

2022

Accountable To None:

The Urgent Need
for Supreme Court
Ethics Reforms

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Introduction

The Supreme Court is the highest court in the American judicial system.

Its decisions shape the lives of every American and often turn on the vote of a single justice. The Supreme Court makes decisions that determine whether we can breathe clean air and drink safe water; make key healthcare choices; join with co-workers to form a union; and exercise the fundamental right to vote.

Yet, while all other federal judges are required to abide by the Code of Conduct, the Supreme Court justices only use the Code for “guidance.” The justices are not required to follow the Code’s Five Canons, including those on extrajudicial and political engagement. Given the significant allegations of misconduct by Supreme Court justices, which are detailed in this report, a voluntary system of adherence to ethical guidelines is not enough. In fact, this voluntary system, and the misconduct that results, has left our judiciary and democracy in deep crisis.

Our federal judicial branch cannot function without the ethical conduct of judges. As stated in the Code of Conduct, “the integrity and independence of judges depend in turn on their acting without fear or favor.” Ethical conduct by judges also serves to preserve public confidence in the courts as fair and impartial arbiters. As the Supreme Court itself recognized in *Caperton v. A.T. Massey Coal Co.*, “the power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen’s respect for judgments depends in turn upon the issuing court’s absolute probity.”

Introduction

In particular, the integrity of the judicial branch requires judges' and justices' strict independence from political matters. In [Federalist No. 78](#), Alexander Hamilton distinguished the judicial branch from the executive and legislative branches. He wrote that if judges were elected like political actors, they would be beholden to voters in a way that would be “fatal to their necessary independence.”

Presidents may not receive another term for an unpopular decision. U.S. Senators may be voted out of office for a controversial position. But federal judges, including Supreme Court justices, are appointed and given lifetime positions to insulate them from such political matters; they can only be removed through the bench through the impeachment process, which has only happened a handful of times throughout history. Separation from politics, Hamilton wrote, is essential to judges guarding the Constitutional rights of all Americans, especially those who hold unpopular or minority opinions.

In 2011, after several years of particularly egregious misconduct allegations, Alliance for Justice (AFJ) led a campaign calling upon Congress and the Supreme Court to reform the Court's ethics rules. In a report about the Code of Conduct, AFJ catalogued allegations of extrajudicial, political misconduct by Supreme Court justices, particularly Justice Clarence Thomas and late Justice Antonin Scalia.

More than ten years have passed since our 2011 campaign, and allegations of misconduct have continued. With confidence in the Supreme Court at an all-time low, and our democracy in peril, the Court remains without a code of ethics. In this report, we will review the history of ethics and the federal courts, outline the Code of Conduct for federal judges, and catalogue the misconduct that has happened since our 2011 report. Finally, we survey additional ethics reforms needed to make a mandatory Code effective and review current legislation that would bring us one step closer to the ethical rules our Supreme Court so desperately needs.

Background

Since the time of the country's founding, federal judges have pushed the boundaries of ethical political engagement. Understanding that reform was necessary, Congress and the courts have worked together over time to develop ethics codes for judges. Unfortunately, every time that a push for reform occurred, the Supreme Court has remained exempt from regulation, and allegations of misconduct by justices has continued.

1789-1924: The First Judiciary Act and Early Reforms

The Judiciary Act of 1789, which **established** our federal courts system, had limited ethical obligations for judges and justices alike; **both** had to take an oath to “do equal right to the poor and to the rich” and do their work “faithfully and impartially.” During the first century and a half of United States’ history, the justices’ extrajudicial activity varied widely, with some justices heavily involved in partisan politics. For example, in 1795 while he was Chief Justice of the Court, John Jay **campaigned** to be governor of New York. Justice Salmon Chase sought the Republican nomination for President in 1860 before serving as Chief Justice starting in 1864, but later ran for President again in both 1868 and 1872. Chief Justice Hughes took time off from the Court to run for President in 1916, but then returned to the Court after he lost to Woodrow Wilson.

A **scandal** in the early 1920s involving major league baseball led to the first successful campaign to reform federal judicial ethics. Former-President turned Chief Justice Taft spearheaded the creation of an advisory Canon of Ethics, completed in 1924 (the Canon); the thirty-four canons, which had no enforcement mechanism, largely concerned judges’ and justices’ political and business activity. Several states adopted the Canon; however, the federal judiciary merely used it as informal guidance.



Background

1924-1972: The 1972 Code of Judicial Conduct and Lower Court Reforms

While the Canon was a major step forward in articulating judicial ethics standards, Chief Justice Taft, and many others, did not exactly change their behavior. Taft was **deeply** politically involved during his judicial career, advising the Republican party, speaking out in favor of political candidates, and counseling presidents on policy matters. Taft was not the only Justice with questionable activity during this period: Justice Douglas, who had served as Chairman of the Securities and Exchange Commission, **played** poker with President Roosevelt, planned multiple presidential runs, and temporarily served on the board of the **Sierra Club**, an organization that regularly litigated before the Court.

In the late 1960s, Justice Fortas's **alleged** engagement in partisan politics led to another push to reform ethics rules. The Judicial Conference and the American Bar Association worked together to develop the five-canon 1972 Code of Judicial Conduct for United States Judges (the Code), the original iteration of the current Code of Conduct. The Watergate scandal, which sparked a national conversation about government ethics, meant that the Code was taken more seriously. In 1980, the Judicial Conduct and Disability Act was passed to serve as an enforcement mechanism for the Code.

Background

1972-Present: The Campaign for Supreme Court Ethics Reform

Like the Canon before it, the Code did not bind Supreme Court justices. For that reason, while there have been continued efforts to reform lower court judges' ethics – including those related to recent reporting on pervasive financial conflicts of interest – most recent ethics reforms have focused on the Supreme Court. In particular, since five Republican-appointed justices halted the 2000 Presidential election recount in *Bush v. Gore*, allegations of extrajudicial, political misconduct by justices have reached a crescendo.

As AFJ delineated in its 2011 campaign, the growing misconduct is inextricably linked with the campaign by anti-democratic, private interests to pack the Court with corporate-backed conservatives. Many of the allegations concerned Justice Thomas and late Justice Scalia's political involvement with conservative groups and donors who had interests before the Court. For example, a 2011 invitation to a Koch brothers' retreat advertised that Justice Scalia and Justice Thomas had attended at least one closed-door, invitation-only event in the past. In another example, Justice Alito headlined a fundraiser for the Intercollegiate Studies Institute, an ultra-conservative Tea Party think tank. In addition, Justice Scalia was a regular hunting partner of Vice President Cheney, who ascended to the Vice Presidency thanks to the votes Justice Scalia and four other Republican-appointed justices in *Bush v. Gore*.

The allegations, and so many others, were so severe that Chief Justice Roberts spent much of his 2011 [year-end report](#) defending the Court's ethical practices. Democratic-appointed justices have faced allegations in recent decades as well, albeit on a less frequent basis; for instance, the late Justice Ruth Bader Ginsburg [inappropriately](#) critiqued then-candidate Trump in a CNN article and Justice Breyer [attended](#) the Renaissance Weekend event in the 1990s with Democratic politicians including then-President Bill Clinton. However, despite these allegations and calls for reform, no changes were made to the Court's ethical rules.

Current Code

To understand the allegations of misconduct against the Supreme Court justices — and how far we have to go on ethics reform — we must first understand the Code as it currently operates. The [Code of Conduct](#), which applies to all judges besides the Supreme Court justices, is enforced under the [Judicial Conduct and Disability Act of 1980](#).

The Code of Conduct contains five Canons, three of which have bearing on the appropriateness of extrajudicial activities of federal judges:

02

CANON 2 STATES:

In part: “A judge should avoid impropriety and the appearance of impropriety in all activities.”

04

CANON 4 STATES:

In part: “A judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.”

05

CANON 5 STATES:

In part: “A judge must refrain from all political activity.”

Current Code

Code Enforcement

The Code of Conduct is enforced through the Judicial Conduct and Disability Act of 1980. **Any person** can make a complaint against a judge by filing it at the court of appeals for the regional circuit in which the judge serves. The chief judge of the circuit reviews the complaint and conducts limited fact-finding. The process may end there, with the chief judge dismissing or concluding the complaint. However, the chief judge may also appoint a special committee to conduct further investigation. The special committee does additional fact finding and then makes a report and recommendation to the judicial council, a panel of judges charged with making administrative decisions for the circuit.

The council **can** dismiss the complaint, return the matter to the chief judge for further investigation, or ultimately sanction the judge. Because federal judges have lifetime appointments and can only be removed by impeachment by Congress, the council does not have the power to remove judges. Instead, the council can request a judge retire early, censure the judge, or order that no new cases be assigned to the judge for a fixed period. If the council determines that impeachment is in order, it refers the finding to the Judicial Conference which then determines whether to certify the matter to Congress.

Current Code

Some current justices appear to have engaged in political activity that would be prohibited by the Code.

Several Supreme Court justices appear to have engaged in conduct that violates Canons 2, 4, and 5. In this section, we provide further information about each Canon and detail the allegations against the current justices.

Canon 2

Canon 2 provides that a judge must obey and respect the law in both private and public, avoid outside influence, and eschew membership in discriminatory organizations. Canon 2, which notably prohibits even the appearance of impropriety, elaborates on the care judges must take to avoid outside influence:

“A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.”

The rule goes on to say that

“The judge cannot lend the prestige of the public office to advance private interests or allow others to convey the impression that they are in a special position to influence the judge.”



Current Code

Allegations have surfaced implicating Justices Thomas, Alito, and Kavanaugh in activity that arguably violates Canon 2:

1. Justice Thomas and Ginni Thomas:

Justice Thomas's wife, Ginni Thomas, has a long history of involvement with ultra-conservative causes. After working for Republican members of the House of Representatives, she joined the conservative Heritage Foundation as a [liaison](#) to the Bush administration and went on to found two organizations associated with the Tea Party. Ginni Thomas's involvements with the Republican party consistently raise ethical issues for Justice Thomas.

There is strong evidence that Ginni Thomas was deeply [tied](#) to the 2020 election disinformation campaign and the January 6th insurrection. After the 2020 election, she vehemently advocated for the invalidation of the election results to Trump Chief of Staff Mark Meadows, pressured Arizona officials to overturn Biden's victory, and attended the January 6 *Stop the Steal* rally at the Capitol. Justice Thomas has already participated in two cases about the 2020 election, including [one](#) case in which he was the lone dissenter. He will likely be participating in another case related to the January 6th insurrection. Given the spousal relationship between Justice Thomas and Ginni Thomas, it is entirely possible that he cannot be impartial and has violated Canon 2 with his involvement in the 2020 elections cases. Additionally, Ginni Thomas's involvement with the insurrection violates Canon 2 by creating the appearance of impropriety.

Current Code

Ginni Thomas has been involved with several conservative organizations that litigated before the Court. She [earned](#) more than \$200,000 in 2017 and 2018 from the Center for Security Policy (CSP), a Southern Poverty Law Center-designated [hate group](#) which turned from a foreign affairs think tank to an anti-Muslim conspiracy-oriented organization. The organization was a promoter of racist birther theories about former-President Obama, accused Hillary Clinton aide Huma Abedin of being a spy for the Muslim Brotherhood, and advocates for extreme anti-immigration policies focused on excluding Muslim individuals from the United States. CSP's founder, Frank Gaffney, signed an [amicus brief](#) in *Trump v. Hawaii*, a case before the Supreme Court that was decided by a 5-4 vote, with Justice Thomas in the majority, allowing Trump's Muslim ban to move forward. Justice Thomas likely violated Canon 2 with his involvement in *Trump v. Hawaii*, and at the very least created the appearance of impropriety.

Ginni Thomas sits on the board of the National Association of Scholars, an organization that opposes affirmative action as well as teaching and learning about civil rights and social justice history. The organization filed an [amicus brief](#) in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, a high-profile challenge to affirmative action. Despite his wife's connection, Justice Thomas still plans to participate in that case. Ginni Thomas's connection to an organization with an amicus brief before the Court at least violates Canon 2 by creating an appearance of impropriety.

Current Code

2. Justices Alito and Kavanaugh and the National Organization for Marriage

Justices Alito and Kavanaugh arguably ran afoul of Canon 2 when they met with the head of the National Organization for Marriage (NOM) at the Supreme Court in 2019. NOM is a leading opponent of same-sex marriage which has repeated falsehoods about LGBTQ+ Americans. In addition to litigation, the organization spearheads state-based campaigns against LGBTQ+ equality. At the time of the Supreme Court meeting, NOM had submitted an amicus brief in *Bostock v. Clayton Co.*, *Altitude Express Inc. v. Zarda*, and *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC* that were unresolved at the time. By meeting with NOM, Justices Alito and Kavanaugh almost certainly allowed NOM to convey that it was in a special position to influence the justices in the pending cases. At the very least, the meeting violated the prohibition on the “appearance” of impropriety since a reasonable person could conclude undue influence. The justices likely violated Canon 5 as well given the highly political nature of the National Organization for Marriage, which consistently runs state-based electoral campaigns.



Current Code

3. Justice Gorsuch at the Trump International Hotel

Justice Gorsuch's [address](#) to a conservative group at the Trump International Hotel in 2017 raised more than one issue under Canon 2. The group, the Fund for American Studies, is a conservative group whose partner organization was representing Mark Janus in the Supreme Court case *Janus v. AFSCME*. Justice Gorsuch ultimately sided with Janus in that case, resulting in a decision that gutted public-sector unions representing teachers, firefighters, and other public employees. In addition, Justice Gorsuch's decision to speak at then-President Trump's hotel was also inappropriate given the numerous Trump-related issues coming before the Court, including regarding Trump's continued ownership of his businesses.





4. Justice Kavanaugh at the Federalist Society Dinner

In 2019, Justice Kavanaugh addressed the conservative Federalist Society to discuss his controversial confirmation — a likely violation of Canon 2. At the event, where Justice Gorsuch was also in attendance, Justice Kavanaugh [thanked](#) then-Republican Majority Leader, Senator Mitchell McConnell. The Federalist Society openly advocates for conservative political and legal outcomes. While the Judicial Conference had proposed [barring](#) federal judges from membership in the Federalist Society or American Constitution Society, conservative federal judges, mainly Trump appointees, successfully [defeated](#) the proposal. Kavanaugh’s participation may at least run afoul of Canon 2.

Current Code

Canon 4

Canon 4 prohibits participation in extrajudicial activities that “interfere with the performance of the judge’s official duties” or “reflect adversely on the judge’s impartiality, lead to frequent disqualification.” This may include fundraising activities, political or otherwise. Advisory Opinion 2 elaborates on this limitation by stating that “the use of the prestige” of the judge’s office may not be used for fundraising. Commentary to Canon 4(C) spells out explicitly that a judge may not serve as a speaker, a guest of honor, or be featured on the program of a fundraising event; however, use of a judge’s name or position may not violate Canon 4C if comparable information and designation is listed for others.

At the same time, Canon 4’s commentary enumerates several activities that federal judges are permitted and even encouraged to engage in, such as speaking, writing, and lecturing on the law, or associating with nonprofit and charitable organizations. For example, participation is encouraged in events like educational seminars or American Bar Association conferences. However, [according](#) to the Judicial Conference’s Advisory Opinion 93, participating in an organization focused on changing the law to achieve policy goals, whether through policy or impact litigation, is not allowed.

Current Code

1. Justice Thomas and Candidate Herschel Walker

On April 8, 2022, Justice Thomas [posed](#) for a photo in a Supreme Court alcove with Herschel Walker, a Republican U.S. Senate candidate in Georgia, seven weeks before Walker’s primary election. Walker had already been endorsed by Trump and Senate Republican leader Mitch McConnell. The photo was tweeted out by Walker’s campaign communications director and had not been deleted as of June 22, 2022.

Since the photo was posted by Walker’s communications director, it appears that the campaign is using Justice Thomas’s prestige to fundraise in violation of Canon 4. Publicized contact between a Supreme Court justice and a political candidate also likely falls within Canon 5’s prohibition of “any other political activity.” The contact likely also violates Canon 2; Walker’s campaign may be using the photo with Justice Thomas to gain prestige, and the connection at least raises the appearance of impropriety.



Current Code

2. Justice Gorsuch and the Federalist Society

In 2022, Justice Gorsuch [spoke](#) at a Florida Federalist Society event that included appearances by Governor. Ron DeSantis, former Vice President Mike Pence, and former White House Press Secretary Kayleigh McEnany. The event was closed to the press and included a panel “The End of *Roe v. Wade?*,” which included Mississippi Solicitor General Scott Stewart who had [asked](#) Justice Gorsuch to overturn *Roe v. Wade* only months before in *Dobbs v. Jackson Women’s Health Organization*. Justice Gorsuch’s participation in the Federalist Society event almost certainly runs afoul of Canon 4, as the organization and event are focused on achieving specific policy goals, such as ending *Roe v. Wade*, not basic legal education.



Current Code



Eagle Forum
@EagleForum



Justice Clarence Thomas and Anne Schlafly Cori at Eagle Council XLVI reception #ECinDC #EC46 #EagleCouncil



3:24 PM · Sep 16, 2017 · Twitter for iPhone



Current Code

3. Justice Thomas and the Eagle Forum

In 2017, Justice Thomas [headlined](#) the annual Eagle Forum conference. The Eagle Forum is a conservative grassroots organization founded by Phyllis Schlafly, a conservative who famously campaigned against ratification of the Equal Rights Amendment during the 1970s. The event, which cost up to \$350 per person, may have been a fundraiser. Ginni Thomas used her husband's appearance, and therefore the prestige of his office, to drum up attendance, urging in promotional materials that prospective attendees come to hear "my amazing husband." After the event, the Eagle Forum [tweeted](#) a promotional video that included footage of the Thomases at the event.

Justice Thomas's participation almost certainly runs afoul of Canon 4, as the organization and event are focused on achieving specific policy goals, such as making English the official language of the United States, opposing immigrants' rights, and opposing the freedom to marry. Thomas's participation may also run afoul of Canons 2 and 5; participation at least has the appearance of impropriety and the Eagle Forum's work likely falls within "any other political activity" given its clear policy and political goals. The Judicial Conference's Advisory Opinion 53 [states](#) that judges must take pains to dissociate themselves from the political involvement of a spouse, including in any communication relating to the spouse's political activity.

Current Code

4. Justice Kavanaugh and Senator Mitch McConnell

In March 2020, as COVID-19 was rapidly spreading around the United States and Senator McConnell prepared for a competitive election, Justice Kavanaugh visited Kentucky with him. Justice Kavanaugh **flew** to Kentucky with Senator McConnell and his spouse, then Transportation Secretary Elaine Chao. While Kavanaugh was in town, he **spoke** at the investiture of Trump-judge Justin Walker; Walker, who was **deemed** unqualified by the American Bar Association and elevated to the D.C. Circuit Court soon after, is a far-right jurist who virtually never tried a case.

Justice Kavanaugh's flight and appearance with Senator McConnell likely runs afoul of Canon 4, as the Senator was in a competitive election season and may have been using Justice Kavanaugh's prestige for fundraising purposes. Publicized contact between a Supreme Court justice and a politician also certainly falls within Canon 5's prohibited "any other political activity."



Current Code



Current Code

Canon 5

Numerous allegations since 2011 have implicated justices in activity that likely conflicts with Canon 5. At the very least the allegations would conflict with Canon 2, including that Canon's prohibition on the appearance of impropriety. Canon 5 makes clear that judges are not to participate in political activities, including making speeches for political organizations, donating to political candidates or organizations, purchasing a ticket to events sponsored by political candidates or organizations, or engaging in "any other political activity." Contact between a Supreme Court justice and high-profile Republican or Democratic politicians and donors likely falls within Canon 5's prohibition against "any other political activity."

1. Governor Ron DeSantis and Justice Thomas

Last summer, in an email exchange with Governor Ron DeSantis of Florida, Ginni Thomas [mentioned](#) that Justice Thomas had been in contact with the governor "on various things of late." Ginni Thomas's email was sent on June 10, 2021, while Florida was a respondent in [Ohio v. OSHA](#), a case about federal vaccination requirements.

Contact between a Supreme Court justice and the governor of a state being sued by the federal government falls within Canon 5's prohibited "any other political activity." In addition, the Judicial Conference's Advisory Opinion 53 [states](#) that justices should take great pains to separate themselves from a spouse's political activity: "Therefore, a judge should, to the extent possible, disassociate himself or herself from the spouse's political involvement... The judge should not, for example, join in or approve any reference to the relationship between the judge and spouse in any communication relating directly or indirectly to the spouse's political activity."

Current Code

2. Justices Alito and Gorsuch and Former Secretary of State Mike Pompeo

In 2019, Justices Alito and Gorsuch may have attended then Secretary of State Mike Pompeo's [Madison Dinners](#). The Madison Dinner invitees included a wide range of Republican politicians and donors and focused on domestic policy issues. The event was in the news because Pompeo used tax-payer funds for the dinner, even though it was focused on domestic politics.

Contact between a Supreme Court Justice and high-profile Republican politicians and donors likely falls within Canon 5's prohibition against "any other political activity."

3. Justice Barrett and Senator Mitch McConnell

In 2021, Justice Barrett [gave](#) a speech at the McConnell Center at the University of Louisville, a center founded by Senator Mitch McConnell. At the event, video recording and streaming were prohibited. Justice Barrett gave her speech with Senate Minority Leader McConnell sitting next to her, [stating](#) that "my goal today is to convince you that this court is not comprised of a bunch of partisan hacks." The speech was preceded by dinner with Justice Barrett, McConnell, and 12 to 15 of the senator's friends.

Contact between a Supreme Court justice and a prominent Republican politician, coupled with a speech about politics and the Court, would likely fall within the prohibited "any other political activity."

The examples above are only the tip of the iceberg. Without ethics rules and enforcement for the Supreme Court, there is no comprehensive list of misconduct allegations.



Ethics Beyond The Code



Ethics Beyond The Code

While this report focuses on the Code of Conduct and extrajudicial political misconduct in particular, a mandatory Code will only be effective if coupled with additional ethics reforms. Additional essential areas of reform include changes that address discrimination and harassment, enforce the Code, and bolster transparency.

A. Anti-Discrimination/Harassment:

Sexual harassment and other forms of discrimination are grave ethics issues in the federal judiciary. Due to severe power imbalances and lacking legal protections, the federal judiciary has a long-term, pervasive problem with sexual harassment and discrimination.

The federal judiciary, including the Supreme Court, is currently exempt from anti-discrimination laws including Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, sex, and national origin. Speaking out in support of a clerk who accused a federal appellate judge of sexual harassment, more than 70 other former law clerks [wrote](#) that there is “no justification for a system in which antidiscrimination law applies to all except those who interpret and enforce it.”

Workplace harassment and discrimination is an ethics issue. It prevents employees from fully contributing to the administration of justice. It also implicates the impartiality and character of the judges and justices themselves, who are supposed to be meting out justice in sexual harassment and other discrimination cases. With [two justices](#) accused of sexual harassment and violence sitting on the Supreme Court today having faced no consequences, these reforms are more necessary than ever. While some ethics legislation ignores harassment and discrimination, comprehensive reform must include changes in this area.

Ethics Beyond The Code

B. Enforcement:

A mandatory code of ethics for the Supreme Court will not be effective without enforcement mechanisms. There must be a system of complaint and adjudication outside of the current system of voluntary self-assessment.

However, the enforcement mechanism for the Code of Conduct for lower court judges, the Judicial Conduct and Disability Act of 1980, does not fit neatly when applied to the Supreme Court. Questions of constitutionality arise regarding who can evaluate and adjudicate complaints against justices, as opposed to judges, and what remedies, including mandated recusal, can be imposed.

There are many current proposals for ensuring that ethics enforcement happens on the Supreme Court. One solution allows the Supreme Court to adjudicate its own complaints but requires public decisions to be released regarding complaints. Another proposes an independent council appointed by Congress to review complaints and release public decisions. Some argue that expanding the Supreme Court, including with a rotating justice system, would allow for the outcome of recusal to be carried out more easily.



Ethics Beyond The Code

C. Transparency:

A bold increase in Supreme Court transparency — in Court proceedings, extrajudicial activity, and financial matters — would be necessary to make a mandatory Code of Conduct effective. While the Court started offering live audio of proceedings during COVID-19, audio or video live streaming should be required by law. Justices should also be required to publish reports regarding extrajudicial conduct, including speeches. Justices' associations with parties and amici that could trigger recusal should also be made available for public review.

Stringent, accessible financial disclosures are also key to transparency. While the President, members of Congress, and lower court judges are subject to rigorous disclosures of outside income, gifts, and reimbursements, the Supreme Court justices have only been required to report on a limited set of information. And while these other senior government officials' reports are available online, the Supreme Court justices' disclosures must be requested in a cumbersome multi-step process. In a positive step, the [Courthouse Ethics and Transparency Act](#) was recently signed into law; the new law increases financial disclosures for Supreme Court justices and will ensure that these disclosures are posted online.



Policy Recommendations

Since the Court has not voluntarily adopted the Code, or created a similar set of binding ethical rules, Congress must act. Several pieces of legislation have recently been introduced that could advance Supreme Court ethics reform. [The Supreme Court Ethics, Recusal, and Transparency Act of 2022](#), [The Judicial Ethics and Anti-Corruption Act of 2022](#), and [The 21st Century Courts Act of 2022](#), all represent movement towards meaningful reform. We also applaud the introduction of the [Judicial Accountability Act of 2021](#), which focuses solely on holding the federal judiciary accountable for discrimination and harassment; we did not review this legislation because it is not as comprehensive or focused on the Supreme Court.

On the following pages, each piece of legislation is reviewed based on the Code of Ethics, Anti-Discrimination, Enforcement, and Transparency.



Policy Recommendations

A. The Judicial Ethics and Anti-Corruption Act of 2022:

The Judicial Ethics and Anti-Corruption Act makes the existing Code of Conduct for U.S. judges, detailed above, mandatory for Supreme Court justices. The Act has the strongest enforcement measures of any of the recently introduced measures; it would create a Supreme Court Review Committee to process complaints against justices accused of violating the Code of Conduct.

The Act has extensive transparency measures. It requires all federal judges, including the justices, to maintain and submit a publicly-available list of associations that would require the judge or justice to be recused from a case. The Act requires judges to submit and make publicly available all significant speeches and remarks, and for appeals courts and the Supreme Court to stream court proceedings, unless the court determines by majority vote that making audio available violates the constitutional rights or threatens a party.

The Act is also the only piece of recently introduced legislation that has provisions related to discrimination and harassment. It requires the Judicial Conference to administer and publicize an anonymous climate survey to all federal court employees; the survey includes questions about workplace environment, such as discrimination and harassment.

Policy Recommendations

B. Supreme Court Ethics, Recusal, and Transparency Act of 2022:

The Supreme Court Ethics, Recusal, and Transparency Act requires the Supreme Court to create its own code of conduct. There is no new process identified for filing complaints for alleged violations of the newly-created code. The Act does, however, allow parties before the Court to file motions to disqualify justices who are required to recuse from the proceeding. The Supreme Court itself then analyzes these motions.

The Act requires the creation, approved by the Chief Justice, of new, stricter rules regarding disclosure of gifts, disbursements, and income. The Act also requires judges to inform themselves about their personal and familial financial interests, broadens the circumstances demanding disqualification, and significantly bolsters the disclosures required by *amici*.



Policy Recommendations



Policy Recommendations

C. The 21st Century Courts Act of 2022:

The 21st Century Courts Act is very similar to the Supreme Court Ethics, Recusal, and Transparency Act. It also requires the Supreme Court to create its own code of conduct and does not have a process identified for filing complaints for alleged violations of the newly-created code. However, the Act allows parties before the Court to file motions to disqualify justices who are required to recuse from the proceeding. The Supreme Court itself then must analyze the motion, make a decision, and explain its reasoning.

The Act requires the creation, approved by the Chief Justice, of new, stricter rules regarding disclosure of gifts, disbursements, and income. It requires increased video and audio streaming and recording availability among the circuit courts and Supreme Court. The Act also requires judges to inform themselves about their personal and familial financial interests, broadens the circumstances demanding disqualification, and significantly bolsters the disclosures required by *amici*.

All of the recently introduced legislation would meaningfully advance Supreme Court ethics reform. The Judicial Ethics and Anti-Corruption Act provides particularly robust transparency measures around justices' financial matters, contains the only anti-discrimination measure, and has the strongest enforcement mechanism.

Conclusion

Like the Supreme Court justices before them, without a code of ethics, the current justices are playing by their own rules. And these rules are not aligned with our basic principles of judicial independence and integrity: our justices, especially those involved in far-right political causes, have allegedly engaged in partisan politics, improper fundraising activities, and other conduct that has deeply harmed their integrity and independence. These behaviors obstruct the Court's substantive decision-making and wreak havoc on the public's confidence in the institution. In fact, about 63% of Americans now [believe](#) that justices' decision-making is driven by politics, and 74% of Americans believe the Court has become too politicized.

The unethical conduct of Supreme Court justices, particularly their involvement in political matters, signifies that our democracy is in grave danger. An independent judiciary, far removed from the legislative and executive branches, ensures that power is not consolidated and abused by an unjust, powerful few. As James Madison wrote in [Federalist No. 47](#), “[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” The Supreme Court needs a code of ethics and there is no time to waste.



