, in response to documents obtained by the Senate Judiciary Committee regarding Justice Thomas's unreported flights in 2017, 2019, and 2021, Mr. Berke issued a statement in June 2024 in which he asserted that "[t]he information that Harlan Crow provided to the Senate Judiciary Committee fell under the 'personal hospitality exemption' and was not required to be disclosed by Justice Thomas."[357] Once again, Mr. Berke's statement reflects a misunderstanding or misrepresentation of the applicable law. The transportation that Justice Thomas received from Mr. Crow did not fall under the personal hospitality exemption. Justice Thomas was required to report it, and Mr. Berke's claim to the contrary is again belied by the fact that Justice Thomas reported gifts of transportation prior to 2004.

As detailed in Section IV.C, in September 2024, the AO published an updated version of the *Guide to Judiciary Policy*[358] which expanded the personal hospitality exemption "to gifts received at personal residences owned by corporate entities."[359] This policy change appears directed at insulating from disclosure Justice Thomas's annual receipt of lodging at Topridge Camp. However, even under the September 2024 revised guidance, many properties and facilities would still not qualify for the reporting exemption—including Mr. Crow's superyacht, the *Michaela Rose*. While a yacht could conceivably serve as a personal residence, it clearly does not in this context. Mr. Crow resides in Texas, and the *Michaela Rose* is a pleasure boat owned by a Crow-controlled holding company. The superyacht is not "a personal residence of the host," and efforts by Mr. Crow to claim business tax deductions on the superyacht further establish that the *Michaela Rose* is not his personal residence. Accordingly, Justice Thomas would still be required to report gifts of travel aboard the *Michaela Rose*.

D. Justice Alito Failed to Report Private Jet Travel and Accommodations for a 2008 Luxury Fishing Trip to Alaska

1. 2008 Luxury Fishing Trip

In June 2023, *ProPublica* revealed that Justice Samuel Alito did not disclose gifts of transportation and lodging he received for an Alaskan fishing trip in 2008.[360] The trip, which was facilitated by Leonard Leo, consisted of private jet travel to and from Alaska provided to Justice Alito by billionaire Paul Singer and lodging provided by billionaire Robin Arkley, II.[361] Mr. Singer provided the following account to the Committee:

> Mr. Singer did not organize the fishing trip, and he did not invite Justice Alito to join the fishing trip. On or about May 19, 2008, Mr. Leonard Leo invited Mr. Singer to join him on a fishing trip with Mr. Robin Arkley II in King Salmon, Alaska. After first declining due to a conflicting family engagement, Mr. Singer was

[357] Justin Jouvenal & Tobi Raji, *New Documents Show Unreported Trips by Justice Clarence Thomas*, WASH. POST (Jun. 13, 2024), https://www.washingtonpost.com/politics/2024/06/13/supreme-court-clarence-thomas-travel/.
[358] 2 GUIDE TO JUDICIARY POLICY, pt. D (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024) https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.
[359] *Judiciary Policy Update: Ethics*, ADMIN. OFF. OF THE U.S. CTS. (Sep. 23, 2024).
[360] Elliott, Kaplan & Mierjeski, *supra* note 194.
[361] *Id.*

> informed he could leave early and then accepted the invitation on or about June 5, 2008. Mr. Singer asked Mr. Leo who he wanted Mr. Singer to take with him on the flight to Alaska, on a private aircraft which Mr. Singer was arranging for his own transportation. On June 9, 2008, Mr. Leo told Mr. Singer that Justice Alito, Judge A. Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit, and Mr. Leo would join him on the flight.
>
> The flight—carrying Mr. Leo, Justice Alito, and Judge Randolph—departed from Dulles, Virginia and flew to Teterboro, New Jersey on July 8, 2008, at an estimated *pro rata* cost of $2,633.30 per passenger. Mr. Singer and another private citizen, journalist John Fund, joined the group in Teterboro and flew to King Salmon, Alaska, at an estimated *pro rata* cost of $11,061.85 per passenger. The group stayed in a private lodge, provided by Mr. Arkley, from July 8 through July 11, 2008. On July 11, 2008, the same group departed King Salmon, Alaska for Dulles, Virginia, at an estimated *pro rata* cost of $10,080.96 per passenger. Other than light food and refreshments offered on the plane flights, and the cost of transportation, Mr. Singer did not pay for any other expenses of participants in the fishing trip, including Justice Alito.[362]

Mr. Arkley separately provided the following account providing more details about how this trip came to be:

> In 2008, Justice Samuel Alito attended a fishing trip and stayed at King Salmon Lodge ("Lodge") in King Salmon, Alaska. The Lodge was owned by Mr. Arkley's company, Security National Master Holding Company ("Company"). For the period of time that the Company owned the Lodge, Mr. Arkley hosted dozens of employees and friends. He sold the Lodge more than a decade ago.
>
> In addition to a number of friends he invited who were personal friends from his hometown or from college, Mr. Arkley also invited Mr. Leonard Leo, a friend through his association with the Federalist Society. After one of his conversations with Leonard, Mr. Arkley invited a number of Mr. Leo's friends to join the trip, including Justice Samuel Alito, Judge Ray Randolph, Mr. Paul Singer, and Mr. John Fund. To the best of Mr. Arkley's recollection, the trip lasted three or four nights. As he had done with other friends and guests who stayed at the Lodge, Mr. Arkley covered the expenses for the lodging, meals, and costs associated with the fishing expeditions.

[362] Letter from Robert K. Kelner & Nick Xenakis, Covington & Burling LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Singer (Aug. 14, 2023).

Mr. Arkley did not provide Justice Alito transportation to or from the Lodge.[363]

2. Justice Alito's Explanations for Failing to Include the Private Jet Travel on His Financial Disclosures Do Not Withstand Scrutiny

Justice Samuel Alito failed to report the gift of free transportation on billionaire Paul Singer's private jet on his annual financial disclosure form for 2008.[364] This failure to report was in apparent contravention of assertions by both the Supreme Court and Justice Alito that Supreme Court justices follow the financial disclosure requirements provided in the Judicial Conference regulations.[365]

Less than six hours before *ProPublica* published its article on Justice Alito's fishing trip, *The Wall Street Journal* published an opinion piece by Justice Alito in which he preemptively responded to *ProPublica*'s inquiries and reporting.[366] In his article, Alito posited two claims: first, that he had no obligation to recuse in Supreme Court cases implicating Mr. Singer's financial interests, and second, that he had no obligation to report his flight on Mr. Singer's plane as a gift in his annual financial disclosure forms. In justifying his failure to recuse, Justice Alito described his relationship with Singer as little more than a passing acquaintance. Justice Alito also wrote that Mr. Singer was not listed as a party in certain cases before the Supreme Court in which Mr. Singer had a financial interest. He further claimed he neither knew nor should have known about Mr. Singer's connections to Supreme Court litigation. Justice Alito's explanations for his failure to recuse raise questions about just how close Justice Alito and Mr. Singer were, as well as questions about Justice Alito's process for screening conflicts and its efficacy.

Although Justice Alito's failure to recuse is cause for concern, his failure to report the flight constituted a violation of federal law. The EIGA requires justices to disclose gifts with more than a minimal value, as discussed in Section II.B.1. They must report all reportable gifts that are not subject to an exclusion, such as the personality hospitality exception.

Justice Alito devoted the second part of his opinion piece to defending his decision to fly on Mr. Singer's plane and his failure to report the flight as a gift. In defending his failure to report, Justice Alito made two principal arguments. First, he argued that he was not required to report the flight due to its falling under the personal hospitality exemption for reportable gifts. Second, he argued that he was justified in taking the seat on Mr. Singer's plane because the seat "would otherwise have been vacant" and it was Justice Alito's understanding that his taking the seat "would not impose any extra cost on Mr. Singer."[367] To further bolster his defense, Justice

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[363] Letter from Samuel E. Clark, Erickson & Sederstrom PC, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Robin P. Arkley, II (Nov. 6, 2023).
[364] Samuel Alito, *Financial Disclosure Report for Calendar Year 2008* (May 14, 2009) [hereinafter *Justice Alito's Financial Disclosure Report for Calendar Year 2008*], Appendix J, Key Document A.
[365] *Statement on Ethics*.
[366] Samuel Alito, *Justice Samuel Alito: ProPublica Misleads Its Readers*, WALL ST. J. (Jun. 20, 2023), https://www.wsj.com/articles/propublica-misleads-its-readers-alito-gifts-disclosure-alaska-singer-23b51eda.
[367] *Id.*

Alito proffered several arguments and claims—some of which were legally dubious at best, and others of which were misleading, irrelevant, or facially absurd. Each argument is addressed in turn.

In his opinion piece, Justice Alito argued that his flight did not need to be reported because it fell within the personal hospitality exemption. In making this argument, Justice Alito provided several strained lines of reasoning. He wrote that, "[u]ntil a few months ago, the instructions for completing a Financial Disclosure Report told judges that '[p]ersonal hospitality need not be reported,' and 'hospitality' was defined to include 'hospitality extended for a non-business purpose by one, not a corporation or organization, . . . on property or facilities owned by [a] person . . . .'"[368] Here, Justice Alito alluded to the Judicial Conference Committee on Financial Disclosure's March 2023 revision to the definition of "personal hospitality," which was updated to specifically note that "the reporting exemption does not include: gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation . . . ."[369]

In making this argument, Justice Alito seemingly relied on the filing instructions for 2021, which stated that "[p]ersonal hospitality need not be reported. Personal hospitality means hospitality extended for a non-business purpose by one, not a corporation or organization, at the personal residence of that person or his family or on property or facilities owned by that person or family."[370] However, earlier versions of the filing instructions, including the version of the filing instructions in force at the time of Justice Alito's 2008 Alaska fishing trip, contained different language. The filing instructions for 2008 stated that "[y]ou are not required to report . . . food, lodging, or entertainment received as personal hospitality."[371] Notably, these filing instructions did not state that "[p]ersonal hospitality need not be reported." There was thus no general exclusion of personal hospitality of any kind in these earlier filing instructions, but instead only exclusions for food, lodging, or entertainment. Transportation was not mentioned, nor did it fall within the plain meaning of "food, lodging, or entertainment received as personal hospitality." Accordingly, transportation should not have been considered within the reporting exclusion, and Justice Alito should have reported the private jet travel he received from Mr. Singer. Justice Alito's reliance on a later version of the filing instructions does not justify his earlier failure to disclose.

Justice Alito also made a tenuous connection between personal hospitality and the word "facilities" writing that "[t]he term 'facilities' was not defined, but both in ordinary and legal usage, the term encompasses means of transportation."[372] Justice Alito was correct in noting that the term "facilities" was not defined in the filing instructions for either 2021 or 2008; but he was incorrect in claiming that the term "facilities" encompasses means of transportation in ordinary

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[368] *Id.* (quoting from the FILING INSTRUCTIONS FOR JUDICIAL OFFICERS AND EMPLOYEES 25 (Admin. Off. of the U.S. Cts. Comm. on Fin. Disclosure rev. Feb. 2022), Appendix B, Key Document H).
[369] 2 GUIDE TO JUDICIARY POLICY, pt. D, ch. 1, § 170 (Admin. Off. of the U.S. Cts. rev. Mar. 23, 2023).
[370] FILING INSTRUCTIONS FOR JUDICIAL OFFICERS AND EMPLOYEES 25 (Admin. Off. of the U.S. Cts. Comm. on Fin. Disclosure rev. Feb. 2022).
[371] FILING INSTRUCTIONS FOR JUDICIAL OFFICERS AND EMPLOYEES 25 (Admin. Off. of the U.S. Cts. Comm. on Fin. Disclosure iss. Jan. 14, 2009), Appendix B, Key Document G.
[372] Alito, *supra* note 366.

or legal usage. The fact that the plain meaning of "facilities" does not include private jet flights is obvious to layperson and lawyer alike.[373]

Justice Alito's subsequent rationalization of his definition of "facilities" does nothing to change that fact. In his discussion of the term "facilities," Justice Alito first referenced a 2001 dictionary definition purportedly defining a "facility" as "something designed, built, installed, etc., to serve a specific function affording a convenience or service: transportation facilities" and "something that permits the easier performance of an action."[374] Yet, as one journalist noted, Justice Alito omitted portions of the dictionary definition he cited which gave three examples of facilities: "transportation facilities;" "educational facilities;" and "a new research facility."[375] Justice Alito's claim that "facilities" necessarily encompasses "transportation" is belied by the definition he selectively quotes. If anything, the cited definition suggests that the term "facilities" would be commonly understood to "encompass[] means of transportation," as Justice Alito claims, only when it is modified by the term "transportation."

Justice Alito then alleged that "[l]egal usage is similar. Black's Law Dictionary has explained that the term 'facilities' may mean 'everything necessary for the convenience of passengers.'"[376] It is unclear what version of *Black's Law Dictionary* Justice Alito ostensibly cited; the 11th edition, which was current in 2023, does not define "facility" or "facilities." However, as one law professor wrote in a June 2023 blog post, a relevant citation appears in a 1905 treatise, the *Cyclopedia of Law and Procedure*.[377] The entry for "Facilities" reads, "Applied to railroads, it means everything necessary for the convenience of passengers and the safety and prompt transportation of freight" (emphasis added), with a note citing the English Law Dictionary and several railroad cases.[378] Justice Alito went on to claim that "[f]ederal statutory law is similar" in its approach to the term "facilities," but he supported that claim by citing two provisions of the U.S. Code and one excerpt from a book on federal jury practice and instructions—all of which use the word "facility" in the context of interstate commerce, rather than in the context of gift laws, disclosure laws, ethics laws, or any number of more relevant areas of law. Justice Alito's citations to the U.S. Code are no more applicable or helpful in the gift disclosure context than statutory provisions defining "facilities" in other unrelated contexts, ranging from electric utilities to fish processing.[379]

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[373] Alito appeared to offer a different understanding of the word "facilities" in his 2008 financial disclosure report, in which he wrote, "I was extended membership to the Washington Golf and Country Club on August 29, 2008; however, I never used the Club's facilities and resigned on December 15, 2008." *See Justice Alito's Financial Disclosure Report for Calendar Year 2008*, at 7.

[374] Alito, *supra* note 366 (quoting from RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (2001)).

[375] *See* Steve Reilly (@BySteveReilly), TWITTER (Jun. 20, 2023, 10:25 PM), https://twitter.com/BySteveReilly/status/1671343627518238720.

[376] Alito, *supra* note 366.

[377] *See* Richard L. Hasen, *About That Black's Law Dictionary Definition of Facilities Cited by Justice Alito in His WSJ Defense of Not Reporting the Free Ride on the Private Plane of a Billionaire Litigant…*, ELECTION LAW BLOG (Jun. 22, 2023), https://electionlawblog.org/?p=137014.

[378] 19 CYCLOPEDIA OF LAW AND PROCEDURE 106 (William Mack ed., 1905), https://babel.hathitrust.org/cgi/pt?id=uc1.b4110727&view=1up&seq=120&q1=facilities.

[379] *See, among others*, 16 U.S.C. § 824i, 16 U.S.C. § 1851.

In concluding his claim that the flight did not need to be reported under the personal hospitality exemption, Justice Alito asserted that his "understanding of the requirement to report gifts reflected the expert judgment of the body that the Ethics in Government Act entrusts with the responsibility to administer compliance with the Act."[380] Justice Alito provided no support for this assertion that the Judicial Conference supported his interpretation of the term "facilities." To the contrary, there is no evidence that Justice Alito's understanding of the gift reporting requirements comported with the Judicial Conference's understanding, nor that any Judicial Conference official had advised him of the correct understanding. The closest thing to evidence for his position that Justice Alito offered in his opinion piece was the following passage:

> When I joined the Court and until the recent amendment of the filing instructions, justices commonly interpreted this discussion of "hospitality" to mean that accommodations and transportation for social events were not reportable gifts. The flight to Alaska was the only occasion when I have accepted transportation for a purely social event, and in doing so I followed what I understood to be standard practice.[381]

Even if justices did commonly interpret the term "hospitality" to include transportation, this purported fact does not establish that their interpretation was correct. In fact, Justice Alito's claim is undermined by the financial disclosure forms of other justices and federal judges. For example, as *ProPublica* detailed in another article, Justice Thomas disclosed a private jet flight provided by Mr. Crow in his 1997 financial disclosure form.[382] *ProPublica* also reported that a review of other federal judges' financial disclosure filings revealed at least six other instances of judges disclosing gifts of private jet travel between 2012 and 2017.[383]

In the final paragraph of his opinion piece, Justice Alito wrote that the seat he took on Mr. Singer's plane "would otherwise have been vacant" and that Justice Alito taking the seat "would not impose any extra cost on Mr. Singer."[384] In making these claims, Justice Alito seemingly suggested that his seat on the flight was not an item of value, or perhaps its value was under the $335 threshold in effect in 2008. The idea that an otherwise-vacant seat on a private jet is not an item of value is facially absurd. In their August 2023 response to a July 2023 letter from the Senate Judiciary Committee, Mr. Singer's attorneys estimated the *pro rata* cost of Justice Alito's travel to and from Alaska at $23,776.11 per passenger.[385] That estimated value far exceeds $335.[386] The seat on Mr. Singer's jet was plainly an item of significant value worth

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[380] Alito, *supra* note 366.
[381] *Id.*
[382] Justin Elliott, Joshua Kaplan & Alex Mierjeski, *Clarence Thomas Defends Undisclosed "Family Trips" With GOP Megadonor. Here Are the Facts.*, PROPUBLICA (Apr. 7, 2023), https://www.propublica.org/article/clarence-thomas-response-trips-legal-experts-harlan-crow.
[383] *Id.*
[384] Alito, *supra* note 366.
[385] Letter from Robert K. Kelner & Nick Xenakis, Covington & Burling LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Paul Singer (Aug. 14, 2023).
[386] For another example of Alito's apparent misunderstanding and undervaluation of gifts, *see Justice Alito's Financial Disclosure Report for Calendar Year 2008*, at 4 (in which Alito listed the value of an honorary country club membership he received as $0.00).

thousands of dollars, rather than an item of negligible or minimal value. Justice Alito's claim that his taking the seat imposed no "extra cost" on Mr. Singer is irrelevant. As one law professor and ethics expert, Steven Lubet, explained in response to Justice Alito's opinion piece, "it is the value of the gift to the recipient, not the donor's cost, that triggers disclosure."[387] In support of this explanation, Professor Lubet noted how the statutory definition of "gift" provided at 5 C.F.R. § 2634.105(h) includes "free attendance at an event," despite the free attendance costing the donor nothing.[388]

"The idea that an otherwise vacant seat on a private jet is not an item of value is facially absurd."

In March 2024, the AO released updated guidance on financial disclosure reports that clarified the requirement to report and estimate the value of travel-related gifts, such as private jet flights.[389] As discussed in Section IV.B, the AO said this guidance marked an update "to reflect past statutory changes more clearly and help ensure complete reporting of gifts and reimbursements consistent with statutory requirements."[390] The updated guidance states that "[i]n the case of gifts related to travel, the filer's estimate of value should be made in reference to the most analogous commercially available substitute" and provides as an example "transportation aboard a private aircraft," which "should be valued at the cost of a first-class ticket for a similar route on a commercial air carrier."[391] While this guidance is almost certain to result in reporting that undervalues gifts compared to the true cost of private transportation, it nevertheless underscores that Justice Alito's failure to report his flight was unjustified.

Justice Alito concluded his opinion piece by writing that, "[h]ad I taken commercial flights, that would have imposed a substantial cost and inconvenience on the deputy U.S. Marshals who would have been required for security reasons to assist me."[392] This claim, too, is irrelevant. An individual's alleged effort to reduce costs and inconvenience for law enforcement officials does not exempt the individual from compliance with gift and reporting requirements established by federal law.

Justice Alito's failure to report his flight on Mr. Singer's plane constituted a failure to comply with the reporting requirements established by the EIGA and the Judicial Conference. None of his arguments—that the flight fell within the personal hospitality exemption, that the plane was a facility, that he followed his understanding of the law, or that the seat would have otherwise been empty—establish that he complied with his obligations under federal law. Instead, they illustrate another failure by a Supreme Court justice to properly report a gift.

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[387] Steven Lubet, *Alito, Thomas and the Supreme Court's Culture of Concealment*, THE HILL (Jun. 22, 2023), https://thehill.com/opinion/judiciary/4062329-alito-thomas-and-the-supreme-courts-culture-of-concealment/.
[388] *Id.*
[389] 2 GUIDE TO JUDICIARY POLICY, pt. D, ch. 3 (Admin. Off. of the U.S. Cts. rev. Mar. 15, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d_1.pdf.
[390] *Judiciary Policy Update: Ethics*, ADMIN. OFF. OF THE U.S. CTS. (Mar. 15, 2024).
[391] 2 GUIDE TO JUDICIARY POLICY, pt. D, ch. 3, § 330.50(c) (Admin. Off. of the U.S. Cts. rev. Mar. 15, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d_1.pdf.
[392] Alito, *supra* note 366.

E. Timeline of Questionable Conduct Regarding Gifts and Use of Office by Other Justices from 1991 to Present

1998

- Justice Ginsburg autographed her *United States v. Virginia* opinion for an auction to raise funds for the National Organization for Women (NOW) PAC.[393]

2004

- An Ohio power plant utility, American Electric Power (AEP), flew Chief Justice Rehnquist on its corporate jet when the company had dozens of active cases in litigation. AEP's spokesperson said that the company was "bearing none of the $3,800 cost" for the round-trip private flight. Instead, the cost was going to be covered by "money raised from a $75-a-plate lunch after the [Chief Justice's] speech" at the Moyer Judicial Center. Environmental groups, however, expressed concerns about the propriety of this trip as AEP had many active cases at the time, including one that was going to trial the following year on allegations that AEP's Ohio plant operations violated the Clean Air Act." These groups noted that this upcoming case could reach the Supreme Court, so travelling on AEP's private jet "could signal a potential conflict of interest" that "would make him not an impartial justice."[394]

2010

- Justice Ginsburg accepted the Eleanor Award from the Woman's National Democratic Club, which supports the Democratic Party.[395]

2016

- Justice Sotomayor failed to disclose that the University of Rhode Island (URI) paid more than $1,000 for her round-trip flight for a commencement speech. URI also paid for approximately 11 hotel rooms for Justice Sotomayor, her friends, and her security detail. The trip included a five-car motorcade from the airport. In addition, URI ordered 125 copies of Justice Sotomayor's autobiography for the appearance. She amended her disclosures in 2021 to include this information.[396]

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[393] Mark Paoletta, *If Democrats Are Worried About SCOTUS Ethics Rules, They Should Look Into Lefty Justices First*, THE FEDERALIST (Jul. 20, 2023), https://thefederalist.com/2023/07/20/democrats-concerned-with-scotus-ethics-rules-should-look-into-leftist-justices-first/.

[394] Michael Janofsky, *Ohio Groups Question Justice's Trip On Utility Jet*, N.Y. TIMES (May 15, 2004), https://www.nytimes.com/2004/05/15/us/ohio-groups-question-justice-s-trip-on-utility-jet.html.

[395] Jared Gans, *Conservatives criticize liberal Supreme Court justices for ethics issues*, THE HILL (May 4, 2023), https://thehill.com/regulation/court-battles/3988846-conservatives-criticize-liberal-supreme-court-justices-for-ethics-issues/.

[396] *Justice Sotomayor Amends Financial Disclosure to Include SIX Trips She Had Previously Omitted*, FIX THE COURT (Jun. 13, 2022), https://fixthecourt.com/2022/06/justice-sotomayor-amends-financial-disclosure-include-six-free-trips-previously-omitted/. *See* Sonia Sotomayor, *Financial Disclosure Report for Calendar Year 2016* (May 9, 2017), Appendix J, Key Document L; Sonia Sotomayor, *Financial Disclosure Report for Calendar Year 2016 Amendment* (Apr. 2, 2021), Appendix J, Key Document M.

2017

- Between 2017 and 2019, Justice Sotomayor's staff "prodded public institutions that have hosted the justice to buy her memoir or children's books."[397]
- After seeking a buyer for two years, an LLC co-owned by Justice Gorsuch sold real estate to a law firm CEO with business before the Court nine days after Gorsuch was sworn in as a justice. He disclosed the sale, but not the buyer.[398]

2018

- Morris Kahn, who had business before the Court in 2017, provided Justice Ginsburg's transportation, food, and lodging on a trip to Israel where she received a lifetime achievement award. She disclosed these items on her annual financial disclosure.[399]

2019

- Justice Ginsburg accepted the $1 million Berggruen Institute prize for philosophy and culture and donated the money to more than 60 charities. She disclosed the prize and the fact that she donated it, but did not disclose all of the charities to which she donated the money.[400]

F. Claims Against Justices Alito, Thomas, and Scalia Are Different in Kind than Disclosed, Transparent Gifts

The foundational principle underlying all financial and gift disclosures for federal officials is that transparency allows for proper scrutiny. Scrutiny of partially or fully gifted trips taken by any justice allows for a proper accounting of whether those entrusted with immense power have conflicts of interest or other forms of bias. This is why the gifts Justices Alito, Scalia, and Thomas have chosen not to disclose are a distinct problem; they are hiding this conduct—and consequently their potential conflicts of interest and biases—from proper scrutiny.

There have been many bad-faith arguments made likening properly disclosed gifts by justices appointed by Democratic presidents with the undisclosed gifts accepted by Justices Thomas, Alito, and Scalia. Most of these purposefully conflate the misconduct of Justices Alito, Scalia, and Thomas with the properly disclosed trips of other justices.

For example, on June 13, 2024, Carrie Severino, president of the Judicial Crisis Network, tweeted her appearance on CNN with the following text:

> Another day, another insane attempt by the Left to smear Justice Thomas with a nothingburger. Until 2023, the Judicial Conference

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[397] *Supreme Court Justice Sotomayor's staff prodded colleges and libraries to buy her books*, ASSOCIATED PRESS (Jul. 11, 2023), https://apnews.com/article/supreme-court-sotomayor-book-sales-ethics-colleges-b2cb93493f927f995829762cb8338c02.
[398] Heidi Przybyla, *Law firm head bought Gorsuch-owned property*, POLITICO (Apr. 25, 2023), https://www.politico.com/news/2023/04/25/neil-gorsuch-colorado-property-sale-00093579.
[399] Evers-Hillstrom, *supra* note 152.
[400] Andrew Kerr, *Ruth Bader Ginsburg's Mysterious $1 Million Prize*, WASHINGTON FREE BEACON (Jul. 19, 2023), https://freebeacon.com/courts/ruth-bader-ginsburgs-mysterious-1-million-prize/.

> itself said personal hospitality shouldn't be disclosed. That's why Justice Breyer — who took at least 233 trips, 68 of them overseas — didn't have to disclose them. And Justice Ginsburg — who took 157 trips, 28 of them overseas — didn't have to disclose them. Just like Justice Thomas didn't. But ultimately, Senate Democrats are relentlessly attacking the Supreme Court because they're furious that we have a majority on the Court who faithfully applies the law and upholds the Constitution.[401]

Several of these statements are outright false. First, as noted in Sections II and IV, federal law only allows entertainment, food, and lodging at personal residences to fall under the hospitality exception and has always required that all gifts of transportation be disclosed; the Judicial Conference merely made that explicit in their forms in 2023 after decades of failures by Justices Scalia and Thomas to disclose gifts of travel and non-excepted lodging.

Second, Ms. Severino implies that Justices Breyer and Ginsburg had hundreds of undisclosed subsidized trips, which is false. The trips she references were all disclosed by Justices Breyer and Ginsburg in their financial disclosures for each year. There are no allegations that Justices Ginsburg or Breyer, or any of the sitting justices other than Justices Alito and Thomas have not disclosed partially or fully subsidized trips.[402] On the other hand, there are several dozen cases of inappropriately undisclosed subsidized travel from Justices Scalia and Thomas alone. The simple fact is that all of the justices except Justices Scalia, Thomas, and Alito appear to follow federal law and properly disclose their subsidized trips.

It is appropriate to scrutinize any subsidized trip taken by any justice. Indeed, *The New York Times* Editorial Board published an opinion piece on the subsidized travel of every sitting member of the Court, disclosed and undisclosed, that questions the propriety of such funded travel.[403] However, the public cannot scrutinize subsidized trips of which they are not aware. That is why the failures of Justices Alito, Scalia, and Thomas to disclose their subsidized trips is so concerning. Although three justices appointed by Republican presidents are the worst violators, justices appointed by Democratic presidents are not without fault, as indicated in Section V.E. The myriad claims of misconduct against multiple justices appointed by presidents of either political party underscore the need for an enforceable code of conduct that applies to all justices.

As Section VI addresses in full, gifts, particularly gifts of transportation and lodging, can be used to gain private access to the justices. This private access, particularly when concealed, often invariably creates an unambiguous appearance of impropriety that the justices must avoid in order to fulfill their duty to sit. While disclosure itself is not enough to avoid an appearance of impropriety, following federal law and disclosing these gifts is a first and necessary step.

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[401] Carrie Severino (@JCNSeverino), TWITTER (Jun. 13, 2024, 5:24 PM) https://x.com/jcnseverino/status/1801364984821121129.

[402] While Justice Kagan joined Justice Scalia on several hunting trips, there are no allegations that she received gifts of transportation and lodging that she did not disclose.

[403] The Editorial Board, *supra* note 164.

VI. Gifts Used to Facilitate Private Access

A. Gifts Can Be Used to Gain Private Access to Justices

1. Overview

Senate Democrats, led by Courts Subcommittee Chair Sheldon Whitehouse, have done extensive work highlighting ways corporate and right-wing interests have engaged in a decades-long coordinated effort to remake the federal judiciary.[404] There are varied participants in this effort, but the main players are Leonard Leo and the Federalist Society.[405] Nonetheless, the practice of gaining private access to the justices themselves is an aspect of these influence operations that deserves additional attention. As Section V detailed, gifts, particularly gifts of luxury travel, can be—and often are—used to facilitate such private access to the justices. This section reviews the ethical misconduct this private access inherently breeds, namely the unmistakable appearance of impropriety.

2. Leonard Leo Has Made a Career of Leveraging Private Access to the Justices

Mr. Leo met then-Judge Thomas in 1990 when Mr. Leo clerked for Judge Randolph on the U.S. Court of Appeals for the District of Columbia Circuit.[406] Following his clerkship, Mr. Leo was hired by the Federalist Society, but delayed his start with the organization to assist Justice Thomas in his confirmation process to become an associate justice in 1991.[407] Since then, Mr. Leo has played an outsized role in the selection and confirmation of every Republican-appointed justice on the Supreme Court.[408] This includes both President George W. Bush's withdrawal of Harriet Miers's nomination and the choice of then-Judge Samuel Alito as her replacement in 2005,[409] and Senate Republican Leader Mitch McConnell's successful effort to block consideration of then-Judge Merrick Garland's nomination in 2016.[410]

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[404] This is covered in the *Captured Courts* reports https://www.democrats.senate.gov/about-senate-dems/dpcc/captured-courts.

[405] *See, e.g.*, DEMOCRATIC POL'Y & COMMC'N COMM., CAPTURED COURTS: THE GOP'S BIG MONEY ASSAULT ON THE CONSTITUTION, OUR INDEPENDENT JUDICIARY, AND THE RULE OF LAW, 18-45 (May 2020), https://www.democrats.senate.gov/imo/media/doc/Courts%20Report%20-%20FINAL.pdf; DEMOCRATIC POL'Y & COMMC'N COMM., WHAT'S AT STAKE: DEMOCRACY—HOW CAPTURED COURTS SUPPORT THE REPUBLICAN PARTY'S ASSAULT ON AMERICAN DEMOCRACY, 10-11 (Oct. 2020), https://www.democrats.senate.gov/imo/media/doc/DPCC%20Captured%20courts%20Democracy%20Report.pdf.

[406] Robert O'Harrow, Jr. & Shawn Boburg, *A conservative activist's behind-the-scenes campaign to remake the nation's courts*, WASH. POST (May 21, 2019), https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/.

[407] *Id.*

[408] Andrew Restuccia & Michael C. Bender, *Trump's Supreme Court Nomination Strategy Steered by White House Counsel, Others*, WALL ST. J. (Sep. 19, 2020), https://www.wsj.com/articles/white-house-counsel-others-steer-trumps-supreme-court-nomination-strategy-11600553569.

[409] David G. Savage, *His conservative revolution*, L.A. TIMES (Jul. 9, 2018), https://enewspaper.latimes.com/infinity/article_share.aspx?guid=405ac9d2-7dba-4521-a1ea-b43bb6b17cf4.

[410] John Kruzel, *"One unnamed donor gave $17 million to the Leo-affiliated Judicial Crisis Network to block the nomination of Judge Merrick Garland and to support Gorsuch; then a donor — perhaps the same one — gave another $17 million to prop up Kavanaugh."*, POLITIFACT (Sep. 11, 2019),

As detailed in Section V, Mr. Leo facilitated and/or participated in at least the following undisclosed trips taken by Justices Alito, Scalia, and Thomas:

- Justice Scalia's 2005 trip to Alaska with Mr. Arkley and Judge Randolph;
- Justice Alito's 2008 trip to Alaska with Mr. Arkley, Judge Randolph, Mr. Singer, and Mr. Fund;
- Justice Thomas's 2018 trip to the Koch Brothers' political network's annual retreat in Palm Springs, California; and
- Justice Thomas's 2018 trip to Topridge Camp with Mr. Crow, Mr. Rutledge, and Mr. Paoletta (memorialized in a photo-realistic painting).

Mr. Leo also has a history of connecting prominent conservative attorneys to Republican-appointed justices. For instance, in 2013, Mr. Leo invited Scott Pruitt, then-Attorney General for Oklahoma and a frequent advocate before the Court, to a private dinner with Justices Scalia and Thomas.[411] This occurred the same week the Court considered Mr. Pruitt's petition for certiorari in *Pruitt v. Nova Health Systems*, defending Oklahoma's abortion ultrasound requirement that the Oklahoma Supreme Court struck down as unconstitutional.[412]

Mr. Leo also has gained access to Justice Thomas through Ms. Thomas. In 2009 and 2010, Mr. Leo was an initial director for Ms. Thomas's nonprofit group Liberty Central, which received $500,000 in seed money from Mr. Crow and was established two months before the Court decided *Citizens United*.[413] This timing is particularly notable because Liberty Central directly benefitted from the Court's 5-4 decision in *Citizens United*, in which Justice Thomas joined the majority's holding. The case allowed corporations to make unlimited independent expenditures to groups like Liberty Central, which in turn now do not have to disclose their donors. In 2012, Mr. Leo directed Kellyanne Conway, a conservative pollster, to pay $25,000 to Ms. Thomas's similarly named for-profit consulting firm, Liberty Consulting, with "no mention of Ginni, of course."[414] Ms. Conway's then-husband, George Conway, a conservative attorney, has described Mr. Leo's role as focused on keeping conservative members of the Court in place: "There was always a concern that Scalia or Thomas would say, 'Fuck it,' and quit the job and go make way more money at Jones Day or somewhere else. Part of what Leonard does is he tries to

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https://www.politifact.com/factchecks/2019/sep/11/sheldon-whitehouse/its-true-millions-dark-money-has-been-spent-tilt-c/.

[411] Eric Lipton, Lisa Friedman & Kenneth P. Vogel, *A Lobbyist Helped Scott Pruitt Plan a Morocco Trip. Then Morocco Hired the Lobbyist.*, N.Y. TIMES (May 1, 2018), https://www.nytimes.com/2018/05/01/us/pruitt-epa-trips-lobbyists.html; *see also* Hillsdale College, *"The Next Supreme Court Justice" – Scott Pruitt, Oklahoma Attorney General*, YOUTUBE (Jul. 12, 2016) https://www.youtube.com/watch?v=ewsYIss_Icg.

[412] *Pruitt v. Nova Health Systems*, SCOTUSBLOG, https://www.scotusblog.com/case-files/cases/pruitt-v-nova-health-systems/.

[413] Heidi Przybyla, *What Ginni Thomas and Leonard Leo wrought: How a justice's wife and key activist started a movement*, POLITICO (Sep. 10, 2023), https://www.politico.com/news/2023/09/10/ginni-thomas-leonard-leo-citizens-united-00108082.

[414] Emma Brown, Shawn Boburg & Jonathan O'Connell, *Judicial activist directed fees to Clarence Thomas's wife, urged 'no mention of Ginni'*, WASH. POST (May 4, 2023), https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/.

keep them happy so they stay on the job."[415] As noted in Section V.B, the justices hold some of the most powerful offices in the government and earn income higher than that of 90 percent of Americans.

3. The Supreme Court Historical Society is Used to Gain Private Access to the Justices

The Supreme Court Historical Society (SCHS) is a nonprofit organization that describes its mission as "dedicated to preserving and collecting the history of the Supreme Court of the United States, increasing public awareness of the Court's contribution to our nation's rich constitutional heritage, and acquiring knowledge covering the history of the entire Judicial Branch."[416] To this end, the SCHS primarily conducts educational programing regarding the Court.

However, in 2022, *The New York Times* reported that "over the years the society has also become a vehicle for those seeking access to nine of the most reclusive and powerful people in the nation."[417] The *Times* discovered that beginning in 2003, SCHS had received at least $6.4 million, or 60 percent, of its donations "from corporations, special interest groups, or lawyers and firms that argued cases before the [C]ourt."[418] The *Times* further found that "according to an analysis of archived historical society newsletters and publicly available records that detail grants given to the society by foundations…at least $4.7 million came from individuals or entities in years when they had an interest in a pending federal court case on appeal or at the high court."[419]

David T. Pride, SCHS's Executive Director from 1979 to 2021, told the *Times* that the Society "was pretty unabashed about" soliciting donations from those with interests before the Court.[420] He justified making these solicitations an intrinsic part of SCHS's fundraising model with the rhetorical question: "[w]ho wouldn't expect that to be our constituency?"

In materials produced to the Committee, SCHS disputed the *Times* characterization of its funding in three ways.[421] First, it argued: "contributions to the Society, no matter how large or from whom they come, do not give the donor the ability to influence the Court. The most a contribution gets the donor is the ability to attend a large group function where the donor, like other attendees, will not have private time with any Justice." Second, SCHS contended that the *Times*' calculations are misleading because it "included in its calculations individuals or entities

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[415] Andy Kroll, Andrea Bernstein & Ilya Marritz, *We Don't Talk About Leonard: The Man Behind the Right's Supreme Court Supermajority*, PROPUBLICA (Oct. 11, 2023), https://www.propublica.org/article/we-dont-talk-about-leonard-leo-supreme-court-supermajority.
[416] *The Society's Mission*, SUPREME COURT HISTORICAL SOCIETY, https://supremecourthistory.org/supreme-court-historical-society-mission/.
[417] Jo Becker & Julie Tate, *A Charity Tied to the Supreme Court Offers Donors Access to the Justices*, N.Y. TIMES (Dec. 30, 2022), https://www.nytimes.com/2022/12/30/us/politics/supreme-court-historical-society-donors-justices.html.
[418] *Id.*
[419] *Id.*
[420] *Id.*
[421] Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of the Supreme Court Historical Society (Sep. 6, 2023).

with business before the Courts of Appeals." Their final claim was that the calculations themselves were flawed:

> Third, the Society has identified several flaws in the *Times*' claim that a significant portion of the funds the Society raised from 2003 to the present came from litigants with matters before the Courts of Appeals or the Supreme Court. The *Times* traced less than half of the contributions that it claims the Society raised since 2003 and then made generalizations from that partial tracing. Remarkably, the *Times* even got wrong the total amount that the Society has raised during that period, information that is publicly available in the Society's IRS filings. Even taking the *New York Times*' calculations at face value, the figures cited in the reporting comprise a significantly smaller percentage of the Society's contributions over the past 20 years than the *Times* posits. The *Times*' analysis is rendered even more meaningless by its combination of donations from litigants before the Courts of Appeals as well as the Supreme Court since the Society has no meaningful connection with the Courts of Appeals.[422]

The New York Times noted the limitations of its reporting in the original article, including the partial nature of their tracing.[423] As the *Times* explained, SCHS "declined when asked to [publicly disclose its donors]" and the analysis was based on "archived historical society newsletters and publicly available records that detail grants given to the society by foundations."[424] The Committee disagrees with SCHS's contention that "[t]he *Times*' analysis is rendered even more meaningless by its combination of donations from litigants before the Courts of Appeals as well as the Supreme Court." While analyzing donations from litigants before all federal courts could potentially be overly broad, a party or parties in up to ten percent of all decisions issued by the federal courts of appeals seek appeal at the Supreme Court annually, which is relevant for analysis of giving trends that may influence the Court.[425]

As for private access to the justices, SCHS generally maintains that the "Society's programming does not provide for meetings with any Justices on Court business—and certainly not for purposes of matters currently before the Court—nor does participation in Society events facilitate such an occurrence."[426] As a practical matter, the argument that participation in Society events does not facilitate access to the justices is misleading. It may not be the intention of the current leaders of SCHS, but actors have exploited the relatively limited access to the justices SCHS provides and will likely continue to do so as long as the opportunity remains available.

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[422] *Id.* at 3–4.
[423] Becker & Tate, *supra* note 417.
[424] *Id.*
[425] Appellate Courts and Cases – Journalist's Guide, ADMIN. OFF. OF THE U.S. CTS., https://www.uscourts.gov/data-news/reports/handbooks-manuals/journalists-guide-federal-courts/appellate-courts-and-cases-journalists-guide (last visited Dec. 16, 2024).
[426] Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of the Supreme Court Historical Society (Sep. 6, 2023), at 2.

For example, Rev. Rob Schenck, a former anti-abortion activist, advised his "allies to contribute money to the Supreme Court Historical Society and then mingle with the justices at its functions."[427] This was part of a multi-pronged effort to "ingratiate[] himself with court officials who could help give him access."[428]

In 2023 and 2024, Lauren Windsor, a left-wing political activist, provided a clear demonstration of how one could use SCHS events to ingratiate themselves with willing justices.[429] During SCHS events, Windsor was able to engage Chief Justice Roberts and Justice Alito in extended, one-on-one conversations.[430]

The Committee has found no evidence that the current leadership of SCHS has in any way attempted to facilitate this access. Rev. Schenck testified before Congress that SCHS's event policies rely on the participants to act in good faith and for the justices to display a judicial temperament. While one would hope for the former and have a right to expect the latter, so long as certain justices make themselves available to such overtures, there will be an incentive for partisan or self-interested actors to exploit such access. And some justices do suggest that they are open to such solicitation. As Rev. Schenck testified to the House Judiciary Committee:

> I'm also conscious we were never admonished for the type of work our missionaries did. Quite to the contrary. In one instance, Justice Thomas commended me, saying something like "keep up what you're doing. It's making a difference."[431]

Although SCHS still "disputes that it may serve as a vehicle to promote the personal agendas of deceptive individuals interested in matters before the Court," it is "reexamin[ing] its practices to prevent even the implication that it may be used in such a manner."[432] While some of the SCHS's proposed changes appear designed merely to prevent leaks, such as "explicitly banning electronics and recording devices at all events," others indicate more seriousness about changing the permissive culture that has allowed individuals to exploit the access SCHS provides, such as "[b]anning violators from future in-person events or terminating their society membership."[433]

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[427] Jodi Kantor & Jo Becker, *Former Anti-Abortion Leader Alleges Another Supreme Court Breach*, N.Y. TIMES (Nov. 19, 2022), https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html.
[428] *Id.*
[429] Tessa Stuart & Tim Dickinson, *Justice Alito Caught on Tape Discussing How Battle for America 'Can't Be Compromised'*, ROLLING STONE (Jun. 10, 2024), https://www.rollingstone.com/politics/politics-features/samuel-alito-supreme-court-justice-recording-tape-battle-1235036470/.
[430] *See, e.g.*, Lauren Windsor (@lawindsor), TWITTER (Jun. 10, 2024, 12:22 PM), https://x.com/lawindsor/status/1800201783945683120; Lauren Windsor (@lawindsor), TWITTER (Jun. 10, 2024, 12:22 PM), https://x.com/lawindsor/status/1800201786403504421.
[431] Transcript of Dec. 8, 2022 House Committee on the Judiciary Hearing.
[432] Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of the Supreme Court Historical Society (Jul. 1, 2024).
[433] *Id.*

VII. Recusal Issues

As outlined in Section II.B.3, federal law creates an affirmative duty for the justices to recuse themselves in a number of situations. These include personal bias or prejudice concerning a party, prior legal work concerning the proceeding, a financial interest in the controversy or party, and otherwise "in any proceeding in which his impartiality might reasonably be questioned."[434] However, the justices have not demonstrated particular adherence to any of these standards, as this section will demonstrate. And when the justices do choose to recuse themselves, the recusal is rarely accompanied by an explanation. In 2023, *Bloomberg Government* reviewed more than 750 recusals identified in the Court's orders since 2018 and found that "virtually all…lacked an explanation of why the justices avoided participating."[435] While the Court only hears a small number of cases each term, it considers many more petitions for review, and it is at this stage where nearly all of these recusals occurred.

A. Common Examples of Failures to Recuse by Justices

1. Cases Involving Parties in Which Justices Own Stock

Under federal law, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself" when "he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding…."[436] "Financial interest" is clearly defined in law to include any stock ownership: "ownership of a legal or equitable interest, however small."[437]

Despite this legislative command, and the choice many justices have made to maintain large portfolios of individual stocks triggering this obligation,[438] justices commonly fail to recuse themselves in matters directly concerning companies in which they are a shareholder. What follows is a non-comprehensive list to highlight the prevalence of this problem:

2008

- Justice Alito did not recuse himself in *FCC v. Fox Television Stations, Inc.*,[439] despite holding 2,000 shares of Disney stock on behalf of his minor children. Disney-owned ABC was a respondent in the case.[440] Justice Alito "owned the Disney shares for many years, after his mother bought $1,000 worth of stock [for] each of his two children," and he ultimately sold these shares in February 2010. Justice Alito said that his participation in the case was an "oversight," and that "aides who routinely check for conflicts in high-

[434] *See* 28 U.S.C. § 455.
[435] John Crawley & Kimberly Strawbridge Robinson, *Alito, Kagan Top Justices in Supreme Court Recusal 'Black Box'*, BLOOMBERG GOVERNMENT (Feb. 13, 2023), https://news.bloomberglaw.com/us-law-week/alito-kagan-top-justices-in-supreme-court-recusal-black-box-1.
[436] 28 U.S.C. § 455(b)(4)
[437] 28 U.S.C. § 455(d)(4)
[438] "[M]ore than a third of Alito's [over 130] recusals over the [2018 to 2023] period likely were due to share conflicts." Crawley & Robinson, *supra* note 435.
[439] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).
[440] Peter S. Green & John Mazor, *Corrupt justice: what happens when judges' bias taints a case?*, THE GUARDIAN (Oct. 18, 2015), https://www.theguardian.com/us-news/2015/oct/18/judge-bias-corrupts-court-cases.

court cases missed the Disney connection when they looked at the *Fox* case, even though ABC's brief clearly disclosed Disney's ownership." Justice Alito "voted with the majority, against ABC's interests."[441]

2015

- Chief Justice Roberts did not recuse himself in *ABB v. Arizona Board of Regents*,[442] despite the fact that he or a family member owned shares in Texas Instruments, a petitioner in the case. According to his 2014 financial disclosure report, Chief Justice Roberts or a family member "own[ed] from $100,001 to $250,000 in Texas Instruments [stock]." The Supreme Court ultimately rejected the appeal with Chief Justice Roberts participating in that decision. A Supreme Court spokeswoman explained that the conflict "should have been caught" and attributed the mistake to "human error."[443]
- Justice Breyer did not recuse himself in *FERC v. EPSA*,[444] despite his wife owning 750 shares in Johnson Controls, a respondent in the case. Justice Breyer participated in oral argument in the case. The day after oral argument, his wife sold all 750 shares. This sale occurred after a reporter contacted Justice Breyer's chambers about his wife's ownership of these shares. The parties in the case were then informed by the Clerk of the Supreme Court that a search in Justice Breyer's chambers for a potential conflict of interest "inadvertently failed to find this potential conflict." The clerk relayed that Justice Breyer had "concluded that he should continue to participate in this case."[445] Justice Breyer's decision to remain involved was based, to some extent, on the fact that he had "devoted substantial judicial time to th[e] case" already. Justice Alito, however, did recuse himself from this same case due to his own ownership of Johnson Controls stock.[446]

2018

- Chief Justice Roberts did not recuse himself in *Roberts v. AT&T Mobility LLC*,[447] despite owning shares in Time-Warner, which had completed its merger with AT&T on June 15, 2018. Three days after the merger, the Court denied certiorari in this case, and Chief Justice Roberts took part in that decision. Chief Justice Roberts subsequently sold his stock on November 15, 2018 "for a gain of at least $100,000, just eight days after watchdog group Fix the Court discovered the conflict and criticized him for not recusing himself from voting on the customers' appeal."[448]

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[441] Mark Sherman, *Alito owned stock, voted in case with Disney's ABC*, SEATTLE TIMES (Jun. 1, 2011), https://www.seattletimes.com/nation-world/alito-owned-stock-voted-in-case-with-disneys-abc-01/.
[442] *ABB Inc. v. Arizona Bd. Of Regents*, 577 U.S. 913 (2015).
[443] Greg Stohr, *Chief justice overlooked stock conflict in Supreme Court case*, DAILY RECORD (Dec. 18, 2015), https://thedailyrecord.com/2015/12/18/chief-justice-overlooked-stock-conflict-in-supreme-court-case/.
[444] *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260 (2016).
[445] Letter from Scott S. Harris, Clerk, U.S. Supreme Court, to Carter G. Phillips, Sidley Austin LLP (Oct. 15, 2015).
[446] Lyle Denniston, *Breyer stays on FERC case after stock sale*, SCOTUSBLOG (Oct. 16, 2015), https://www.scotusblog.com/2015/10/breyer-stays-on-ferc-case-after-stock-sale/.
[447] *Roberts v. AT&T Mobility LLC*, 585 U.S. 1004 (2018).
[448] Jimmy Hoover, *Chief Justice Sold AT&T Shares After Ruling In Co.'s Case*, LAW360 (Jun. 13, 2019), https://www.law360.com/articles/1169010/chief-justice-sold-at-t-shares-after-ruling-in-co-s-case.

2021

- Justice Alito did not recuse himself from *Valentine v. PNC Financial Services*¸ despite owning approximately $15,001 to $50,000 in shares in PNC Bank, the respondent.[449]

2. Cases Involving Justices' Book Publishers

Several justices have failed to recuse themselves from matters directly concerning their book publishers. This issue is distinct from stock ownership because of the direct payments justices receive from their publishers in the form of book advances. What follows is a non-comprehensive list to highlight the prevalence of this problem:

2013

- Justice Sotomayor did not recuse herself in *Greenspan v. Random House*,[450] even though the respondent was her book publisher, from which she received a $1.9 million book advance for her memoir ($1.2 million in 2010 and the rest in 2012).[451] The Supreme Court decided not to hear the case and Justice Sotomayor took part in that decision the same year her memoir was published.[452]

2019

- Neither Justices Gorsuch nor Sotomayor recused themselves in *Nicassio v. Viacom*,[453] despite their book publisher being a respondent. Justice Gorsuch had published "A Republic, If You Can Keep It" in 2019, and had, at that point, "received $655,000" from the publisher, Penguin Random House, according to his 2018, 2019, and 2020 financial disclosures.[454] Altogether Justice Sotomayor had "earned $3.6 million from Penguin Random House and its subsidiaries for…her 2013 memoir…and numerous children's books." These payments were ongoing at the time of the case, and "the same day that the petition [for certiorari] was submitted, Justice Sotomayor received a check from Penguin Random House for $10,586." Justice Breyer recused himself from participating in this case because he had also "received money from Penguin Random House."[455]

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[449] *Recent Times a Justice Failed to Recuse Despite a Conflict of Interest*, FIX THE COURT (Sep. 10, 2024), https://fixthecourt.com/2024/09/recent-times-justice-failed-recuse-despite-clear-conflict-interest/; Samuel Alito, *Financial Disclosure Report for Calendar Year 2019* (Jun. 12, 2020), Appendix J, Key Document B.
[450] *Greenspan v. Random House*, 569 U.S. 942 (2013).
[451] Luke Rosiak, *Liberal SCOTUS Justice Took $3M From Book Publisher, Didn't Recuse From Its Cases*, DAILY WIRE (May 3, 2023), https://www.dailywire.com/news/liberal-scotus-justice-took-3m-from-book-publisher-didnt-recuse-from-its-cases.
[452] Victor Nava, *Justice Sonia Sotomayor didn't recuse herself from cases involving publisher that paid her $3M: report*, N. Y. POST (May 4, 2023), https://nypost.com/2023/05/04/supreme-court-justice-sonia-sotomayor-didnt-recuse-herself-from-cases-involving-book-publisher-that-paid-her-3m-report/.
[453] *Nicassio v. Viacom Int'l, Inc.*, 140 S. Ct. 630 (Dec. 9, 2019).
[454] Devan Cole, *2 Supreme Court justices did not recuse themselves in cases involving their book publisher*, CNN POLITICS (May 5, 2023), https://www.cnn.com/2023/05/04/politics/sonia-sotomayor-neil-gorsuch-book-recusal-supreme-court-cases/index.html.
[455] Victor Nava, *Justice Sonia Sotomayor didn't recuse herself from cases involving publisher that paid her $3M: report*, N. Y. POST (May 4, 2023), https://nypost.com/2023/05/04/supreme-court-justice-sonia-sotomayor-didnt-recuse-herself-from-cases-involving-book-publisher-that-paid-her-3m-report/.

3. Cases Involving a Justice's Family or Other Close Relation

A justice's obligation to recuse in cases involving a family member or other close relation is not limited only to matters where "[h]e or his spouse, or a person within the third degree" to either is "a party to the proceeding"[456] or "acting as a lawyer in the proceeding."[457] Justices must recuse themselves in all cases where such relations are "known by the judge to have an interest that could be substantially affected by the outcome of the proceeding" or "is likely to be a material witness in the proceeding."[458]

1998

- Chief Justice Rehnquist did not recuse himself from *Microsoft Corp. v. United States*,[459] an antitrust lawsuit, despite his son's work on private antitrust cases for Microsoft as a law firm partner. While his son did not work on this particular case, he was working on other "private antitrust cases" for Microsoft at the time as a partner at Goodwin Procter. Chief Justice Rehnquist sent the other justices a memo explaining his decision not to recuse himself, claiming that he was "acutely aware of the weight of impartiality on the public consciousness" and that the Supreme Court "wasn't operating in a vacuum." While Justice Ginsburg and Justice O'Connor "praised the decision," Justice Stevens had several concerns—many of which he expressed in the margins of a memo—and thought that the Chief Justice should have recused himself. The Supreme Court ultimately declined to hear the case, which was sent back to the appeals court. The two parties later settled.[460]

4. Cases About Which Justices Had Commented or Demonstrated Views

Recusal obligations under federal law extend to "any proceeding in which [a justice's] impartiality might reasonably be questioned."[461] This provision covers many scenarios, including those where a justice has commented or demonstrated views on live legal questions.

2004

- Justice Ginsburg gave opening remarks at a lecture series named for her that was cosponsored by the NOW Legal Defense and Education Fund (NOW LDF), which regularly litigated abortion issues before the Court. Two weeks prior to the lecture series, Justice Ginsburg had voted in a case on the side taken by the NOW LDF in its amicus brief. Additionally, Justice Ginsburg, prior to taking the bench, briefly sat on the NOW LDF board in the 1970s, and had served on the group's advisory committee for judicial education. This raised concerns with several legal experts, who commented that Justice

[456] 28 U.S.C. 455(b)(5)(i).
[457] 28 U.S.C. 455(b)(5)(ii).
[458] 28 U.S.C. 455(b)(5)(iii) & (iv).
[459] *Microsoft Corp. v. United States*, 530 U.S. 1301 (Sep. 26, 2000).
[460] Tobi Raji & Aaron Schaffer, *A chief justice didn't recuse in a major case. This justice disagreed.*, WASH. POST (Jun. 26, 2023), https://www.washingtonpost.com/history/2023/06/26/supreme-court-recusal-history-stevens-rehnquist/; James V. Grimaldi, *A High Court Conflict of Interest?*, WASH. POST (Oct. 1, 2000), https://www.washingtonpost.com/archive/business/2000/10/02/a-high-court-conflict-of-interest/2683ecbc-8a25-4b0a-b08a-3ae12acc2cc1/?itid=lk_inline_manual_26.
[461] 28 U.S.C. 455(a).

Ginsburg's "ongoing affiliation with the legal activist group [NOW LDF] undercuts her appearance of impartiality."[462]

2006

- Justice Scalia did not recuse himself in *Hamdan v. Rumsfeld*,[463] a case concerning the president's power to establish military tribunals to try prisoners at Guantanamo Bay for war crimes, after making remarks about the rights of detainees at Guantanamo Bay. In March 2006, during a question-and-answer session at the University of Fribourg in Switzerland, Justice Scalia faced hostile questions about Guantanamo Bay detainees. In a recording of the event, Justice Scalia said that he was "astounded" at the world reaction to Guantanamo because "[w]e are in a war." He also said that "[w]e never gave a trial in civil courts to people captured in a war" and that it was a "crazy idea" to give captured combatants such judicial processes. Justice Scalia also added a personal note to his remarks, saying, "I had a son on that battlefield [in Iraq], and they were shooting at my son, and I'm not about to give this, this man who was captured in a war a full jury trial."[464] Subsequently, five retired generals and admirals who had previously filed amicus briefs in *Hamdan*, wrote to the Court asking Justice Scalia to recuse himself, arguing that his remarks gave rise to "the unfortunate appearance that, even before the briefing in this case was complete, the Justice had made up his mind about the merits."[465] The Court ultimately ruled that the president did not have the authority to set up the war crimes tribunals and found the special military commissions illegal under both military justice law and the Geneva Conventions. Justice Scalia dissented.

2014

- Justice Ginsburg gave an interview to *The New Republic* in which she offered commentary on Texas House Bill 2 (HB2), a law that required physicians who performed abortions to obtain admitting privileges at a local hospital.[466] In the interview, Justice Ginsburg was asked "if state lawmakers could be trusted to safeguard abortion rights." She responded by saying, "[h]ow could you trust legislatures in view of the restrict[ion]s states are imposing? Think of the Texas legislation that would put most clinics out of business … In my view, both [courts and legislatures] have been moving in the wrong direction."[467] In the 2016 case *Whole Women's Health v. Hellerstedt*,[468] the Court ruled that HB2 was unconstitutional. Justice Ginsburg did not recuse herself in the case.

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[462] Richard A. Serrano & David G. Savage, *Ginsburg Has Ties to Activist Group*, L.A. TIMES (Mar. 11, 2004), https://www.latimes.com/archives/la-xpm-2004-mar-11-na-ginsburg11-story.html.
[463] *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).
[464] Nina Totenberg, *Scalia Remarks Draw Criticism Before Guantanamo Case*, NPR (Mar. 27, 2006), https://www.npr.org/templates/story/story.php?storyId=5304714.
[465] Lyle Denniston, *Scalia asked to step aside*, SCOTUSBLOG (Mar. 27, 2006), https://www.scotusblog.com/2006/03/scalia-asked-to-step-aside/.
[466] Jacob Gershman, *Justice Ginsburg Comments on Abortion Law Stir Recusal Debate*, WALL ST. J. (Oct. 1, 2014), https://www.wsj.com/articles/BL-LB-49396.
[467] Jeffrey Rosen, *Ruth Bader Ginsburg Is an American Hero*, NEW REPUBLIC (Sep. 28, 2014), https://newrepublic.com/article/119578/ruth-bader-ginsburg-interview-retirement-feminists-jazzercise.
[468] *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016).

2016

- Justice Ginsburg told *The New York Times* in an interview: "I can't imagine what the country would be – with Donald Trump as our president." She offered other public criticisms of the then-Republican presidential candidate days later. The following day she apologized for her "ill-advised" comments.[469] The Court reviewed only one matter in the 2016 election cycle where the Trump campaign was a party—an emergency application to vacate a stay issued against the Ohio Democratic Party. Justice Ginsburg did not recuse herself from the denial of this application and voted with the Court to deny the application.[470]

2021

- Justice Alito did not recuse himself in cases involving the 2020 presidential election or the January 6 insurrection, such as *Republican Party of Pennsylvania v. Degraffenreid*, *Trump v. Thompson*, *Trump v. Anderson*, *Fisher v. United States*, or *Trump v. United States*, despite allowing an upside-down American flag to be flown at his home just 11 days after then-President Trump incited the insurrection in an effort to subvert the 2020 presidential election. The upside-down American flag had become a symbol of the "Stop the Steal" movement and was carried by followers of then-President Trump at the insurrection. This issue will be discussed further in Section VII.C.1.

2023

- Justice Alito did not recuse himself in *Moore v. United States* despite sitting for an interview with an attorney for the petitioner while the case was before the Court. This issue will be discussed further in Section VII.C.2.
- Justice Alito did not recuse himself in *Fisher v. United States* or *Trump v. United States* despite allowing an "Appeal to Heaven" flag to be flown at his Long Beach Island property in 2023. The "Appeal to Heaven" flag had become a symbol of the "Stop the Steal" movement and was carried by followers of then-President Trump at the insurrection. This issue will be discussed further in Section VII.C.1.

B. Other General Recusal Issues

As Section VII.A illustrates, there are many cases, particularly in the context of stocks, when a justice violated federal law by remaining on a case in which she had a financial interest. While some of these situations may be willful, it appears the internal procedures the justices rely on to identify recusal issues may not be thorough enough. Other recusal issues arise due to justices' personal, non-familial relationships with the parties that come before them. What follows is a non-comprehensive list of examples of these other recusal issues.

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[469] Adam Liptak, *Ruth Bader Ginsburg, No Fan of Donald Trump, Critiques Latest Term*, N.Y. TIMES (Jul. 10, 2016), https://www.nytimes.com/2016/07/11/us/politics/ruth-bader-ginsburg-no-fan-of-donald-trump-critiques-latest-term.html.

[470] *Ohio Democratic Party v. Donald J. Trump for President*, 580 U.S. 978 (2016).

2004

- Three weeks after the Supreme Court announced it would hear *Cheney v. United States Dist. Court*,[471] Justice Scalia went on a hunting trip to Louisiana with Vice President Cheney, whose powers were directly contested in the case.[472] The Sierra Club filed a motion requesting Justice Scalia recuse himself from the case, which he denied in a 21-page memorandum explaining his decision.[473]

2016

- Chief Justice Roberts initially did not recuse himself in *Life Technologies Corp. v. Promega Corp*.,[474] despite owning shares in Thermo Fisher Scientific, Life Technologies' parent company. He only recused himself after the error was brought to his attention following oral argument.[475] In a letter to the attorneys in the case, the clerk of the Supreme Court wrote that "the ordinary conflict check conducted in the Chief Justice's chambers inadvertently failed to find this potential conflict."[476]

2017

- Justice Kagan initially did not recuse in *Jennings v. Rodriguez*,[477] despite her previous work on the case when she was U.S. solicitor general. She stepped aside when the error was brought to her attention. This announcement came over a month after oral argument in the case was heard.[478]

2020

- Justice Sotomayor initially did not recuse herself from *Colorado Department of State v. Michael Baca*, despite her close friendship with Polly Baca, one of the respondents. After some months, she did recuse. In a letter to the parties in the case, the clerk of the Supreme Court said that the "initial conflict check conducted in Justice Sotomayor's Chambers did not identify this potential conflict."[479]

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[471] *Cheney v. United States Dist. Court*, 542 U.S. 367 (2004).
[472] Charles Lane, *Sierra Club Wants Scalia To Sit Out Task Force Case*, WASH. POST (Feb. 23, 2004), https://wapo.st/3BcDJL9.
[473] *Cheney v. United States Dist. Court*, 541 U.S. 913 (Scalia, J. mem.).
[474] *Life Technologies Corp. v. Promega Corp.*, 580 U.S. 140 (2017).
[475] Lawrence Hurley, *U.S. chief justice steps aside in patent case over stock conflict*, REUTERS (Jan. 4, 2017), https://www.reuters.com/article/usa-court-thermo-fisher-idUSL1N1EU1TB/.
[476] Amy Howe, *Roberts recuses from December patent case*, SCOTUSBLOG (Jan. 4, 2017), https://www.scotusblog.com/2017/01/roberts-recuses-december-patent-case/.
[477] *Jennings v. Rodriguez*, 583 U.S. 281 (2018).
[478] Amy Howe, *Kagan recuses from immigrant-detention case*, SCOTUSBLOG (Nov. 10, 2017), https://www.scotusblog.com/2017/11/kagan-recuses-immigrant-detention-case/.
[479] Harper Neidig, *Sotomayor recuses herself from case on 'faithless electors'*, THE HILL (Mar. 10, 2020), https://thehill.com/regulation/court-battles/486877-sotomayor-recuses-herself-from-case-on-faithless-electors/.

C. Cases in Which Justice Alito Failed to Properly Recuse Himself

1. Display of Flags Associated with January 6 Insurrection

On May 16, 2024, *The New York Times* revealed that an upside-down American flag had been flown at Justice Alito's home in the immediate aftermath of the January 6 insurrection.[480] This flag has been used by many movements to signal dissatisfaction with the federal government, which alone would raise ethical questions about a justice's display of the flag. By January 2021, the flag had been adopted by then-President Trump's supporters following his 2020 reelection defeat to the point that the flag was "really established as a symbol of the 'Stop the Steal' campaign."[481] It was flown prominently at the January 6 insurrection.

Eleven days after the insurrection, while this flag was being flown at Justice Alito's home, the Court was actively considering *Republican Party of Pennsylvania v. Degraffenreid*, a case brought by supporters of then-President Trump concerning the validity of certain of Pennsylvania's absentee ballots. While the Court ultimately declined to take up the case, Justice Alito joined Justices Thomas and Gorsuch in a dissent explaining why they would have taken up this case.[482]

Justice Alito provided a short initial explanation to the *Times* regarding the display of the upside-down American flag outside his home: "I had no involvement whatsoever in the flying of the flag…It was briefly placed by Mrs. Alito in response to a neighbor's use of objectionable and personally insulting language on yard signs."[483] In a later interview with *Fox News*, Justice Alito added more detail to this explanation, contending that the situation began with Ms. Alito speaking to neighbors about a sign that read "Fuck Trump," allegedly placed near a children's bus stop.[484] According to Justice Alito, the same neighbors put up a sign directly attacking Ms. Alito after the conversation, and then, in a later interaction, argued with Ms. Alito and used derogatory language, "including the C-word." It was after this, according to Justice Alito, that Ms. Alito decided to fly the flag as a statement against these neighbors. Subsequently, Justice Alito provided the following explanation to Chair Durbin and Senator Whitehouse in a letter:

> [My wife] was greatly distressed at the time due, in large part, to a very nasty neighborhood dispute in which I had no involvement. A house on the street displayed a sign attacking her personally, and a man who was living in the house at the time trailed her all the way down the street and berated her in my presence using foul language,

[480] Jodi Kantor, *At Justice Alito's House, A 'Stop the Steal' Symbol on Display*, N.Y. TIMES (May 16, 2024), https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html.
[481] *Id*.
[482] *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021) (Alito, J., dissenting).
[483] Kantor, *supra* note 480.
[484] Shannon Bream & Greg Norman, *Alito says wife displayed upside-down flag after argument with insulting neighbor*, FOX NEWS (May 17, 2024), https://www.foxnews.com/politics/alito-wife-displayed-upside-down-flag-argument-insulting-neighbor.

> including what I regard as the vilest epithet that can be addressed to a woman.[485]

While there is no justification for a "Stop the Steal" symbol flying on a Supreme Court justice's property in the immediate aftermath of January 6, these explanations would help contextualize the situation if true. But police records and interviews with the neighbors contradict Justice Alito's version of events.[486] Most significant is that the alleged encounter with the derogatory language could not have been the impetus for Ms. Alito to fly the upside-down flag. Photographic evidence shows that the upside-down flag was flown as early as January 17, 2021. Yet, the encounter with derogatory language did not take place until February 15, 2021—nearly a month later. This date is marked by a call to police placed by the neighbors because, in their accounting of the situation, Ms. Alito repeatedly confronted them to the point that it constituted harassment. According to the *Times*, the neighbors told the police "somebody in a position of authority needs to talk to her and make her stop."[487]

Photographic evidence and interviews with others in the neighborhood likewise confirm that the neighbors never placed a sign personally attacking Ms. Alito; the only signs they placed were one that read "Fuck Trump" on the front and "Bye Don" on the back, one that read "Trump Is a Fascist," and a final one that read "You Are Complicit." It is certainly possible that Ms. Alito was offended by the signs and interpreted the final sign to be directed at her. It was not until 2022, after the neighbors had moved away, that they came back to the neighborhood to hold signs calling Justice Alito a "fascist" and "insurrectionist" in protest of his majority opinion in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*.[488] Ms. Alito's purported concern with the signs being near a children's bus stop also does not withstand scrutiny, because at the height of the COVID-19 pandemic Fairfax school children were attending school virtually.[489] At best, Justice Alito has exaggerated the details of this situation to put himself and his wife in the best possible light; at worst, he has misled Congress and the American people about the appearance of bias in cases of immense national and historic importance. Even if the neighbors' conduct was inappropriate or unnecessarily provocative, it does not excuse Justice Alito's duty to avoid the appearance of partiality.

The upside-down American flag was not an isolated incident. In July and September of 2023, the "Appeal to Heaven" flag was documented flying at Justice Alito's Long Beach Island home.[490] Like the upside-down American flag, the "Appeal to Heaven" flag was carried by rioters on January 6.[491]

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[485] The Honorable Samuel A. Alito, Associate Justice, U.S. Supreme Court, to the Honorable Richard J. Durbin, Chair, and Shelton Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary (May 29, 2024), Appendix A, Key Document N.
[486] Justin Jouvenal, *Alito's account of the upside-down flag doesn't fully add up. Here's why.*, WASH. POST (Jun. 5, 2024), https://www.washingtonpost.com/politics/2024/06/05/justice-alito-flags-unanswered-questions/.
[487] Jodi Kantor, *The Alitos, the Neighborhood Clash and the Upside-Down Flag*, N.Y. TIMES (May 28, 2024), https://www.nytimes.com/2024/05/28/us/justice-alito-neighbors-stop-steal-flag.html.
[488] *Id.*
[489] Jouvenal, *supra* note 486.
[490] Jodi Kantor, Aric Toler & Julie Tate, *Another Provocative Flag Was Flown at Another Alito Home*, N.Y. TIMES (May 22, 2024), https://www.nytimes.com/2024/05/22/us/justice-alito-flag-appeal-to-heaven.html.
[491] *Id.*

This particular flag connotes more than generalized grievance against the government of the United States. While the flag was initially commissioned in 1775 for use on certain American Revolutionary War ships, by approximately 2015 the flag had been coopted by Christian nationalists. Dutch Sheets, a leader of the fundamentalist New Apostolic Reformation (NAR) movement, went on a nationwide tour he dubbed "An Appeal to Heaven" and used the flag as a symbol of Christian nationalism. Sheets later became a prominent denier of the 2020 presidential election results, and repeatedly called for his followers to "fight for us," "make a stand," and engage in "war to get God's will and God's person back in office" in the lead up to January 6.[492] Another NAR adherent, former Pennsylvania state senator Doug Mastriano, who led the efforts to overturn Pennsylvania's 2020 presidential election vote, used the flag as a backdrop during online streams and posted it on Twitter in the aftermath of January 6, which he attended.[493]

Unlike the upside-down American flag, Justice Alito has disputed the meaning of the "Appeal to Heaven" flag, stating in a letter to Chair Durbin and Senator Whitehouse that:

> I was not familiar with the 'Appeal to Heaven' flag when my wife flew it. She may have mentioned that it dates back to the American Revolution, and I assumed she was flying it to express a religious and patriotic message. I was not aware of any connection between this historic flag and the 'Stop the Steal Movement,' and neither was my wife. She did not fly it to associate herself with that or any other group, and the use of an old historic flag by a new group does not necessarily drain that flag of all other meanings.[494]

This explanation is hard to give credence to given Ms. Alito's own remarks about how she uses flags. In a surreptitiously recorded conversation at a 2024 Supreme Court Historical Society dinner, Ms. Alito indicated that she will again fly protest flags at their Long Beach Island home after Justice Alito ends his tenure on the Court: "I want a Sacred Heart of Jesus flag because I have to look across the lagoon at the pride flag for the next month. I said, 'when you are free of this nonsense, I'm putting it up.'"[495] The Appeal to Heaven flag has a long history, but Ms. Alito appears to have a habit of flying flags to express political messages to her neighbors. These two well-established "Stop the Steal" symbols being flown at two of the Alitos' properties while Justice Alito actively participated in cases concerning the 2020 presidential election and January 6 creates an appearance of partiality that can only be addressed by recusal.

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[492] Tim Dickinson, *Meet the Apostle of Right-Wing Christian Nationalism*, ROLLING STONE (Sep. 1, 2022), https://www.rollingstone.com/politics/politics-news/new-apostolic-reformation-mtg-mastriano-dutch-sheets-1234584952/.
[493] *Id.*
[494] The Honorable Samuel A. Alito, Associate Justice, U.S. Supreme Court, to the Honorable Richard J. Durbin, Chair, and Shelton Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary (May 29, 2024).
[495] Josh Gerstein, *Alito and his wife are captured in audio recordings talking about abortion leak, flag controversy*, POLITICO (Jun. 10, 2024), https://www.politico.com/news/2024/06/10/alito-wife-supreme-court-recordings-00162610.

For these reasons, Chair Durbin called for Justice Alito to recuse himself from *Trump v. United States*,[496] which he refused to do.[497]

To date, the only person in the judiciary who has faced consequences for Justice Alito's action and inaction is Judge Michael Posnor. In May 2024, Judge Posnor authored an opinion piece that argued:

> The fact is that, regardless of its legality, displaying the flag in that way, at that time, shouldn't have happened. To put it bluntly, any judge with reasonable ethical instincts would have realized immediately that flying the flag then and in that way was improper.[498]

A review found that this commentary violated the *Code of Conduct for U.S. Judges* that binds all federal judges except the Supreme Court justices. Judge Posnor acknowledged violating the rules, apologized for his actions, and committed to seeking ethics advice before doing further outside writing.[499]

This episode highlights the substantial disparity between the strictness and enforceability of ethical requirements that bind all other federal judges and the conduct that the Court allows the justices to engage in without consequence.

2. Interview with an Attorney with a Case Pending Before the Court

In April and July 2023, Justice Alito sat for two interviews that were published in *The Wall Street Journal*'s editorial page on July 28, 2023.[500] The interviews were conducted in part by David Rivkin, a partner at BakerHostetler LLP. At the time of these interviews, Mr. Rivkin was on the team representing the plaintiff-appellants in *Moore v. United States*, a case that was pending before the Court. Mr. Rivkin represented the clients in *Moore* before the district court, where their case was dismissed, and the Ninth Circuit, which affirmed the district court's dismissal.[501] On February 21, 2023, two months prior to the first interview with Justice Alito,

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[496] Office of Senator Richard J. Durbin, Press Release, Durbin Calls On Justice Alito To Recuse Himself From Cases Related To The 2020 Election After A 'Stop The Steal' Symbol Was Displayed In His Yard (May 17, 2024), https://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-on-justice-alito-to-recuse-himself-from-cases-related-to-the-2020-election-after-a-stop-the-steal-symbol-was-displayed-in-his-yard. Staff find the Alitos' apparent association with "Stop the Steal" and support of the election subversion, in general and directly after January 6, to be particularly outrageous given the terror our members, colleagues, and other Capitol complex staff endured on January 6 directly next door to the Supreme Court.

[497] *See Trump v. United States*, 144 S. Ct. 2312 (2024).

[498] Michael Posnor, *A Federal Judge Wonders: How Could Alito Have Been So Foolish?*, N.Y. TIMES (May 24, 2024), https://www.nytimes.com/2024/05/24/opinion/alito-flag-supreme-court.html.

[499] Jess Bravin, *Judge Broke Rules by Criticizing Justice Alito During Flag Flap*, WALL ST. J. (Dec. 17, 2024), https://www.wsj.com/us-news/law/judge-broke-rules-by-criticizing-justice-alito-during-flag-flap-784405fb.

[500] David B. Rivkin & James Taranto, *Samuel Alito, the Supreme Court's Plain-Spoken Defender*, WALL ST. J. (Jul. 28, 2023), https://www.wsj.com/articles/samuel-alito-the-supreme-courts-plain-spoken-defender-precedent-ethics-originalism-5e3e9a7.

[501] *See Moore v. United States*, No. C19-1539-JCC, 2020 WL 6799022 (Nov. 19, 2020); *Moore v. United States*, 36 F.4th 930 (9th Cir. 2022).

Mr. Rivkin and his team sought certiorari for their clients.[502] Between the first and second interview—on June 26—the Court granted certiorari, agreeing to hear Mr. Rivkin's clients' case.[503]

It is uncommon, but not unprecedented, for a sitting justice to participate in an interview.[504] What is unusual is for a justice to sit for an interview with an attorney who represents a client with a matter pending before the Court. In the subsequent articles, Mr. Rivkin and his fellow interviewer appeared to attempt to curry favor with Justice Alito, casting him as "the Supreme Court's Plain-Spoken Defender" and describing the investigative reporting from *ProPublica* about Justice Alito's undisclosed luxury travel with conservative billionaires as a "hit piece."[505]

This problematic conduct and Justice Alito's concerning relationship with Mr. Rivkin, which extends beyond these interviews, prompted 10 Democratic members of the Senate Judiciary Committee to call for Justice Alito to recuse himself from *Moore*.[506] Mr. Rivkin is also counsel for Leonard Leo with regard to the Senate Judiciary Committee's investigation into Mr. Leo's actions to facilitate gifts of free transportation and lodging that Justice Alito accepted from Paul Singer and Robin Arkley II in 2008.[507]

Justice Alito declined to recuse himself in a statement appended to the Court's September 8, 2023 orders.[508] The substance of Justice Alito's response is unpersuasive and further demonstrates his hostility to reasonable concerns regarding his actions. Most notably, Justice Alito did not base his declination to recuse on the governing standard for his own conduct—i.e., whether he created an appearance of impropriety in the minds of reasonable members of the public—but rather on the Court's prudential concern that justices have a "duty to sit." Supreme Court justices do face a unique risk with regard to recusal; unlike district and circuit court judges, a justice cannot be replaced by another sitting judge when they recuse. However, this concern should be mitigated by the justices not engaging in conduct that requires recusal. Here, Justice Alito uses the "duty to sit" as a shield to allow him to act with impunity.

Justice Alito also made the disingenuous claim that the justices "have no control over the attorneys whom parties select to represent them." While true, this is irrelevant in the context of Justice Alito's interviews with Mr. Rivkin. At the time Justice Alito chose to sit for interviews

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[502] Petition for Writ of Certiorari, *Moore v. United States*, No. 22-800 (Feb. 21, 2023).
[503] *Moore v. United States*, No. 22-800, 2023 WL 4163201 (Jun. 26, 2023).
[504] Robert Barnes, *Alito will not recuse in case involving lawyer who interviewed him*, WASH. POST (Sep. 8, 2023).
[505] *Id. ProPublica* won the Pulitzer Prize for Public Service for this and other investigative reports in their coverage of the Supreme Court's self-inflicted ethics crisis.
[506] *See* Letter from Ten Senate Judiciary Committee Democrats to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (Aug. 3, 2023), Appendix A, Key Document K.
[507] *See* Letter from David B. Rivkin, Baker Hostetler LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Leonard Leo (Jul. 25, 2023); Letter from David B. Rivkin, Baker Hostetler LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Leonard Leo (Oct. 19, 2023); Letter from David B. Rivkin, Baker Hostetler LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Leonard Leo (Jan. 24, 2024), Appendix G, Key Document F.
[508] *Moore v. United States*, 144 S. Ct. 2 (Sep. 8, 2023) (Statement of Alito, J.).

with Mr. Rivkin, Mr. Rivkin already had an active matter before the Court. Justice Alito's framing of this interaction is misleading as well. He contended that "[w]hen Mr. Rivkin participated in the interviews and co-authored the articles, he did so as a journalist, not an advocate." Mr. Rivkin is not a journalist; he is a partner at one of the highest grossing law firms in the world, where profit per equity partner is $1,818,000 per year.[509] Occasional commentary does not a journalist make. Moreover, Mr. Rivkin's interview with Justice Alito was commentary, not reportage, and thus appeared on the opinion page of *The Wall Street Journal*, whose conservative editorial board is well known for stridently defending Justices Alito and Thomas.[510]

Justice Alito further claims that his conduct was wholly appropriate, because "[o]ver the years, many Justices have participated in interviews with representatives of media entities that have frequently been parties in cases before the Court." But Justice Alito's interview with Mr. Rivkin is not comparable to other interviews of justices where the media outlet, but not the interviewer herself, is a party to a case that is not pending at the time of the interview. With one exception, none of outlets Justice Alito cited had active matters before the Court at the time of the interview. In the single exception, the publication, but not the interviewer, was a party to the case.[511] Some of Justice Alito's examples included interviews and litigation separated by as much as six years.[512]

Further, many of the interviews he cited do not involve any parties to a matter before the Court, but rather the attorneys or organizations who are amicus curiae —non-parties who filed briefs that offer expertise on particular questions. Amici present many ethical issues that are outside the scope of this report. But suffice to say that justices sitting for interviews with non-parties do not present the same ethical issues as justices who are interviewed by attorneys and/or parties with active matters before the Court.

Perhaps most absurd of all, Justice Alito cited as comparable Bryan Garner's interviews with multiple justices about the importance of grammar in legal writing and advocacy. It is self-evident that discussing grammar is qualitatively different than the content of Justice Alito's partisan interview. Additionally, Garner had no active cases before the Court during these interviews, with the closest interview in time taking place almost five years before his 2020 argument before the Court.[513]

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[509] *BakerHostetler*, LAW.COM, https://www.law.com/law-firm-profile/?id=19&name=Baker-%26-Hostetler-LLP.
[510] Rivkin & Taranto, *supra* note 500.
[511] The petition for certiorari in *National Review, Inc. v. Mann* was pending at the time of Justice Gorsuch's interview with Charles C.W. Cooke; however, Mr. Cooke was not himself a party to this case, which centered on allegedly defamatory statements made by Mark Steyn and Rand Simberg in commentary about the plaintiff's climate change work.
[512] Justice Alito cites Jan Crawford Greenburg's November 17, 2006 interview with Chief Justice Roberts for *ABC News* and *ABC*'s subsequent case before the Supreme Court, *American Broad. Cos., Inc. v. Aereo, Inc*, 573 U.S. 431 (2014). The petition for certiorari in this case was not filed until October 11, 2013, almost seven years after the interview. Ms. Greenburg was not a party to or attorney for this case.
[513] LawProse with Bryan A. Garner, *Hon. Elena Kagan, Associate Justice Parts 1 to 4*, YOUTUBE (Aug. 26, 2015), https://www.youtube.com/watch?v=fVf2Y7veCtE; *see Facebook Inc. v. Duguid*, 592 U.S. 395 (2020).

Justice Alito cited no cases where another justice sat with an interviewer with an active case before the Court either as an attorney for a party or as a party. This illustrates just how far outside the acceptable norm his conduct was. The Committee finds the fundamental unseriousness of Justice Alito's reasoning in this recusal decision to demonstrate a shocking disregard for reasonable concerns about the appearance of impropriety.

The Court announced its decision in *Moore* on June 20, 2024.[514] The Court ruled against Mr. Rivkin's client, and Justice Alito joined Justice Barrett's concurrence with the judgment of the Court. The Committee takes no stance on the propriety of the Court granting certiorari in *Moore* or the ultimate holding. But the posture of Mr. Rivkin's clients in this case illustrates how favor could be shown to his clients or Mr. Rivkin personally, even if the ultimate decision of the Court was not favorable. Litigation strategy includes risk management; a central question in all civil matters is whether the cost of pursuing the claim outweighs the potential gains. From that perspective, simply granting certiorari could show meaningful favor to an attorney or party without ultimately ruling in their favor on the merits. In *Moore*, the opposing party had already prevailed at every stage of litigation, including Mr. Rivkin's client's petition for rehearing en banc.[515] Had Mr. Rivkin's client not been granted certiorari, the case would have ended, along with the defendant-respondent's litigation costs. The certiorari grant extended the litigation and thereby increased the costs to the defendant-respondent, expanding the bargaining power of Mr. Rivkin's client to reach a settlement. Likewise, the Court's decision to grant certiorari enriches lawyers with paying clients because continued litigation means more billable hours. No party in a proceeding should be worried that any justice might be influenced to favor the opposing party substantively or procedurally, and Justice Alito's unprecedented conduct here created that concern.

"The Committee finds the fundamental unseriousness of Justice Alito's reasoning in this recusal decision to demonstrate a shocking disregard for reasonable concerns about the appearance of impropriety."

D. Additional Commentary Calling into Question Justice Alito's Impartiality

1. Commentary Calling into Question Justice Alito's Impartiality

For the past several years Justice Alito has regularly and proactively offered his personal sentiments about subjects touching on cases and questions regularly before the Court. In 2020, Justice Alito made unambiguously partisan remarks concerning several issues in a keynote speech at the Federalist Society Convention.[516] He criticized governors for issuing "sweeping restrictions" in response to COVID-19, stating: "we have never before seen restrictions as

[514] *Moore v. United States*, 144 S. Ct. 1680 (2024).
[515] *Moore v. United States*, 53 F.4th 507 (9th Cir. 2022).
[516] Sanjana Karanth, *Samuel Alito Goes Full Political Commentator In Federalist Society Speech*, HUFFPOST (Nov. 12, 2020), https://www.huffpost.com/entry/samuel-alito-political-supreme-court_n_5fadf9f1c5b6dd8959789997.

severe, extensive and prolonged as those experiences for most of 2020."[517] He argued that these restrictions were resulting in "previously unimaginable restrictions on individual liberty."[518] Justice Alito condemned the Court's decision in *Obergefell v. Hodges*, arguing that "now it is considered bigotry [to] say that marriage is the union between one man and one woman" and that freedom of speech "is falling out of favor in some circles."[519] Erwin Chemerinsky, Dean of the University of California, Berkeley School of Law, contemporaneously criticized this speech, noting that he could not "think of any speech [by a justice] like this one that discussed so many issues and in a clearly, ideological, partisan way."[520]

2. Commentary on Congressional Efforts to Require an Enforceable Code of Conduct for the Supreme Court

Justice Alito's interviews with Mr. Rivkin prejudged Congress's ability to address the ethics crisis the Court has brought on itself. Justice Alito stated: "I know this is a controversial view, but I'm willing to say it. No provision in the Constitution gives [Congress] the authority to regulate the Supreme Court—period."[521] Setting aside the fact that this view is false, as discussed in Section II, Justice Alito publicly prejudged a matter that could come before the Court in the future—this Committee's legislative effort to establish an enforceable code of conduct for the justices.[522] Because these comments "unquestionably engender doubt that he could fairly discharge his duties should this question come before the Court," 10 Democratic Members of the Senate Judiciary Committee called for Justice Alito to "recuse himself in any future cases concerning legislation that regulates the Court."[523]

E. Cases in Which Justice Thomas Failed to Recuse Himself

1. Ginni Thomas's Involvement with the "Stop the Steal" Movement and Right-Wing Causes

The spouses of justices are independent actors who are free to conduct themselves as they wish and do not relinquish their First Amendment freedom of speech by virtue of their marriage to a justice. Nonetheless, their actions can have direct implications for the ethical obligations of the justices. This is particularly true of Justice Thomas's wife, Ginni Thomas, a political operative who regularly works on issues before the Court and with attorneys and parties who bring those issues before the Court. As detailed in Sections V.3 and VI.A.2, Ms. Thomas's work has been intimately tied to advancing the political interests of elected Republicans and

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[517] *Id.*
[518] *Id.*
[519] Janna Adelstein, *Justice Alito and Supreme Court Ethics*, BRENNAN CTR. FOR JUSTICE (Nov. 20, 2020), https://www.brennancenter.org/our-work/analysis-opinion/justice-alito-and-supreme-court-ethics.
[520] *Id.*
[521] Rivkin & Taranto, *supra* note 500.
[522] *See* May 2, 2023 Senate Committee on the Judiciary Hearing, https://www.judiciary.senate.gov/committee-activity/hearings/supreme-court-ethics-reform; Executive Business Meeting, Senate Committee on the Judiciary (Jul. 20, 2023), https://www.judiciary.senate.gov/committee-activity/hearings/07/13/2023/executive-business-meeting.
[523] Letter from Ten Senate Judiciary Committee Democrats to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (Aug. 3, 2023).

movement conservatives, including Mr. Crow and Mr. Leo, both of whom have provided or directed considerable amounts of money to her and her businesses.

Most recently, Ms. Thomas created an obvious conflict of interest for Justice Thomas due to her efforts to subvert the 2020 presidential election as part of the "Stop the Steal" movement, including direct engagement with Trump Administration and state legislative officials. Starting on November 5, 2020, Ms. Thomas began regularly texting then-President Trump's Chief of Staff Mark Meadows, unambiguously urging him to help President Trump subvert the results of the election with messages like: "Do not concede. It takes time for the army who is gathering for his back."[524] During this time period, Ms. Thomas also corresponded with John Eastman, the architect of the campaign pressuring then-Vice President Pence to unlawfully block Congress's certification of the election results.[525]

Ms. Thomas also personally advocated for election subversion to state lawmakers in multiple swing states. On November 9, Ms. Thomas began pressing then-Arizona Speaker of the House Russell Bowers and then-State Representative Shawnna Bolick to set aside President Biden's victory in the state and put forward a false slate of electors.[526] She continued this personal pressure campaign on at least 29 Arizona state lawmakers with what appear to be form letters, including messages sent on December 13—prior to the Electoral College's December 14 vote.[527] Ms. Thomas also sent identical requests to put forward false electors to a Wisconsin state senator and state representative.[528] On January 6, she personally attended the "Stop the Steal" rally at the Ellipse, prior to the insurrection at the Capitol.[529] Yet, when questioned under penalty of perjury by the House Select Committee on the January 6 Attack about what "the most significant case of voter fraud that [she was] concerned with after the election took place," Ms. Thomas had none, stating: "I can't say that I was familiar at that time with any specific evidence."[530]

Despite her view that "her involvement in the event has no bearing on the work of her husband,"[531] Ms. Thomas's conduct created an unavoidable conflict of interest for Justice

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[524] Bob Woodward & Robert Costa, *Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show*, WASH. POST (Mar. 24, 2022), https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts/.

[525] Ryan Nobles, Zachary Cohen, Annie Grayer, Katelyn Plantz & Chandelis Duster, *January 6 committee has emails between Ginni Thomas and John Eastman*, CNN (Jun. 16, 2022), https://www.cnn.com/2022/06/15/politics/ginni-thomas-john-eastman-emails-january-6-committee/index.html.

[526] Emma Brown, *Ginni Thomas, wife of Supreme Court justice, pressed Ariz. Lawmakers to help reverse Trump's loss, emails show*, WASH. POST (May 20, 2022), https://www.washingtonpost.com/investigations/2022/05/20/ginni-thomas-arizona-election-emails/.

[527] Emma Brown, *Ginni Thomas pressed 29 Ariz. Lawmakers to help overturn Trump's defeat, emails show*, WASH. POST (Jun. 10, 2022), https://www.washingtonpost.com/investigations/2022/06/10/ginni-thomas-election-arizona-lawmakers/.

[528] Emma Brown, *Ginni Thomas pressed Wisconsin lawmakers to overturn Biden's 2020 victory*, WASH. POST (Sep. 1, 2022), https://www.washingtonpost.com/investigations/2022/09/01/ginni-thomas-wisconsin-bernier-tauchen/.

[529] Kevin Daley, *Exclusive: Ginni Thomas Wants to Set the Record Straight on January 6*, WASHINGTON FREE BEACON (Mar. 14, 2022), https://freebeacon.com/courts/exclusive-ginni-thomas-sets-the-record-straight-on-january-6/.

[530] Transcript of Virginia Thomas Interview with the Select Committee to Investigate the January 6 Attack on the United States Capitol at 38 (Sep. 29, 2022).

[531] Daley, *supra* note 529.

Thomas. Federal law prohibits a justice from hearing a case where "his spouse…has a financial interest…or any other interest that could be substantially affected by the outcome of the proceeding." [532] Every case regarding the 2020 election and January 6 concerns interests of Ms. Thomas that could be substantially affected by the outcome of those proceedings. This is the case, because, among other things, she personally sought to subvert the 2020 election and her communications are evidence in the investigations and prosecutions of other defendants who sought to subvert the 2020 election. Chair Durbin and other Committee Democrats have repeatedly called for Justice Thomas to recuse himself from these cases.[533] However, Justice Thomas only recused himself from considering a single matter, *Eastman v. Thompson*.[534] Instead, Justice Thomas has inappropriately participated in every other case before the Court touching on the 2020 election and January 6, including *Trump v. United States,* which effectively immunized President Trump from prosecution for the crimes he allegedly committed in office.

2. Involvement in Koch Brothers Fundraisers

In 2008, Justice Thomas attended the Koch brothers' political network's annual retreat and fundraiser in Palm Springs, California. This trip happened at a time when the Kochs were funding several litigants with cases before the Supreme Court.[535] In 2011, Justice Thomas publicly acknowledged that he promoted his memoir at a dinner during this retreat. Justice Thomas's travel and accommodations for this engagement, according to a Supreme Court spokeswoman, "were paid by the Federalist Society, a conservative legal organization."[536] This event was not included on his disclosure forms.

In 2018, Justice Thomas once again attended the Koch brothers' political network's annual retreat and fundraiser held in Palm Springs, California.[537] This event was also not included on his disclosure forms. Staffers for the political network told investigative reporters that Justice Thomas was invited to the event "in the hopes that such access would encourage donors to continue giving."[538] The next year, Americans for Prosperity Foundation, one of the groups in the Koch political network, petitioned the Court for certiorari in a case where they opposed California's compelled disclosure rule for donations to charities and nonprofits.[539] Justice Thomas did not recuse himself from consideration of the petition.

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[532] 28 U.S.C. 455(b)(4).
[533] *See* Allison Pecorin, *Senate Judiciary chair says Justice Clarence Thomas should recuse himself from Jan. 6 cases*, ABC NEWS (Mar. 28, 2022), https://abcnews.go.com/Politics/senate-judiciary-chair-justice-clarence-thomas-recuse-jan/story?id=83727413; Senator Dick Durbin (@SenatorDurbin), TWITTER (Feb. 7, 2024, 12:04 PM), https://x.com/senatordurbin/status/1755276346203246760. *See also* Office of Senator Sheldon Whitehouse, Press Release, Whitehouse, Johnson Call On Chief Justice Roberts To Ensure That Justice Clarence Thomas Recuses Himself From January 6th Cases (Apr. 5, 2022), https://www.whitehouse.senate.gov/news/release/whitehouse-johnson-call-on-chief-justice-roberts-to-ensure-that-justice-clarence-thomas-recuses-himself-from-january-6th-cases/; Office of Senator Richard Blumenthal, Press Release, Blumenthal Calls For Justice Thomas's Recusal In Trump January 6th Case (Dec. 20, 2023), https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-calls-for-justice-thomass-recusal-in-trump-january-6th-case.
[534] *Eastman v. Thompson*, 144 S. Ct. 248 (2023). *See also* 601 U.S. No. 22-1138 (Oct. 2, 2023).
[535] Smith, *supra* note 203.
[536] The Associated Press, *supra* note 204.
[537] Kaplan, Elliott & Mierjeski, *supra* note 306.
[538] *Id.*
[539] *Id. See Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021).

F. The Lack of Public Recusal Explanations Prevents Consistent Application of Recusal

One thing that is apparent when reviewing the recusal memoranda drafted by Justices Alito and Scalia in particular is how self-serving they are.[540] Instead of contending with how their own conduct created calls for recusal, they instead hid behind their duty to sit rather than changing their behavior to avoid the appearance of impropriety. Properly understood, the duty to sit should limit the conduct justices engage in to prevent the appearance of impropriety. Despite the flimsiness of their reasoning, these memoranda make clear the value in documenting recusal decisions. Not only do recusal memoranda provide public reasoning that can be scrutinized, allowing requesting parties and the public the chance to voice their agreement or dissent with the reasoning, they also allow for the development of a body of precedent which the justices themselves can publicly reference in their reasoning.

Although recusal memoranda are valuable, they are uncommon. Overwhelmingly, justices do not provide public reasoning for their decisions to hear or recuse from a case. The current lack of such a public body of reasoning provides additional cover for justices to refuse to recuse when circumstances should demand it. Following its November 2023 adoption, Justices Jackson, Gorsuch, Kagan, and Sotomayor have occasionally cited the *Supreme Court Code of Conduct* when recusing in cases, albeit without any explanation beyond the citation.[541] Such recusals represent a promising development, but any decision to recuse or explain a recusal remains the prerogative of each individual justice, and both decisions to recuse and explanations regarding recusal remain relatively rare.

[540] *See Cheney v. United States Dist. Court*, 541 U.S. 913 (Scalia, J. mem.); *Moore v. United States*, 144 S. Ct. 2 (Sep. 8, 2023) (Statement of Alito, J.).
[541] *See, e.g.*, *Brunson v. Sotomayor*, 144 S. Ct. 2597 (Mem) (2024); *Dorsey v. United States*, 144 S. Ct. 1005 (Mem) (2024); *Liquidia Techs., Inc. v. United Therapeutics Corp.*, 144 S. Ct. 873 (Mem) (2024); Letter from Scott S. Harris, Clerk, U.S. Supreme Court, to Counsel for Parties in *Seven County Infrastructure Coalition v. Eagle County, Colorado* (Dec. 4, 2024). In *Brunson*, *Dorsey*, and *Liquidia Techs., Inc.*, Justices Sotomayor, Kagan, and Jackson also cite the federal recusal statute at 28 U.S.C. §455.

VIII. Failures of the Court and the Judicial Conference to Ensure Ethical Conduct

A. Failures of the Roberts Court

The failures of the Roberts Court to address its self-inflicted ethics crisis fall into two broad categories: its refusal to investigate or cooperate in investigations of reported ethical misconduct by sitting justices, and its failure to take sufficient action to address its ethical crisis. In April 2023, following *ProPublica*'s reporting of questionable conduct by Justice Thomas, all 11 Democratic members of the Senate Judiciary Committee sent a letter urging Chief Justice Roberts to open an investigation.[542] Instead, Chief Justice Roberts referred the letter to the Secretary of the Judicial Conference of the United States, who in turn forwarded the letter to the Judicial Conference Committee on Financial Disclosure.[543] To date, there is no indication that Chief Justice Roberts or the Court have ever undertaken an investigation into reported misconduct by a justice. Nor have Chief Justice Roberts or the Court taken sufficient steps to prevent further misconduct.

In April 2023, Chief Justice Roberts declined Chair Durbin's invitation to testify before the Senate Judiciary Committee at a public hearing about ethical rules governing Supreme Court justices.[544] The Chief Justice cited "separation of powers concerns" and "the importance of preserving judicial independence" in declining the invitation. The Chief Justice also declined to designate another justice to appear, and no justice appeared at the Committee's May 2023 hearing on Supreme Court ethics, despite the fact that past chief justices have appeared before Congress in their official capacity to discuss the Court, and other justices have testified before this Committee about ethics issues.[545] In May 2024, Chair Durbin and Senator Whitehouse requested a meeting with Chief Justice Roberts, in his capacity as Chief Justice and presiding officer of the Judicial Conference of the United States, to discuss additional steps to address the Supreme Court's ethics crisis.[546] The Chief Justice declined the request, again citing "separation of powers concerns" and "the importance of preserving judicial independence."[547] The Roberts Court's refusal to investigate its own conduct or assist members of Congress in their

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[542] Letter from the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, *et al.* to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (Apr. 10, 2023).
[543] Letter from the Honorable Roslynn R. Mauskopf, Secretary, Jud. Conf. of the U.S., to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary (Apr. 21, 2023), Appendix A, Key Document F.
[544] Letter from the Honorable John Roberts, Chief Justice, U.S. Supreme Court, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary (Apr. 25, 2023).
[545] *See generally*, BARRY J. MCMILLION & JENNIFER E. MANNING, CONG. RSCH. SERV., IN12155, APPEARANCES BY SITTING U.S. SUPREME COURT JUSTICES AT CONGRESSIONAL COMMITTEE AND SUBCOMMITTEE HEARINGS *(1960-2022)* (May 2, 2023), https://crsreports.congress.gov/product/pdf/IN/IN12155; *see also* Hearing before the Committee on the Judiciary, U.S. Senate, "Considering the Role of Judges Under the Constitution of the United States," S. Hrg. 112-137 (Oct. 5, 2011), https://www.govinfo.gov/content/pkg/CHRG-112shrg70991/html/CHRG-112shrg70991.htm.
[546] Letter from the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, and the Honorable Sheldon Whitehouse, Chair, Courts Subcommittee, to the Honorable John Roberts, Chief Justice, U.S. Supreme Court (May 23, 2024), Appendix A, Key Document M.
[547] Letter from the Honorable John Roberts, Chief Justice, U.S. Supreme Court, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, and the Honorable Sheldon Whitehouse, Chair, Courts Subcommittee (May 30, 2024), Appendix A, Key Document O.

investigation of the Supreme Court's ethics crisis has only augmented the crisis and hindered efforts to resolve it.

The Roberts Court's failures extend beyond its refusal to investigate or assist with investigations. As discussed in Section III, in response to dozens of accusations of misconduct by multiple justices over multiple decades, the Court has taken insufficient steps to resolve this crisis and restore the public's faith in the judiciary. No justice has been punished, censured, criticized, or otherwise held accountable by the Roberts Court.

The Court's adoption of its *Code of Conduct* did not address the Court's past failures. And, since its adoption, the *Supreme Court Code of Conduct* has failed to deter additional ethical misconduct by Supreme Court justices. Justices Alito and Thomas continued to participate in cases concerning the 2020 election and the January 6 insurrection that required their recusal. Significantly, this includes *Trump v. United States*, which effectively immunized President Trump from prosecution for much of his conduct concerning January 6 and his efforts to subvert the 2020 election. Moreover, the *Supreme Court Code of Conduct* does not include enforcement mechanisms to combat future misconduct. The *Supreme Court Code of Conduct* does not even ostensibly proscribe any behavior by justices; as Section III.B details, the provisions of the *Supreme Court Code of Conduct* repeatedly state that justices "should" act in certain ways rather than mandating how justices "shall" act, and there are no penalties for any violations of the *Supreme Court Code of Conduct*.

There is no reason for this to be the case. As Justice Kagan has noted: "I think the thing that can be criticized [about the *Supreme Court Code of Conduct*] is, you know, rules usually have enforcement mechanisms attached to them. And this one, this set of rules does not."[548] Yet, to date, only three justices have publicly expressed openness to implementing an enforceable code of conduct: Justice Kagan,[549] Justice Ketanji Brown Jackson,[550] and Justice Sotomayor.[551] This is an essential step, in light of the failures of the Roberts Court to police itself. Any claim that the Court can adequately police itself is belied by the fact that no members of the Court have faced consequences for unethical behavior since Justice Fortas resigned from the Warren Court more than 50 years ago. The failures of the Roberts Court to prevent or address its ethical crisis necessitate additional action.

B. Failures of the Judicial Conference

To date, the Judicial Conference has failed to adequately respond to the Supreme Court's ethical crisis. Although some of the recent revisions to the *Guide to Judiciary Policy* are likely beneficial—including the March 2023 revisions of the "personal hospitality" exemption—other recent revisions are insufficient and potentially detrimental to judicial ethics. Additional changes

[548] Devan Cole, *Justice Elena Kagan says Supreme Court's code of conduct needs an enforcement plan. Takeaways from her wide-ranging comments*, CNN POLITICS (Jul. 25, 2024), https://www.cnn.com/2024/07/25/politics/kagan-supreme-court-ethics-sacramento-conference/index.html.
[549] *Id.*
[550] Melissa Quinn, *Justice Ketanji Brown Jackson says she's open to enforceable ethics code for Supreme Court*, CBS NEWS (Sep. 1, 2024), https://www.cbsnews.com/news/ketanji-brown-jackson-supreme-court-ethics-code/.
[551] Kantor & VanSickle, *supra* note 23.

are necessary to strengthen financial disclosure regulations for all judicial officers, including Supreme Court justices.

Moreover, the Judicial Conference has repeatedly failed to enforce existing financial disclosure regulations or properly review financial disclosure reports of Supreme Court justices. The Judicial Conference reviews judges' and justices' financial disclosure report filings for compliance.[552] As this report detailed in Section V, multiple financial disclosure reports filed by Supreme Court justices were not in compliance with the Judicial Conference's regulations, yet the Judicial Conference neither acknowledged nor responded to that noncompliance.[553]

Most egregious was the Judicial Conference's abdication of responsibility for Justice Thomas filing several years of non-compliant financial disclosure reports. In 2011, following revelations that Justice Thomas had failed to report a source of his wife's income, Justice Thomas updated years of his financial disclosure reports.[554] Justice Thomas had also failed to disclose flights on Mr. Crow's private jet.[555] In response to complaints from lawmakers and advocacy groups, the Judicial Conference said its Committee on Financial Disclosure would look into Justice Thomas's alleged noncompliance.[556] However, in early 2012, the committee's chair declared that he had decided to end the inquiry regarding Justice Thomas's failure to report his income. He prevailed in a committee vote on the matter despite resistance from other committee members.[557] Justice Thomas's failure to report his flights was not discussed, addressed, or investigated, despite the non-applicability of the personal hospitality exemption. The episode highlights the Judicial Conference's failure to diligently examine financial disclosure reports and reticence to take any meaningful action in response to subsequent complaints or the receipt of other information.

In its report on its September 2023 proceedings, the Judicial Conference stated that "[t]he Committee [on Financial Disclosure] was also updated on the status of the ongoing review of public written allegations of errors or omissions in a filer's financial disclosure reports that were referred to it since the [Judicial] Conference's last session."[558] It is possible that the referenced filer is Justice Thomas, but the Judicial Conference has yet to specify the identity of the filer or provide additional information regarding its review of Justice Thomas or any other Supreme Court justice.

Under the EIGA, the Judicial Conference is required to refer to the Attorney General any individual whom it has reasonable cause to believe has willfully falsified or failed to file

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[552] 2 GUIDE TO JUDICIARY POLICY, pt. D, Ch. 4 (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.
[553] Brett Murphy & Kirsten Berg, *The Judiciary Has Policed Itself for Decades. It Doesn't Work.*, PROPUBLICA (Dec. 13, 2023), https://www.propublica.org/article/judicial-conference-scotus-federal-judges-ethics-rules.
[554] Robert Barnes & Ann E. Marimow, *Complaints about Justice Thomas's disclosures sent to judicial committee*, WASH. POST (Apr. 18, 2023), https://www.washingtonpost.com/politics/2023/04/18/clarence-thomas-disclosures-investigation-crow/.
[555] McIntire, *supra* note 297.
[556] Murphy & Berg, *supra* note 553.
[557] *Id*.
[558] *Report of the Proceedings of the Judicial Conference of the United States* (Sep. 12, 2023) at 14, https://www.uscourts.gov/sites/default/files/jcus_sep_2023_proceedings_0.pdf.

information required to be reported.[559] The Judicial Conference has yet to make such a referral for any Supreme Court justice, despite the clear evidence, detailed in Section V, that justices have willfully falsified or failed to file reportable information.

Although the Judicial Conference has the ability to hold Supreme Court justices accountable for their ethics violations, it has not taken any meaningful steps to do so. The Judicial Conference's lack of transparency and failure to act have enabled the ethical misconduct of Supreme Court justices and contributed to the Supreme Court's ethical crisis.

1. Shortcomings of the Judicial Conference's Review of Financial Disclosure Reports

As noted in Section II.B.1, the EIGA requires certain federal officials, including Supreme Court justices, to file financial disclosure reports.[560] The EIGA further specifies that, for judicial officers, the statute is subject to the rules and regulations of, and administered by, the Judicial Conference.[561] The EIGA also authorizes the Judicial Conference to delegate any authority it has under the EIGA to an ethics committee established by the Judicial Conference.[562] In 1990, the Judicial Conference delegated its authority under the EIGA to what became the Committee on Financial Disclosure.[563]

Consistent with the EIGA, the Judicial Conference's *Guide to Judiciary Policy* states that the Judicial Conference is the designated agency ethics official for the judiciary and serves as the reviewing official for judiciary financial disclosure reports.[564] The *Guide to Judiciary Policy* further states that the Judicial Conference has delegated this responsibility to the Judicial Conference's Committee on Financial Disclosure, which has in turn delegated certain responsibilities to Committee counsel and staff. These counsel and staff constitute the reviewing officials who are responsible for examining financial disclosure reports.

Despite the important and necessary oversight of financial disclosure reports these reviewing officials perform, the current system does not adequately support their work. A December 2023 *ProPublica* article highlighted the numerous shortcomings of the Judicial Conference and its review of financial disclosure reports.[565] Among these shortcomings is that some staff, particularly those working on a temporary basis, lacked expertise and were not provided relevant training.[566]

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[559] 5 U.S.C. § 13106(b).
[560] 5 U.S.C. app., § 101, 109.
[561] 5 U.S.C. app., § 503.
[562] 5 U.S.C. app., §111.
[563] *Report of the Proceedings of the Judicial Conference of the United States* (Sep. 12, 2017) at 13, https://www.uscourts.gov/sites/default/files/17-sep_final_0.pdf.
[564] 2 GUIDE TO JUDICIARY POLICY, pt. D, § 410 (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.
[565] Murphy & Berg, *supra* note 553.
[566] *Id*.

The *Guide to Judiciary Policy* also allows for the "administrative closure" of financial disclosure reports, rather than certification, in certain circumstances.[567] One listed factor for consideration of administrative closure is "the absence of evidence indicating that the filer is knowingly and willfully failing to act;" other factors include non-responsiveness, incapacity, and absence from a governmental decisionmaking position.[568] An administratively-closed report will not be certified or signed by a reviewing official, but the closure effectively ends the Judicial Conference's investigation of a report. This option creates a loophole for filers and reviewing officials to avoid ensuring the accuracy of reports, as it allows for filers and reviewing officials alike to claim a lack of evidence indicating intent, and creates an offramp for filers and officials to stop examining an inaccurate report without resolving its inaccuracies.

Finally, the *Guide to Judiciary Policy* and federal law only require the AO to retain financial disclosure reports for a six-year period. This creates the possibility of ethical misconduct and attendant inaccuracies in reports being discovered more than six years after their occurrence, but without an opportunity to review the reports as evidence of any wrongdoing. Although the threat of this occurrence is reduced by the ability of requesters to request, retain, and publish financial disclosure reports—which occurs most frequently with Supreme Court justices' reports—there is no guarantee that a report will be retained, available, or subject to review by any party beyond a six-year window.

2. Additional Shortcomings of the Administrative Office of the U.S. Courts

As part of this investigation, Committee staff requested materials from the AO to review relevant ethics rules in effect from 1991 through 2024. The requested materials included past versions of financial disclosure report forms, financial disclosure reporting instructions and filing instructions, and various sections of the *Guide to Judiciary Policy*, including:

- Code of Conduct for U.S. Judges
- Code of Conduct for Judicial Employees
- Judicial Conference Regulations on Gifts
- Judicial Conference Regulations on Outside Earned Income, Honoraria, and Employment
- Judiciary Financial Disclosure Regulations
- Gifts to the Judicial Branch
- Mandatory Conflict Screening Policy

Committee staff first requested these materials in March 2024. Over the next eight months, AO staff provided some, but not all, of the requested materials. The months-long process through which the AO only partially fulfilled the Committee's requests for information reveals challenges for the AO and Judicial Conference in adequately policing judicial ethics or assisting outside investigations. In correspondence with Committee staff, AO staff acknowledged

[567] 2 GUIDE TO JUDICIARY POLICY, pt. D, § 420.50 (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.
[568] 2 GUIDE TO JUDICIARY POLICY, pt. D, § 420.50(b) (Admin. Off. of the U.S. Cts. rev. Sep. 23, 2024), https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.

that historic versions of materials related to judicial ethics are not systematically archived and categorized. The incompleteness of the materials the AO ultimately provided to the Committee further demonstrates that the AO's archiving practices render the AO incapable of locating or providing all of its own past rules and regulations pertaining to judicial ethics.

Any investigations into potential misconduct are hampered by the AO's failure to preserve documents that established the relevant rules and regulations in effect at the time of the conduct in question. Additionally, in accordance with the EIGA, the financial disclosure reports filed by the judiciary are kept for only six years and then are destroyed.[569] Although individuals or groups from outside the AO or judiciary may request, preserve, or publish certain documents for future reference, that possibility does not supplant the need for the AO and the Judicial Conference to review and reform their own practices and processes.

The Senate Judiciary Committee's investigation has raised concerns about the AO's ability to respond to requests originating from outside the judiciary. These concerns extend beyond the AO's cooperation over the course of the Committee's investigation. For example, from January 2022 to June 2024, the U.S. Government Accountability Office (GAO) conducted an unrelated review of the judiciary's policies and practices to prevent and respond to workplace misconduct, including sexual misconduct.[570] In July 2024, the GAO issued its report to congressional requesters; the report mentioned significant delays by the judiciary and extremely limited access to judiciary employees.[571] The GAO report illustrated the AO's reticence to cooperate or provide transparency, yet a subsequent letter from the Director of the AO attempted to justify and recharacterize the AO's decisions, actions, and delays with misleading characterizations of GAO requests.[572] Whether the subject at hand is judicial ethics, workplace misconduct, or another matter of public importance, the AO has failed to fully and quickly cooperate and respond to outside investigations—suggesting the AO does not prioritize transparency.

[569] 5 U.S.C. app., § 105.
[570] U.S. Gov't Accountability Off., GAO-24-105638, Federal Judiciary: Additional Actions Would Strengthen Efforts to Prevent and Address Workplace Misconduct, 6 (July 2024).
[571] *Id.* at 53.
[572] Letter from the Honorable Robert J. Conrad, Jr., Director, Admin. Off. of the U.S. Courts, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, *et al.* (Aug. 2, 2024), Appendix A, Key Document P.

IX. Recommendations

A. Due to the Court's Abdication of its Ethical Responsibilities, Congress Must Establish an Enforceable Code of Conduct

1. The *Supreme Court Ethics, Recusal, and Transparency Act*

Senator Whitehouse introduced the *Supreme Court Ethics, Recusal, and Transparency (SCERT) Act*, which is cosponsored by every Democratic member of the Senate Judiciary Committee.[573] The *SCERT Act* would require Supreme Court justices to adopt a binding code of conduct, create a mechanism to investigate alleged violations of the code of conduct and other laws, improve disclosure and transparency when a justice has a connection to a party or amicus before the Court, and require justices to explain their recusal decisions to the public.

Code of Conduct: The bill would require the Court to issue a code of conduct for itself within 180 days, with public notice and an opportunity for comment. It would also require the Court to establish processes under which individuals could file complaints alleging that a justice has violated the code of conduct, another federal law, or the federal recusal statute, or has otherwise engaged in conduct that undermines the integrity of the Court. Such complaints would be reviewed by randomly selected chief circuit judges, who would investigate and present findings to the Supreme Court as well as make "recommendations for necessary and appropriate action by the Supreme Court, including dismissal of the complaint, disciplinary actions, or changes to Supreme Court rules or procedures."

Disclosure and Transparency: The *SCERT Act* includes several provisions to enhance disclosure requirements. Most relevant to the current ethical crisis, it would require the Court to adopt rules governing the disclosure of gifts, income, or reimbursements that require—at minimum—the same level of disclosure as is required under Senate and House standing rules. Additionally, it would require robust disclosure of persons who contributed to the preparation or submission of an amicus brief or to the amicus organization, as well as direct the Court and the Judicial Conference to prescribe rules of procedure to allow the striking of an amicus brief—or prohibiting the filing of a brief—that would result in the disqualification of a justice or judge.

Recusal: The bill would enable parties to proceedings to file motions seeking disqualification of any judge or justice from a proceeding along with an affidavit alleging facts showing that disqualification is required by law. The motion would be considered by a panel of reviewing judges. In the case of a Supreme Court justice, the other justices would comprise the panel. Justices and judges would also be required to recuse from cases involving parties from whom the justice, judge, or a close family member received income or a gift within the previous six years, or who lobbied or spent substantial funds in support of the justice's or judge's confirmation.[574] In

[573] S. 359, https://www.congress.gov/bill/118th-congress/senate-bill/359.

[574] Sec. 4(a) of the *SCERT Act* would require judicial disqualification from cases in which a party to a proceeding made lobbying contact or spent substantial funds in support of the relevant judicial nomination. This provision is intended to prevent justices or judges from hearing cases involving parties to whom they may feel particularly indebted for their judicial appointments. The provision's definition of the term "lobbying contact" is from the Lobbying Disclosure Act of 1995. That definition includes several exceptions to the term "lobbying contact,"

any instance requiring recusal, a justice or judge would have an affirmative duty to notify all parties to a proceeding once the justice or judge learns of a condition that could reasonably require recusal. Finally, the bill would require the relevant clerk of court to issue timely public notice of any matter in which a justice or judge is disqualified, including a specific identification of the reason that resulted in the disqualification while allowing for appropriate redactions.

On May 2, 2023, the Senate Judiciary Committee held a full committee hearing on Supreme Court ethics reform. The hearing emphasized the clear need for reform and examined proposals—including the *SCERT Act*—to establish ethical standards for justices. On July 20, 2023, the Senate Judiciary Committee ordered the *SCERT Act* to be reported by a party-line vote of 11–10, with all Judiciary Committee Democrats voting in favor of the bill. On June 12, 2024, Chair Durbin led Senate Democrats in requesting unanimous consent for the Senate to pass the *SCERT Act*. Senate Republicans objected to the unanimous consent request.

2. Other Proposals

During the 118th Congress, other Senators have introduced bills addressing the Supreme Court's ethical standards.

Senator Murphy's *Supreme Court Ethics Act* would require the Judicial Conference to issue a code of conduct that applies to all federal judges, including Supreme Court justices.[575] The bill would also require the Supreme Court to establish the position of an ethics investigative counsel, who would adopt rules to enforce the code of conduct. These rules would include a process for receiving complaints from the public about violations of the code of conduct by Supreme Court justices. The ethics investigative counsel would be required to investigate complaints and issue annual public reports describing complaints received and steps taken to investigate and resolve them. The bill would also require a Supreme Court justice to publicly disclose the reasons for recusing himself or herself from a proceeding, as well as a justice's reason for denying a motion to disqualify the justice in a proceeding.

Senators King and Murkowski's *Supreme Court Code of Conduct Act* would require the Supreme Court to issue a code of conduct for Supreme Court justices and publish it on the Court's website.[576] The Court would also be required to designate an individual to process complaints that a justice has engaged in conduct prejudicial to the administration of justice or in violation of federal law or the Court's code of conduct. The designated individual would publish the complaints. The Marshal of the Supreme Court would be permitted to initiate investigations to determine if a justice has engaged in misconduct.

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including exceptions for testimony submitted to Congressional committees and public advocacy. As a result, the *SCERT Act* would not typically require judicial disqualification from a case in which a party to the proceeding had written a public letter of support for a judicial nomination that was subsequently confirmed.

[575] S. 325, https://www.congress.gov/bill/118th-congress/senate-bill/325.

[576] S. 1290 https://www.congress.gov/bill/118th-congress/senate-bill/1290.

B. Reform the Judicial Conference and Improve Its Internal Operations

Congress is responsible for some of the shortcomings of the AO and the Judicial Conference. Federal law requires the destruction of the judiciary's financial disclosure reports after a period of six years, unless needed in an ongoing investigation, and—as this report makes clear—investigations into judicial ethics may require information from beyond the most recent six-year period. The need for longer records retention is especially salient in the context of judicial ethics, as federal judges' life tenure means that judicial officers still in active service may have engaged in misconduct that merits investigation while serving on the bench decades ago. Congress should accordingly amend the EIGA to better preserve financial disclosure reports and other documents maintained by the AO, whether by extending the period for which records must be maintained or by requiring the AO to submit certain records on an annual basis.

While Congress should act to improve laws concerning judicial ethics and administration, the AO and the Judicial Conference are also responsible for organizational shortcomings. The Judicial Conference and the AO should evaluate if the allocation of additional resources—or reallocation of the Judicial Conference's existing resources—could help improve the quality of financial disclosure report review, including by allowing for the hiring of additional qualified staff to review reports and answer filers' questions.

However, the hiring of additional staff alone is unlikely to resolve several larger issues with the Judicial Conference and its review of financial disclosure reports. To date, the Judicial Conference has failed to regulate or administer itself as much as it has failed to adequately review financial disclosure reports. The *Guide to Judiciary Policy* requires revisions to improve its review processes and standards and ensure that filers' reports are accurate. These revisions could be made by the Judicial Conference itself. The Judicial Conference could also request outside input and incorporate recommendations regarding best policies.

Although the Judicial Conference's written policies and dearth of staff enfeeble its effective fulfillment of its responsibilities, a greater obstacle is its apparent resistance to meaningfully changing its practices and culture. The EIGA tasks the Judicial Conference with administering financial disclosure rules for judicial officers, and effectively carrying out this responsibility is essential to ensuring oversight and accountability for the judiciary. Yet the Judicial Conference regularly obfuscates, excuses, and enables ethical misconduct within the judiciary. Despite the judiciary's insistence that it can police itself, it has failed to do so for decades. True reform and ethics accountability require the Judicial Conference to fundamentally transform its practices, processes, conception of itself, and performance of its role.

Several judicial ethics bills introduced in the Senate include various roles and requirements for the Judicial Conference within the legislation's framework. However, none of the proposed legislation reforms the Judicial Conference or addresses the Judicial Conference's shortcomings. Congress created the Judicial Conference and its membership.[577] Congress can accordingly pass additional legislation to improve the Judicial Conference and its operation. Such legislation could require additional transparency or reporting requirements for the Judicial Conference or mandate the inclusion of parties from outside the judiciary—including ethics

[577] 28 U.S.C. § 331.

lawyers or ethics experts—in the membership of the Judicial Conference or its committees and subcommittees. Congress could also amend the EIGA to create a separate entity to review judiciary financial disclosure reports, or even require a new or different body than the Judicial Conference to administer the financial disclosure requirements for judicial officers and employees. Ultimately, the full scope and necessity of congressional action is likely to depend on any action or inaction by the Judicial Conference itself.

C. Further Investigative Steps Needed

To date, none of the justices have been directly questioned about their alleged misconduct. Unlike the baseless arguments made by the private citizens who resisted this investigation,[578] inquiries of the justices do raise separation of powers concerns that the Committee has taken into account in its approach to this investigation. Namely, this Committee first sought information from "other sources," rather than directly from the officers of a co-equal branch of government and their personal papers, as the Supreme Court has directed, because these sources "could reasonably provide Congress the information it needs in light of its particular legislative objective" of Supreme Court ethics reform.[579] This preliminary step is not yet complete because several recipients of valid requests from this Committee have not yet sufficiently responded, including Mr. Leo, who is currently in noncompliance with a valid congressional subpoena. This information remains necessary for the Committee's legislative efforts because, while the case for legislative action to mandate an enforceable code of conduct on the justices is clear, what remains unclear is what additional legislative efforts are necessary to restore the integrity of the Court.

The answers to some of these questions can only be answered by the Court itself and may require Congress to seek the testimony of Chief Justice Roberts or others about the Court's ineptitude in maintaining the appearance of propriety. Whether it is the repeated failures of justices to recuse themselves from cases in which they have clear financial, familial, or other prohibited interests; inappropriate policy commentary suggesting bias; or nondisclosure of lavish gifts from those with interests before the Court, the justices have allowed ethical misconduct to persist for decades. Further investigation—ideally with the cooperation of the justices—is needed to understand how the justices allowed this to happen and how to effectively address these failures going forward.

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[578] Many of the private citizens who received a request for information from the Committee in this investigation claimed that they, as private citizens with no role in government, could invoke the "separation of powers doctrine," which is an equity between co-equal branches of government. *See, e.g.*, Letter from Michael D. Bopp, Gibson, Dunn & Crutcher LLP, to the Honorable Richard J. Durbin, Chair, Senate Committee on the Judiciary, on behalf of Harlan Crow, HRZNAR LLC, Rochelle Marine LTD, & Topridge Holdings LLC (May 22, 2023); Letter from David B. Rivkin, Baker Hostetler LLP, to the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of Leonard Leo (Jul. 25, 2023); Letter from Matthew Schneider, Honigman LLP, the Honorable Richard J. Durbin, Chair, and Sheldon Whitehouse, Courts Subcommittee Chair, Senate Committee on the Judiciary, on behalf of David Sokol (Sep. 27, 2023).

[579] *Trump v. Mazars USA, LLP*, 591 U.S. 848, 869–870 (2020).