2024

Updated: Accountable to None:

The Fight for Accountability Continues

ALLIANCE FOR JUSTICE

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Why We Need Ethics Reform *Now.*

An update to the **Alliance for Justice** (AFJ) **Accountable to None: The Urgent Need for Supreme Court Ethics Reform** report detailing justices' ethical violations, reform proposals, and making policy recommendations, **The Fight Continues** captures the growing catalogue of ethical infractions by members of Supreme Court and missteps by the institution, offering a deep dive into the misconduct that has, despite increased scrutiny from AFJ and partner organizations, Congress, media, and the public, continued.

Justices' transgressions include not only refusals to recuse in instances of a conflict of interest and to report gifts and benefits as required by federal ethics laws but also the creation of a culture of corruption that threatens to infect the lower courts, emboldening other judges to flout long-standing ethics norms, rules, and laws.

Public trust in the Supreme Court, as measured by "approve or disapprove of the Supreme Court" polling, has remained at historic lows for more than three years. The difference between those who disapprove of the Court and those who approve was last positive, momentarily, in April 2023, when 41.9 percent of respondents disapproved of the Court and 44.1 percent approved — a net difference of just 2.2 points in the Supreme Court's favor. Even then, the margin of approval was within the margin of error.

The big swing among Americans on attitudes toward the Supreme Court began in September 2021. That month, disapproval shot up to 47.5 and approval dipped to 40.7 percent with a negative net difference of 6.8 points. This new low was captured by both by political data analysis site 538, which relies on polling averages, and Gallup. Since then, the net difference between disapproval and approval has ventured into favorable territory for the Court only twice and briefly, first for a stretch between March and April 2022 and then, even more briefly, in April 2023, as noted above.

Per Gallup, dips in the Court's favorability correspond to the justices' refusal to block a Texas anti-abortion law in 2021 in *Whole Woman's Health v. Jackson,* argued in November and decided that December, and their decision in *Dobbs v. Jackson Women's Health Organization.* The latter decision, argued in December 2021 and decided in June 2022, overturned *Roe v. Wade,* imperiling people nationwide by blocking access to health care.

The Supreme Court has undermined itself, knowingly deviating from the role it was created to fill — one that Chief Justice John Roberts infamously described as "call[ing] balls and strikes" at his confirmation hearing in 2005. While no longer available through the U.S. Courts website at the time of writing, the transcript of Roberts's remarks is still ultimately accessible thanks to the Government Publishing Office and Congressional Research Service.

Originally proffered as evidence he understood the Supreme Court's role and responsibilities, over the nearly 20 years since his confirmation Roberts's baseball metaphor has proven one of the most helpful frames for understanding just how far astray this Supreme Court has gone.

Far from umping or refereeing, at least six Supreme Court justices have joined the game, approaching questions and conflicts as skirmishes in a war to advance a far-right agenda. They are embracing outside influences and ignoring conflicts of interests, violating long-standing norms and laws, and ignoring the repercussions for American democracy and the rule of law.

II. Injustice: The Current State of The Supreme Court

Here AFJ examines justices' ethical and legal violations in order of seniority.

Thomas and Friends

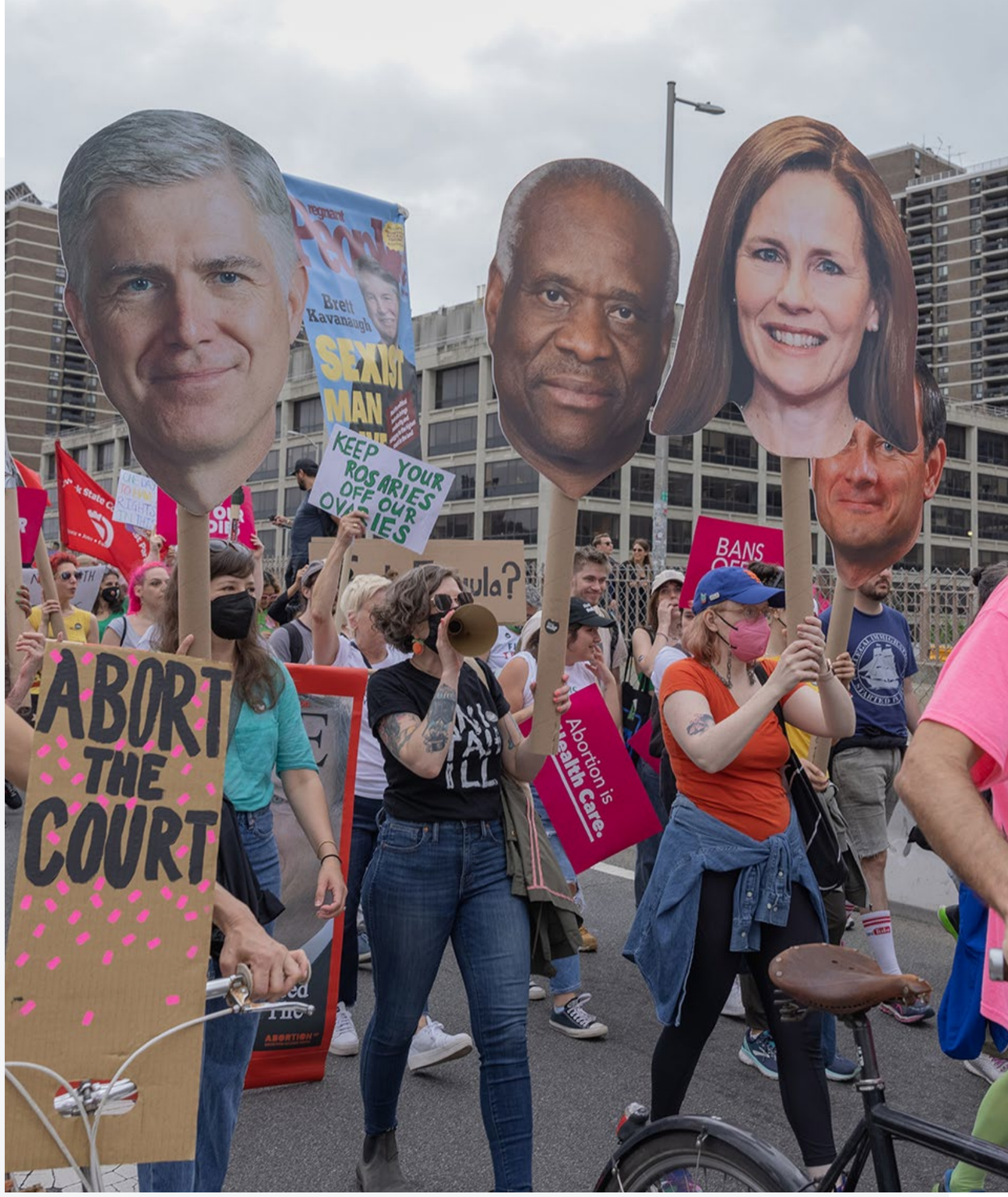
More so than any other justice, Justice Clarence Thomas has overtly and unapologetically accepted inappropriate gifts from parties with interests before the Court (both singly and jointly with his wife), refused to comply with the reporting requirements of the Ethics in Government Act, and embraced a host of "friends" and influences whose interactions with any member of the Court should merit close scrutiny.

In Thomas's case, the value of the perks he has accepted defies quantifying, both because he made no attempt to do so, as required by ethics law, and because of the nature of some perks — like travel on private jets and yachts. Estimates place Thomas's haul in the millions. For this reason and others, Alliance for Justice was among the earliest organizations to call for his resignation.

Shortly after his rocky 1991 confirmation to the Supreme Court, Thomas was invited to join the Horatio Alger Association of Distinguished Americans. A balm in the aftermath of the bruising confirmation battle, Thomas embraced the Association, through which he quickly became close with "a cluster of extraordinarily wealthy, largely conservative members who lionized him and all that he had achieved."

It was through the Horatio Alger Association and only after his confirmation that Thomas met David Sokol, formerly of Berkshire Hathaway, and late billionaire businessman Wayne Huizenga. For context, a Florida waterfront property owned by Huizenga just hit the market for $45 million.

In turn, Thomas has remained active in the Horatio Alger Association, giving the group what the *New York Times* has euphemistically described as "unusual access to the Supreme Court." Thomas hosts an annual event for the Association at the Court, presiding over proceedings and placing medals around the neck of each member of each new class of lifetime members. Far from merely making the space available, Thomas is helping the organization financially each time he hosts: Tickets run $1,500.



In 1999, Thomas accepted an absurdly lenient loan for more than a quarter of a million dollars to purchase a luxury RV. Adjusted for inflation, the loan amount would be closer to $500,000 today. The *New York Times* describes the vehicle as "a brand favored by touring rock bands and the super-wealthy." The Thomases drove the RV to a number of lush resorts and conservative gatherings, a far cry from the everyman image Thomas tried—aggressively—to attach to his RV.

Thomas never repaid the RV loan, which came from long-term friend Anthony Welters. When the loan came due in 2004, Welters gave Thomas a 10-year extension. Four years later, Welters declared the loan "satisfied." Unlike most loans, in this case "satisfied" just meant that Welters would not seek additional payments—rather, he forgave the loan altogether.

In early 2000, Justice Thomas attended "Awakening," a "conservative thought weekend" at a five-star Georgia seaside resort. Deeply in debt, he complained about his salary to Representative Cliff Stearns of Florida on the flight back to Washington, calling for Congress to give justices a raise—or else expect resignations.

Thomas's comments sparked concern among conservatives, with Stearns writing Thomas a follow-up letter promising "to look into a bill to raise the salaries of members of the Supreme Court." The chain reaction culminated in the late Chief Justice William Rehnquist focusing his end of year report on "the most pressing issue facing the Judiciary: the need to increase judicial salaries."

Alarmed by Thomas's complaint, members of the conservative movement began seeking extra-institutional ways to pad Thomas's salary. The Georgia jaunt was one of many trips he did not report, despite reporting 11 other trips that year on his financial disclosure — a pattern that reveals how aware Thomas was of how outrageous the perks he was already making a habit of accepting were. Simultaneously, he was underreporting or excluding details in financial disclosures required by law about spouse Virginia "Ginni" Thomas's income.

Come April 2023, the game was up: ProPublica published a devastating exposé entitled "Clarence Thomas and the Billionaire." In 2019, Thomas celebrated the publication of the final opinion of the 2018 Term with a trip to Indonesia, leaving the United States on a private jet then boarding a "superyacht staffed by a coterie of attendants and a private chef" for a nine-day trip. It would have been a $500,000-plus trip—had the Thomases paid for it. Instead, Harlan Crow did.

A conservative mega-donor, Crow inherited a real estate empire. His hobbies include collecting and displaying "representations of many of the most infamous dictators and authoritarians of the 20th century" and Nazi memorabilia, including a signed copy of Mein Kampf and two paintings by Adolf Hitler. In April 2019, members of the Commission on the Practice of Democratic Citizenship, created the year before by the Academy of Arts and Sciences (AAA&S), attended a dinner at Crow's Texas estate after a meeting only to discover the nature of Crow's collection. The President of the AAA&S later issued a mea culpa: "It was a mistake to not understand what was at the house."

Crow's involvement with conservative political institutions stretches back three decades or more. Crow has been affiliated with the Club for Growth since its inception and sits on the boards of both the American Enterprise Institute (AEI) and the Hoover Institution. The latter two organizations regularly attempt to shape the outcome of federal cases and use multiple forums to push not just case law but legal scholarship in a right-ward direction.

For more than 20 years, the Thomases have vacationed with Crow at his expense — never disclosing their voyages or stayovers. Their travel perks have ranged from inclusion on Indonesian island-hopping excursions to free stays at uber-expensive U.S.-based resorts, like Topridge. In July 2017, the Thomases' stay at that resort coincided with stays by Verizon and PricewaterhouseCoopers executives as well as one of AEI's leaders. Some these trips only came to light as the result of Freedom of Information Act (FOIA) requests to the U.S. Marshals Service, including some by non-profit Fix the Court, in combination with on-the-ground reporting.

While Crow characterized these trips as "gatherings of friends," it's notable that, like other prominent and selectively generous conservatives, Crow's friendship with Thomas began only after Thomas's confirmation to the Supreme Court. Nor were all Crow-financed travel perks group affairs: Thomas accepted the use of Crow's private jet for a there-and-back trip to New Haven, Connecticut, to speak at Yale, where a Crow-funded portrait costing more than $100,000 of Thomas will eventually be unveiled. This is not to be confused with the painting Crow commissioned of Thomas and friends enjoying a luxurious retreat.

Crow's largesse in his presumptive attempts to secure favorable Supreme Court outcomes isn't limited to travel. In addition to spiriting Thomas around the world in the present, he has reached into the past to purchase Thomas family real estate and the site of his upbringing as well as investing in "his childhood library in Georgia." According to Crow, he and his wife "want to make sure as many people as possible learn about [Thomas], remember him, and understand the ideals for which he stands."

Crow purchased Thomas's mother's home and two other lots owned by Thomas and family members for a significantly above-market sum of $133,363, which Thomas failed to report. Crow invested in improving the property even as Thomas's mother continued living there rent-free and paid for Thomas's nephew's schooling. Crow also gifted Thomas with, inter alia, a $19,000 bible that belonged to Frederick Douglass and a $15,000 bust of Abraham Lincoln. Thomas did not report most gifts, travel, and transactions until exposed.

Accountable U.S. has compiled a timeline of known gifts to the Thomases. Crow remains resistant to efforts at investigation into his influence vis-á-vis Thomas, obstructing the Senate Judiciary Committee (SJC) where possible.

While tracking exactly how conversations occurring in private have shaped Justice Thomas's jurisprudence is challenging — especially those on trips outside of the United States and to secretive, elite retreats like Bohemian Grove and fundraising-related events at the behest of conservative scions like the Koch Brothers — there's little doubt that they have.

Consider Thomas's 2020 turnabout in *National Cable & Telecommunications Assn. v. Brand X Internet Services,* the opening salvo in an attack on government regulation most notable for the fact that, in the opinion, Thomas reverses his own decision from 2005. Just four years later, in *Loper Bright v. Raimondo,* the Court overturned the underlying doctrine — set out in *Chevron U.S.A. v. Natural Resources Defense Council* — that was the foundation of his 2005 opinion and of government regulation for the past 40 years. Thomas wrote a standalone concurrence emphatically claiming that *Chevron,* a bedrock of U.S. administrative law, "violate[d] our Constitution's separation of powers, as I have previously explained at length," citing three opinions, none earlier than 2015.

Thomas stands by his benefactors and conspirators — and they by him, demonstrating unusual loyalty and longevity in Washington, notorious for turnover.

The Other Thomas at the Supreme Court

No one exerts a more profound or more problematic influence within Justice Thomas's orbit than his wife, Virginia "Ginni" Thomas, who accompanied Thomas on his illicit travels and whose income he has habitually left off financial disclosures. A former Republican House operative, Ginni's involvement in right-wing movements, from the Tea Party in 2009 to "Stop the Steal" in 2020 and 2021, has been extensive.

Ginni and Clarence have long claimed that they "never" speak about Supreme Court cases, but that claim grows less plausible by the year — and never more so than in relation to the 2020 election. Ginni Thomas has not simply participated in far-right movements: She has raised funds, accepted untold dollars, and assumed senior roles — not just assisting but persistently leading efforts on behalf of far-right agitators. Example: Ginni named the lobbying firm she started in the days of the Tea Party "Liberty Central." Its purpose, per Ginni, was "activating a community of grass-roots patriots." Seed funding came from Crow, who contributed $500,000.

Also in 2011, as a result of investigative journalists' finding that Justice Thomas habitually omitted his wife's income from reporting, he amended 13 years of disclosures, albeit without including the level of detail required. That same year, Politico reported that Ginni would head a new lobbying firm, Liberty Consulting. She named herself "self-appointed ambassador to the freshman class [of Congress] and an ambassador to the tea party movement."

After the 2020 election, Ginni lobbied Trump staffers to reject the results. In March 2022, 29 text messages between Ginni and Trump's then-Chief of Staff Mark Meadows — 21 from her and 8 from him — surrounding the 2020 election results became public. She called the election "the greatest Heist [sic] of our History [sic]."

The possibility that Trump would take his fight to overturn the results to the Supreme Court, as he threatened on 2:30 am the morning after the election, did not deter but rather drove Ginni's exchanges with Meadows and others. On November 10, Ginni urged Meadows, "Help This Great President stand firm, Mark!!!" "You are the leader, with him, who is standing for America's constitutional governance at the precipice."

While in testimony before the House about the January 6 attack on the Capitol, Ginni said she regretted the messages, she also admitted that she attended the Stop the Steal rally, held near the White House, on January 6, heading home before the insurrection only "because it was too cold" and "she did not have any role in planning the event."

Justice Thomas, though sidelined by a hospitalization for a period after the election, would go on to hear the January 6 cases that made it to the Supreme Court — despite Ginni's deep and extensive involvement and radical views. He did so despite 28 U.S. §455(b)(4), directing that a judge should recuse if aware "that . . . his spouse . . . has a financial interest in the subject matter . . . in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

Thomas took Trump's side at the Supreme Court in January and February on related matters. He was the "1" in an 8-1 January decision denying Trump's attempt to block the House committee investigating the January 6 riot from obtaining relevant presidential records. Come February, Thomas dissented from the Supreme Court's denial of Trump and allies' attempt to convince the Court to intervene in the election. He described the decision as "baffling" and "inexplicable," a missed chance to provide guidance for future elections.

Ginni Thomas's efforts to thwart the outcome of the 2020 election may be the latest alarming development, but her involvement in organizations and projects that present clear conflicts of interest has been long-term — and sprawling. From 2017 to 2018, she earned more than $200,000 from the Center for Security Policy, an anti-Muslim conspiracy juggernaut designated a hate group by the Southern Poverty Law Center. In May 2023, the Washington Post reported that about a decade earlier, Ginni Thomas had received up to $100,000 through one connection alone — the Federalist Society's Leonard Leo, a king-maker when it comes to conservative judges who hopes to impose conservative policy through the courts.

Lest there be any doubt that the parties involved knew Ginni's involvement was improper, Leo directed Trump advisor Kellyanne Conway to use her firm as a conduit for the funds, "bill[ing] a non-profit group [Leo] advises" for the cash to pay Mrs. Thomas, leaving Ginni's name out of it.

Ginni's work, despite her claims that she and her husband never speak of Court cases, has at times centered on the Supreme Court. A September 2024 expose by ProPublica found that Ginni also jubilantly emailed Kelly Shackelford, head of the First Liberty Institute, to praise Shackelford's conservative advocacy regarding the Supreme Court. He has called efforts to promote reform "a dangerous attempt to really destroy the court, the Supreme Court."

Like so many of the Thomases' contacts, Shackelford is a mainstay of the conservative movement. He formerly served as vice president of the Council for National Policy, an umbrella group that brings together conservative leaders and deep-pocketed donors. In the last two years alone, the organization has scored multiple victories before the Supreme Court. And Ginni Thomas may be their biggest cheerleader: On July 31, just months before the 2024 election, Shackelford read an email from Ginni Thomas aloud on a donor call: "YOU GUYS HAVE FILLED THE SAILS OF MANY JUDGES. CAN I JUST TELL YOU, THANK YOU SO, SO, SO MUCH." Capitalization Ginni's.

The Code of Conduct for United States Judges makes clear judicial spouses' interests and involvement in a matter before their spouse's court trigger the recusal requirement. At the Supreme Court, however, unbound by the rules followed by lower courts, Ginni has done nothing to minimize her contact with and involvement in movements likely to come before the Court. Far from attempting to project an appearance of impartiality in even her public-facing communications, Ginni Thomas has a Facebook presence that reads like a stunt by satirical publication The Onion.

There's no sign of daylight between or among Ginni, her Supreme spouse, and the influences and interests the Thomases surround themselves with even as public scrutiny grows.

Roberts's Spousal Situation

While Ginni Thomas sets the bar high for spousal ethical transgressions, she's not the only partner of a justice whose work triggers substantial concerns around impartiality — she, Jane Sullivan Roberts, and Martha Ann Alito all make the list. Chief Justice John Roberts's spouse, Jane Roberts, formerly a law firm attorney, now makes her living head-hunting on behalf of firms — "some of which have business before the Supreme Court."

Although Mrs. Roberts suggested she changed careers to reduce the appearance or potential for conflicts of interest, the opposite is true. Rather than being involved with a single firm, she is now tied to countless firms and corporations through her efforts to recruit and place attorneys — work that earned her more than $10 million from 2007 to 2014 alone. Her income comes not from one entity but from commissions paid by corporations and law firms.

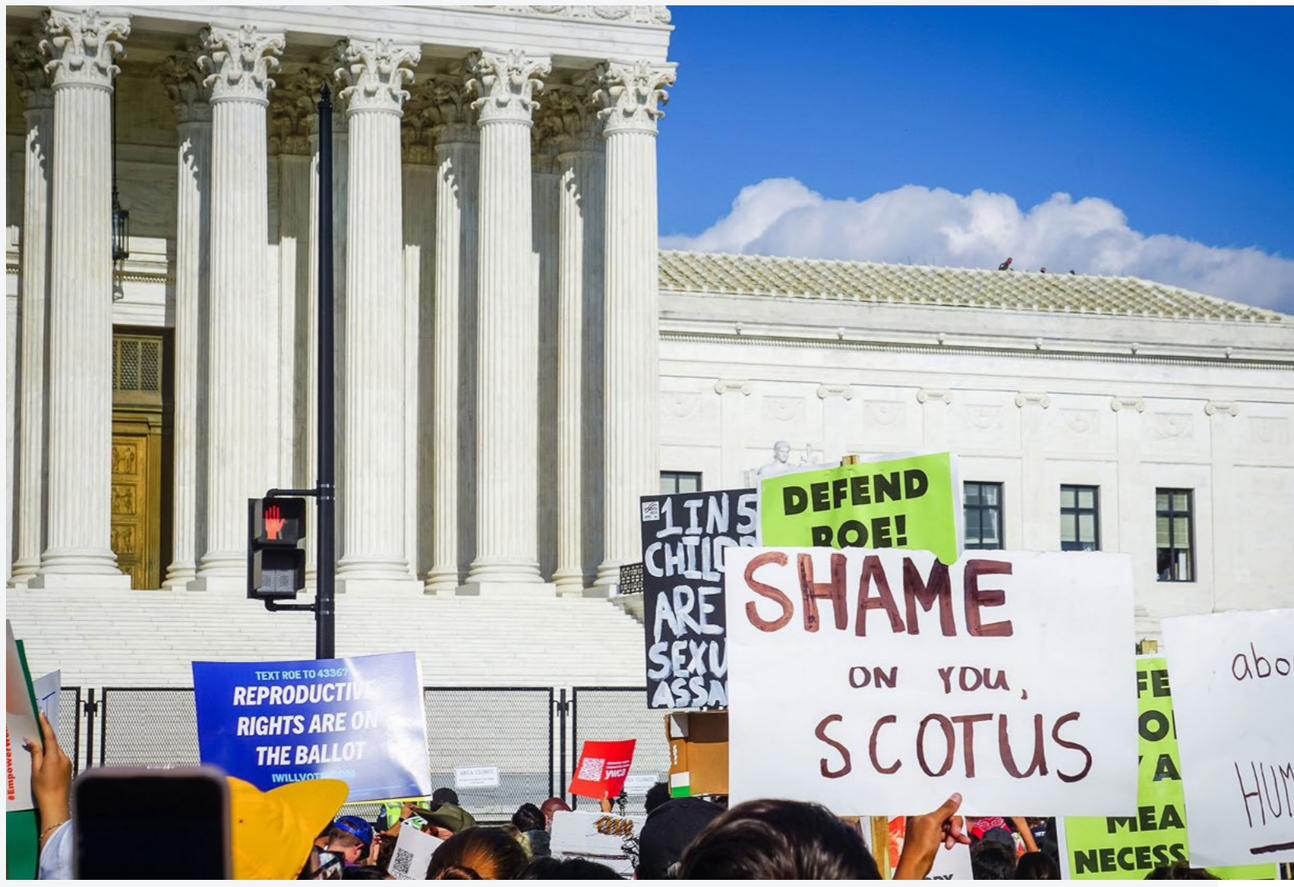
Mrs. Roberts' role in placing attorneys as private sector actors who have business before the Court has inspired at least one whistleblower to speak up. Kendal Price worked as a Managing Director alongside Jane Roberts at recruiting outfit Major, Lindsey & Africa (MLA). There, he was explicitly discouraged from raising concerns about impropriety and conflicts of interest. In a 14-page sworn affidavit, Price noted his concern that the Chief Justice "has not complied with his legal obligations regarding judicial recusals, and/or proper disclosure of household income."

Pulling no punches, Price wrote, "Ms. Roberts is accomplished in her own right. But after her spouse John Roberts was confirmed as the Chief Justice of the United States, she restructured her career to benefit from his position." Price learned Jane Roberts was MLA's "highest earning recruiter in the whole company 'by a wide margin,'" perhaps globally. "A substantial part of Ms. Roberts's commissions would likely have been generated from large American law firms with active Supreme Court practices." He alleges that "at least some of her remarkable success as a recruiter has come because of her spouse's position."

Price cited in his affidavit the portion of the U.S. Code, 28 U.S. §455(a), directing 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." The same section of code, at (b)(4), states that recusal is appropriate where a judge "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, or any other interest that could be substantially affected by the outcome of the proceeding."

An attorney for Mr. Price, whose affidavit was part of a suit against Mrs. Roberts and MLA after losing his job, argued that the advisory opinion, contrary to the Roberts' representation, supported the need for recusal. They distinguish between "isolated activities" and "pattern of continuing involvement," citing the opinion's note that "judges should recuse . . . if a spouse performed 'four high level executive recruitments' for the same company in a year and collected large fees."

For a spouse to regularly conduct transactions with and receive commissions from law firms with business before the Supreme Court, placing attorneys likely to argue before it, more than satisfies the criteria for being concerned about judicial impartiality and should trigger recusal — perhaps regularly in the case of Roberts, whose spouse earns millions from such work. Yet the Chief Justice has never recused himself from a case based on his wife's ties to an attorney or firm.



Alito: A Vocal Disregard for Ethics

While Justice Thomas is quietly defiant in his refusal to adhere to ethics norms and laws, colleague and frequent collaborator Justice Samuel Alito has been outspoken in defending his ethical violations. When, in June 2023, ProPublica prepared to report on Alito's relationship with billionaire Paul Singer, whose interests come before the Supreme Court routinely, the journalists gave Alito the opportunity to comment before publication. Instead, Alito snuck over to the *Wall Street Journal* (WSJ), publishing an op-ed entitled "ProPublica Misleads Its Readers."

What are the facts? Alito has accepted at least one high-dollar trip — to Alaska — on Singer's private jet. The foray, organized by Leonard Leo in 2008, was a fishing trip; guests stayed at a luxury lodge. The cost to charter the private plane on which Alito flew, had he paid for it, would have been more than $100,000 — each way. Singer's business, a hedge fund, had interests in cases before the Court at least 10 times following that fishing trip. In one case pitting Singer against Argentina, the Court's ruling effectively netted Singer $2.4 billion.

Behind the WSJ paywall, using reasoning that a first-year law student could demolish, Alito claimed "an unbiased and reasonable person who is aware of all relevant facts" would not find his relationship with Singer problematic or suspect. Among other questionable points, Alito emphasized that, had he not taken the trip to Alaska, the seat on Singer's private plane would have been unoccupied — therefore his attendance did not "impose any extra cost." In fact, Alito claims, he saved the government money because it was not necessary that U.S. Marshals accompany him. And, finally, Alito argued that even though Singer's hedge fund had a major case before the Court, Alito couldn't have even known his billionaire buddy's financial stake because Singer's name wasn't mentioned.

As Shakespeare might say, Alito doth protest too much. He spent a paragraph of his first WSJ op-ed going into embarrassing detail about the nature of accommodations during his fishing trip, downplaying the luxury. To what end? Like Thomas, whose guidance he acknowledges, Alito claims a "hospitality" exception to the duty to report gifts. In this puerile effort at defending himself, Alito resorts to not one but two dictionaries, a favorite tactic of originalists, trying to wordsmith himself out of the obvious disclosure violation.

Put simply, by ethics expert Professor Charles Geyh, in relation to Alito's Singer trip in a remark equally applicable to some of Thomas's travels, "If you were good friends, what were you doing ruling on his case?" Geyh, who literally wrote the book on judicial disqualification added a follow-on: "And if you weren't good friends, what were you doing accepting [the Alaska trip]?" Notably, like Crow, Singer made every effort to dodge investigation by the SJC.

Additional op-eds; defenses of Alito, including one specific to Singer; and an interview with the justice followed in the WSJ. Following undercover journalist Lauren Windsor's interview with Alito published in *Rolling Stone,* in which he expressed his view that he is engaged in a "fundamental" ideological conflict and that his beliefs "can't be compromised," the WSJ published a piece under the head-scratching title "Justice Alito Stands Falsely Accused of Candor." In an interview with Politico, Windsor noted that was new about Alito's statements was the "verbal confirmation of his lack of impartiality" and rejection of secular democracy.

Far from being chastened by public controversy over his lacking ethics — or calls for recusal, including AFJ's — Alito continues to seek the company of questionable actors, from a clutch with prominent anti-abortion, anti-LGBT "Catholic crusader[s]" to fraternizing with sects within far-right Catholic circles. He's accepted concert tickets from anti-abortion extremist Princess Gloria von Thurn und Taxis, of which the best that can be said is that he reported the gift.

For his actions, Alito was rewarded with knighthood. In 2017, Alito "pledged an oath to the Sacred Military Constantinian Order of Saint George" and accepted "the Knight Grand Cross of Merit," a development only made public in July 2024. The delay, no doubt, reflects that those involved recognize the conflict created by Alito's competing oaths: one to uphold the Constitution of the United States, with its separation of church and state, and the other to religious interests with intractable views on issues upon which he would nevertheless rule, including abortion.

Further in line with his disregard for the obligation to avoid even the appearance of bias, Alito has been linked to former North Carolina Supreme Court Justice Mark Martin. Martin spoke with then outgoing-President Trump the night of the January 6 insurrection and led efforts to help Trump find a way to stay in power. He was then dean of Regent University Law School, founded by Pat Robertson, where he'd installed Alito as a lecturer.

Despite Martin's involvement in the attempt to usurp the election results, Alito taught a three-day seminar with him just 20 days after the January 6 insurrection. Alito's association with Martin continues, even as Martin does things like attending the Republican National Convention. Under a second Trump administration, it's possible they'll become colleagues: Martin's name has come up in the context of potential additional Trump Supreme Court nominations.

[Red] Flags Abound

In the spring of 2024, it was revealed that Justice Alito and his wife Martha Ann flew an upside-down American flag in front of their home in the weeks after the January 6 insurrection. Historically used as a symbol of distress or protest, the upside-down flag had by that time been appropriated by Stop the Steal activists and insurrectionists and was flown at the Capitol by rioters on January 6.

"I had no involvement whatsoever in the flying of the flag," Alito told the *New York Times,* blaming the incident on his wife and a conflict with neighbors' yard signs — as if it excused the brazenly partisan and anti-democratic public display. The flag was flying in front of their home even as the Supreme Court was considering a case about Trump's efforts to block the 2020 election results.

Two years later, the Alitos flew an **"Appeal to Heaven"** flag outside of their second home, a New Jersey beach house. Like the upside-down American flag, the Appeal to Heaven flag was adopted by insurrectionists. But the second flag has a more specific meaning: It stands for "a push to remake American government in Christian terms."

Questioned by undercover journalist Lauren Windsor, Martha Ann was defiant about the Alito family's flag-flying habits. She doubled down, telling Windsor she "fantasized about designing a flag featuring the word 'vergogna,'" Italian for "shame," to retaliate against neighbors' LGBTQ+ pride flags.

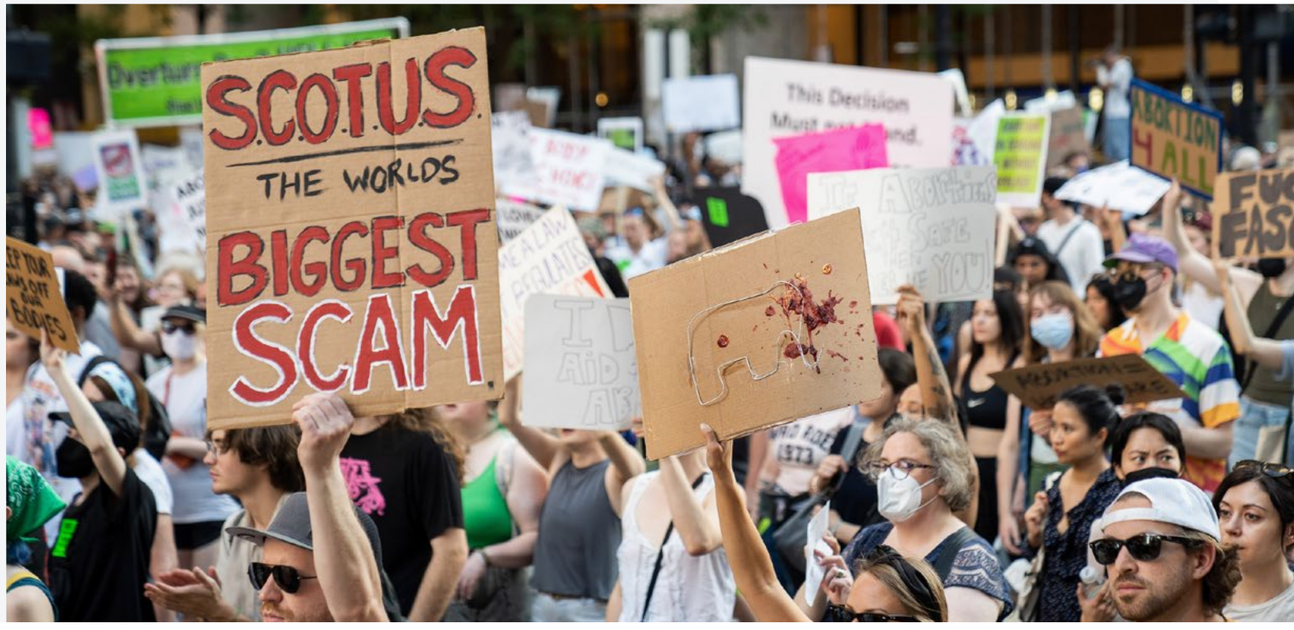
Not even a May 24, 2024, letter from Citizens for Responsibility and Ethics in Washington to the Chief Justice detailing the ethical implications of the Alitos' flags, which should have spurred Alito to recuse himself from January 6 and related cases, and renewing a call for an enforceable code of ethics for the Court to prevent future such overt partisan displays compromising impartiality — had any effect. Rather, Alito denounced calls for him to recuse.

Justice Alito has refused to disavow these displays, aside from repeatedly blaming his wife, as noted by the Brennan Center. As noted by the Campaign Legal Center, Alito has invented a **"rogue spouse"** exception to the Court's flimsy Code of Conduct for Justices.

Last Justice Standing

Alito is now the only Supreme Court justice, according to 2023 financial disclosures, who holds individual stakes in a plethora of companies. In the past, Alito has recused himself from cases in which he holds an investment in a party before the Court — 64 cases from 2021 to the beginning of the October Term this year alone. This brings us back to 28 U.S. §455(b)(4), directing that a judge should recuse if they "know[] that . . . individually or as a fiduciary, or his spouse . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

The Constitutional Accountability Center (CAC) has, perhaps optimistically, predicted Alito will recuse himself in cases involving the companies in which he has an interest, which include Raytheon Co., ConocoPhillips, and, via a subsidiary, Johnson & Johnson. But while Alito has recused himself at a higher rate than other justices, he has done so while taking advantage of the Court's lax recusal protocol, which does not require that a justice explain a recusal. This makes establishing the extent to which Alito observes recusal rules when his financial interests are implicated in cases before the Court all but impossible.



Sotomayor's Blurred Lines

While scarcely on the level of infractions by her colleagues, Justice Sonia Sotomayor has also attracted scrutiny — in her case, around staff's less-than-cautious handling of requests for books at speaking events.

In July 2023, the Associated Press determined, following review of more than 100 open records requests including not just Sotomayor but her colleagues, that taxpayer-funded Court staff had performed a variety of duties outside their official roles — for multiple members of the Court. The investigation also found myriad examples of institutions attempting to make the most of visits by justices, promoting high-profile events and inviting donors.

In Sotomayor's case, what rose to the fore was that staff had encouraged institutions inviting the justice to speak to purchase her books for such events. At the time of publication, Sotomayor had earned "at least $3.7 million" from the books.

Unlike the clear-cut violations committed by conservative colleagues, Sotomayor's staff had a practical explanation — one offered in a statement from the Supreme Court. When the justice is "invited to participate in a book program," noted the Court, "Chambers staff recommends the number of books (for an organization to order) based on the size of the audience so as not to disappoint attendees who may anticipate books being available at an event."

Even critics of what may be perceived as Sotomayor's blurring of Court duties and outside obligations struggle to make a strong case against her. If anything, the minor controversy highlights the need for a binding, enforceable code of ethics, such as the one that applies to other government officials, which would offer clear guidance in the future.

Kagan's Bagels

Justice Elena Kagan may be the least-critiqued member of the Supreme Court when it comes to ethics. She has exercised the greatest degree of caution, even going so far as turning down bagels from a friend. While Kagan signed onto the toothless November 2023 Code of Conduct for Justices without objecting to its shortcomings at the time, she has since been the most vocal of the justices advocating for a binding ethics code.

In August 2023, before a Ninth Circuit gathering, Kagan alluded to Congress's power to rein in the Court. "It just can't be that the Court is the only institution that somehow is not subject to checks and balances from anybody else. We're not imperial," she said. "Can Congress do various things to regulate the Supreme Court?" Kagan queried. "I think the answer is: yes."

Kagan has since ceased discussing congressional avenues for enforcing ethics rules but remains firm on the 2023 code's flaws. In July at a judicial conference in Sacramento, California, again before an audience of Ninth Circuit lawyers and federal judges, Justice Kagan criticized the 2023 code and called for an enforcement mechanism. "The thing that can be criticized is: Rules usually have enforcement mechanisms attached to them," said Kagan, "and this set of rules does not." She proposed review by "retired or highly experienced judges."

The justice reiterated her support for a mechanism of enforcement most recently at a September event at New York University School of Law. "It seems like a good idea in terms of ensuring that we comply with our own code of conduct going forward in the future," commented Kagan. "It seems like a good idea in terms of ensuring that people have confidence that we're doing exactly that."

Gorsuch: Evasive but Entangled

By the time he was confirmed to the Supreme Court on April 7, 2017, Justice Neil Gorsuch had been seeking a buyer for a property he co-owned with two other people in his home state of Colorado for two years. Nine days later, he had one — law firm Greenberg Traurig's Brian Duffy jumped on the chance to buy the now-justice's 3,000-square foot home. Greenberg is, for the record, a global law firm that's one of the ten largest in the United States and has a robust Supreme Court practice.

Duffy and his wife closed a month later — for $1.875 million, a detail Politico obtained through county records. Gorsuch, who listed the source of the income only as the "Walden Group, LLC," the name he and his co-owners adopted, reported receiving between $250,001 and $500,000 on federal disclosure forms — a mind-bogglingly wide range. The real median household income, as reported by the U.S. Census Bureau, was $80,610 in the United States in 2023.

It's notable that, while Gorsuch reported the purchase, he did so on "the 56th line in the middle of 113 investment matters, most of which appeared to be stocks, bonds or dividends," per the *New York Times*. The justice also "left empty a field asking him to list the "identity of buyer/seller (if private transaction)." Gorsuch's minimalist approach to disclosure falls short of the transparency the public deserves.

Per Politico, Greenberg Traurig has had no fewer than 22 cases before the Supreme Court since Duffy's purchase. Gorsuch has sided with Greenberg in cases including a pivotal Environmental Protection Agency (EPA) case that undermined that agency's ability to reduce emissions causing global warming. The minority in that case, comprised of Justices Stephen Breyer, Sotomayor, and Kagan, warned that the majority's decision blocked the EPA's ability "to respond to the most pressing environmental challenge of our time."

An example of a case before the Supreme Court in which Greenberg has a hand this Term? An attempt to get the Supreme Court to overturn a California state court decision requiring a Maryland university to include on its board members who do not adhere to the same religious beliefs as those espoused by the university. In this transparent bid to pervert the First Amendment to shield a positive right to discrimination on the basis of religious belief — an inversion of the foundational negative right to be free of discrimination in the practice of religion — Greenberg is working with the First Liberty Institute, linked to Ginni Thomas above.

From Cradle to Bench: The Brett Kavanaugh Story

Like Justice Alito, Kavanaugh has ties to Johnson & Johnson — and via his father, a retired high-level lobbyist, a bevy of other companies. Ed Kavanaugh, who hired now-Chief Justice John Roberts for help in the matter, likely knowingly profited from carcinogenic products at the expense of parents and children. The millions Ed earned may have helped pay for Justice Kavanaugh's million-dollar home and resolve his soaring pre-Supreme nomination debt — between $60,000 and $200,000 on credit cards alone plus a loan against his retirement. These debts disappeared by the time of his nomination in 2018. Related issues have and may continue to come before state and federal courts, including in the form of class actions.

Unethical behavior should have kept Justice Kavanaugh off the bench in the first place; now that he's made it there, it's no wonder that he continues to subvert the Court's integrity.

Barrett: A "Handmaid" Tale

The Court's newest justice, Amy Coney Barrett, belongs to the People of Praise (PoP), characterized by The Guardian as "a secretive Christian sect" and by the Associated Press as a charismatic Catholicism group decidedly divergent from Catholic Church. Like some strains of Pentecostalism and other fundamentalist Christian groups, PoP's practices include pushing members, including children, to "speak in tongues" and produce prophecies. Estimates place group membership between 1,100 and 1,700.

PoP is anti-abortion, "holds that men are divinely ordained as the 'head' of the family and faith," and teaches that "wives must submit to the will of their husbands." Since Barrett's confirmation, rushed through following the death of the late Justice Ruth Bader Ginsburg, the Court has heard cases that will decide the future of civil rights, reproductive health care, and freedom of religion.

Neither during her circuit court nor Supreme Court confirmation proceedings did Justice Barrett mention PoP. She has declined to answer questions about her involvement and never reported her affiliation with the group, though she's been involved with PoP for decades. During her time as a student at Notre Dame Law, from which she graduated in 1997, Barrett lived with PoP's co-founder, Kevin Ranaghan, and his wife, Dorothy Ranaghan.

But when asked, PoP refused to disclose whether Justice Barrett and husband Jesse Barrett, who also lived with the Ranaghans, are members. However, as reported in October 2020, a 2010 PoP directory listed Barrett as a "handmaid," a counter-intuitive designation for female leaders within the group.

Reports of sexual, physical, and emotional abuse perpetrated by members of PoP first emerged in 2020. Although PoP engaged law firm Quinn Emanuel to investigate, it did not release the findings.

As of January 2024, Justice Barrett's father Michael Coney was not only involved but had recently been promoted within the organization to serve as general legal counsel. A group of people who experienced abuse within the cult-like sect, operating under the name PoP Survivors, released a statement upon Coney's elevation highlighting their concern he now wields "power to block information that might be embarrassing to" Justice Barrett.

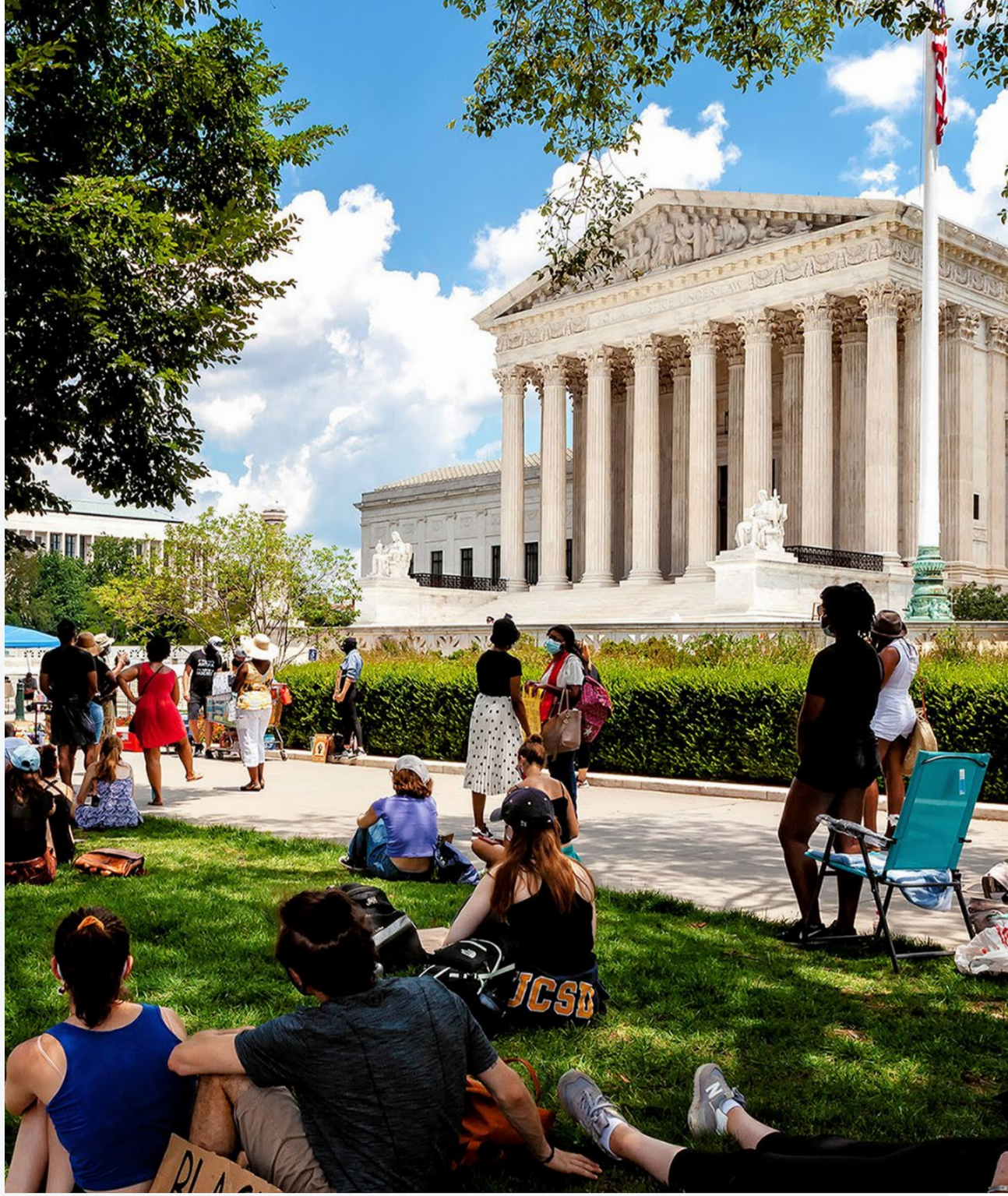
A professor of theology familiar with PoP warned that "even if senators declined to question Barrett about [PoP], the issues deserved to be aired in other forums because groups like [PoP] . . . do reject a secular view of separation between church and state."

When Justice Barrett was short-listed for the Supreme Court by the first Trump administration, PoP "erased numerous records from its website." Although that vacancy would be filled by Justice Kavanaugh, PoP remained at the ready: In September 2020, the Associated Press reported that PoP had, for a second time, "sought to erase all mentions and photos of [Barrett] from its website" prior to her meetings with legislators around her confirmation. That PoP took such steps suggests the group is aware that her ties to PoP present a threat to, at a minimum, public perceptions of Barrett's independence and impartiality.

Jackson and Beyoncé

Justice Ketanji Brown Jackson gave her first television interview since her 2022 confirmation in September 2024. In it, Jackson joined Kagan in signaling support for a binding code of ethics — the only two justices who have done so clearly — while skirting questions about enforceability as "particular policy proposals." "People are entitled to know if you're accepting gifts as a judge," Jackson said, "so that they can evaluate whether or not your opinions are impartial."

Justice Jackson has been especially transparent in her disclosures, a foil to colleagues who resist what limited reporting requirements apply. For example, she diligently detailed the receipt of Beyoncé tickets with a worth of $3,712 — a fraction of the value of the gifts and benefits Justices Thomas, Alito, and Kavanaugh have accepted and obscured, whether from donors or family.



III. Supreme Court Exceptionalism

More Americans disapprove than approve of the Supreme Court — and have for more than three years. As recently as May 2023, the gap between approval and disapproval was 22.8 points: 57.2 percent disapproving to just 41 percent approving of the Court. Even during the short upswings in support of the Court, the proportion of Americans approving of the Court stayed well below the 50 percent mark. And even in late November, after the country elected the man responsible for appointing a third of the Supreme Court, 49.4 percent disapproved of the institution and only 41 percent approved — a net difference of 8.4 on the unfavorable side for the Court.

While the overall turn in public opinion can be pegged to high-profile rulings on issues like abortion, the public isn't just responding to blatant displays of partisanship. Americans are also rejecting the Court's refusal to follow the same ethics rules enforced upon the lower courts and the rules that bind all other federal officials — and its procedural shenanigans. Front and center is the Court's habit of making major decisions out of sight and without offering rationale using what's called the shadow docket.

Until about a decade ago — which is to say, until the Roberts Court began to hit its stride — the Supreme Court used the shadow docket for entirely procedural purposes, like requests for emergency relief. Now, it's the go-to option for conservative justices seeking to subvert the tedious process of reviewing briefs, hearing oral arguments, and writing an opinion — also known as doing their job.

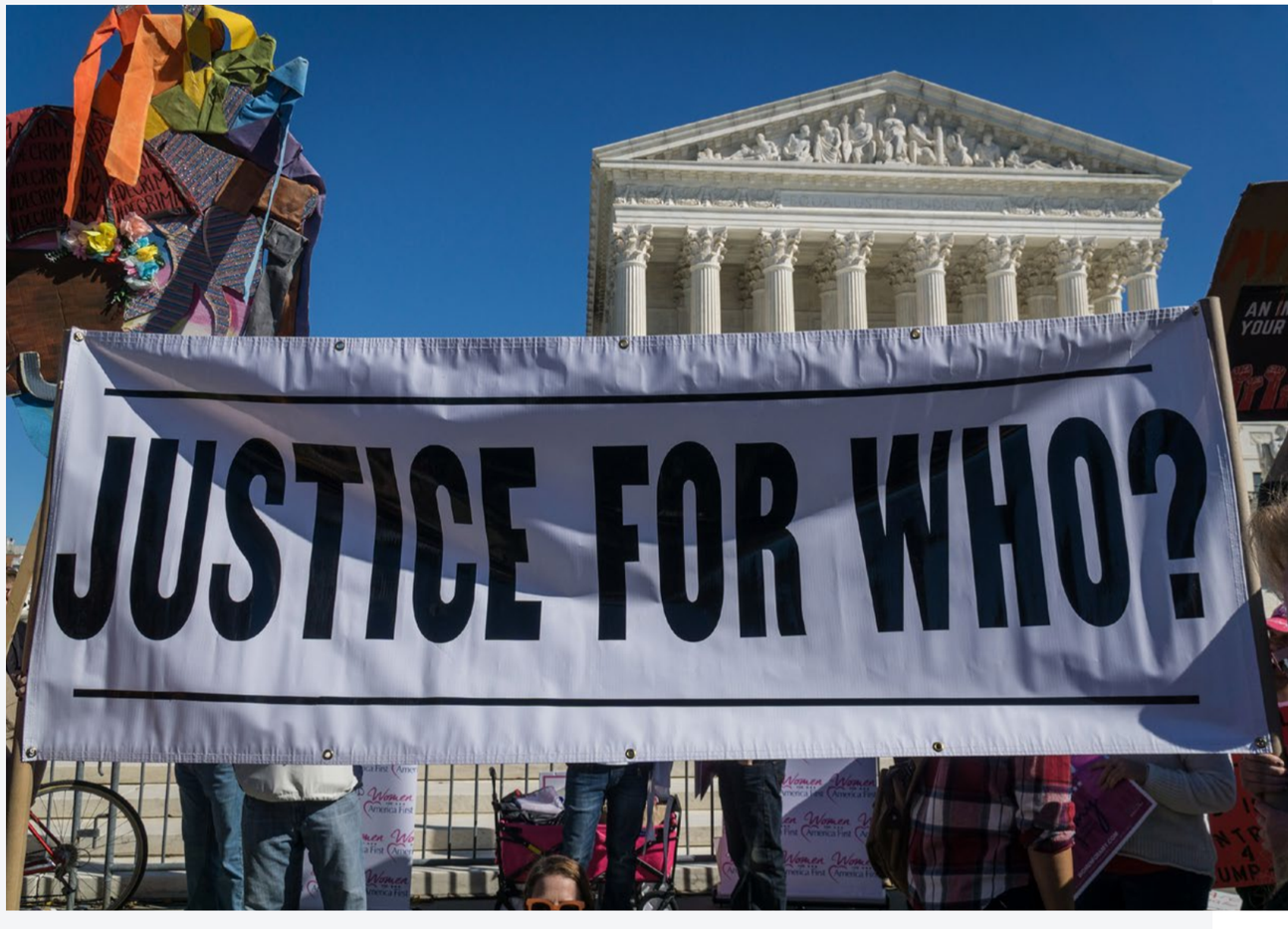
The justices have used the shadow docket to rule on issues as significant as access to the abortion drug mifepristone and funding for Trump's border wall. Of the first Trump administration's 41 requests for emergency relief — an excessive quantity from a desperate administration — the Roberts Court "granted all or part of those requests in 28 . . . cases."

How aware are the justices of the appearance created by their adoption of the shadow docket as a run-around? Justice Alito, in a speech at Notre Dame, broke a cardinal rule followed by public relations professionals and litigators everywhere by volunteering the adjectives that have attached to the Court's abuse of this procedural avenue: "sneaky," "sinister," and "dangerous."

The Court's subterfuge is growing old; the public is newly attentive to both individual and institutional failings that are increasingly difficult to dismiss as unwitting or accidental, as Justices Thomas and Alito have claimed of their disclosure violations.

The Court's unprecedented self-generated code of ethics amounted to an admission of a problem — of, at a minimum, heightened public criticism and legislative scrutiny. Unprecedented leaks from 1 First St. NE, followed by faux investigations, have reinforced the impression of a Court with no interest in following the rules that bind other members of government or earning public trust. Not a single justice was questioned under oath in the investigation that followed the leaked release of Alito's draft decision in *Dobbs*. The subsequent leak, via the Supreme Court website, of the opinion in a second major abortion case heightened the impression of chaos at the Court.

In short, the Supreme Court is taking the same liberties it bestowed upon Trump: Putting politics before principle and justices above the law.



IV. Solutions: Where There's A Will

The goal for advocates of reform must be a real, enforceable code of conduct and clear mechanisms for enforcement. Losing the 2024 election doesn't mean that Senate Democrats have to give up judicial reform; to the contrary, it's more important than ever.

The Shape of Reform

Intra-Judiciary Accountability

In theory, the Supreme Court can and should impose a code of ethics on itself. But any future effort would have to distinguish itself substantially from the 2023 "Code of Conduct for Justices." That Code, a public relations exercise, amounted to a weakened version of the federal code of conduct that binds all other federal judges. The text is nearly identical, save for replacing absolutes such as "must" and "shall" with watered-down language such as "should."

How egregious are these swaps of mandates for suggestions? Take Back The Court President Sarah Lipton-Lubet and advisor Jamison Foser noted that the Code "uses the word 'should' 53 times and the words 'shall' and 'must' a combined total of only 6 times." This distinction demonstrates the justices' willingness to openly water down their ethical obligations — despite there being robust examples to borrow from.

As Campaign Legal Center's (CLA) Roger Wieand spotted, the ABA's model ethics code states that "a judge *shall* act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." The Supreme Court borrows this exact language from the model, but replaces "shall" with "should," turning it from a requirement into a mere suggestion.

The Code of Ethics for Justices also builds in an explicit loophole in the form of an adverb: "knowingly." "A Justice should neither *knowingly* lend the prestige of the judicial office to advance the private interests of the Justice or others," reads the Supreme Court's feint at an ethics code, "nor *knowingly* convey or permit others to convey the impression that they are in a special position to influence the Justice."

"Knowingly" pops up again in the portion of the purported ethics code governing extrajudicial activities: "A Justice may attend a 'fundraising event' of law-related or other nonprofit organizations, but a Justice should not *knowingly* be a speaker, a guest of honor, or featured on the program of such event." Michigan University School of Law's Professor Leah Litman, of podcast Strict Scrutiny, called it "a hall pass for the Federalist Society galas and Koch Network 501c3 and 501c4 [organizations]." *The Nation's* Elie Mystal provided a Roberts Court-to-English translation: "And this is why the FedSoc gala is totally cool and very ethical for us to do."

If the Supreme Court continues refusing to regulate itself, the next most proximate body responsible for its conduct, the Judicial Conference, also has the power to take action on ethics reform. In April 2023, the CLC wrote a letter to the Judicial Conference requesting it to do just that: refer Justice Thomas to the Attorney General and Department of Justice for investigation of violations of the Ethics in Government Act.

While the Judicial Conference ostensibly began investigating Thomas through its Committee on Financial Disclosures in 2023, it has deferred action repeatedly — and as recently as July 2024. Its failure to transparently address or try to check Thomas's most recent violations echoes its 2011 transgressions — also in relation to Justice Thomas's refusal to comply with ethics law. In that instance, the Judicial Conference committee announced that they had not seen evidence of the allegations against Justice Thomas — without ever having sought such evidence.

In an August 2023 article by the American Bar Association, former Judge Jeremy Fogel, who served on a Judicial Conference committee reviewing judges' financial disclosure before becoming head of the Federal Judicial Center, said of Thomas, "In my career I don't remember ever seeing this degree of largesse given to anybody," adding, "I think it's unprecedented."

As reported by ProPublica in December 2023, "the Judicial Conference has . . . often protected, not policed, the judiciary, according to interviews and previously undisclosed internal documents. For decades, conference officials have repeatedly worked to preserve judges' most coveted perks while thwarting congressional oversight and targeting 'disloyal' figures in the judiciary who argued for reforms."

Administrative Office of the Courts

A second intra-judiciary actor accountable for averting and responding to ethical violations, primarily regarding financial disclosures, the Administrative Office (AO) of the U.S. Courts, has likewise refused to rein in judges. "They do not have a functioning financial disclosure and ethics program," according to a former AO financial disclosure division attorney, "and I don't believe they want one."

Department of Justice

The Department of Justice (DOJ) could initiate an investigation and consequences for members of the Supreme Court — as senators have requested in response to various ethical concerns. However, if Attorney General Merrick Garland refused to investigate justices out of concern for an appearance of politicization, it's a certainty that Trump's DOJ will not do so — with no concern for either the appearance or evidence of politicization.

Congressional Legislation

Congress has the responsibility of "mak[ing] all Laws which shall be necessary and proper for carrying into Execution . . . all other Powers vested by this Constitution." This means it can force ethical accountability on the Supreme Court unilaterally. To that end, members of Congress have proposed Supreme Court reform with provisions ranging from creating an office charged with investigating ethical violations within the Court to stricter requirements for recusal and reporting of gifts and financial interests to term limits and staggered appointments to ensure a more ideologically balanced Court to expanding the Court.

Should the Court and other judicial actors continue refusing to impose ethical accountability, Congress can act directly on the judiciary — not just create and impose oversight through an outside body. For example, Congress could direct the U.S. Judicial Conference to "establish a process for receiving and handling complaints about justices' ethical misconduct."

President Biden has advocated three strands of reform to be enacted by Congress: an enforceable code of conduct for the Supreme Court, 18-year term limits, and a constitutional amendment to reverse the Roberts Courts' grant of presidential immunity in *Trump v. United States.* His proposals follow and complement extant legislative reform proposals.

Senator Ron Wyden introduced the **Judicial Modernization and Transparency Act** on September 26, 2024. The Act would expand the Supreme Court by six and set regular intervals for new appointments, granting presidents the opportunity to make nominations in the first and third years of each term; create a "supermajority threshold" for jurists contemplating overturning federal legislation on a constitutional basis; increase the number of federal appellate courts to 15, one justice assigned to each; and up the number of district and circuit judgeships to improve access to justice. The legislation would also require justices to transparently consider and share their reasoning in response to recusal motions as well as increasing financial transparency.

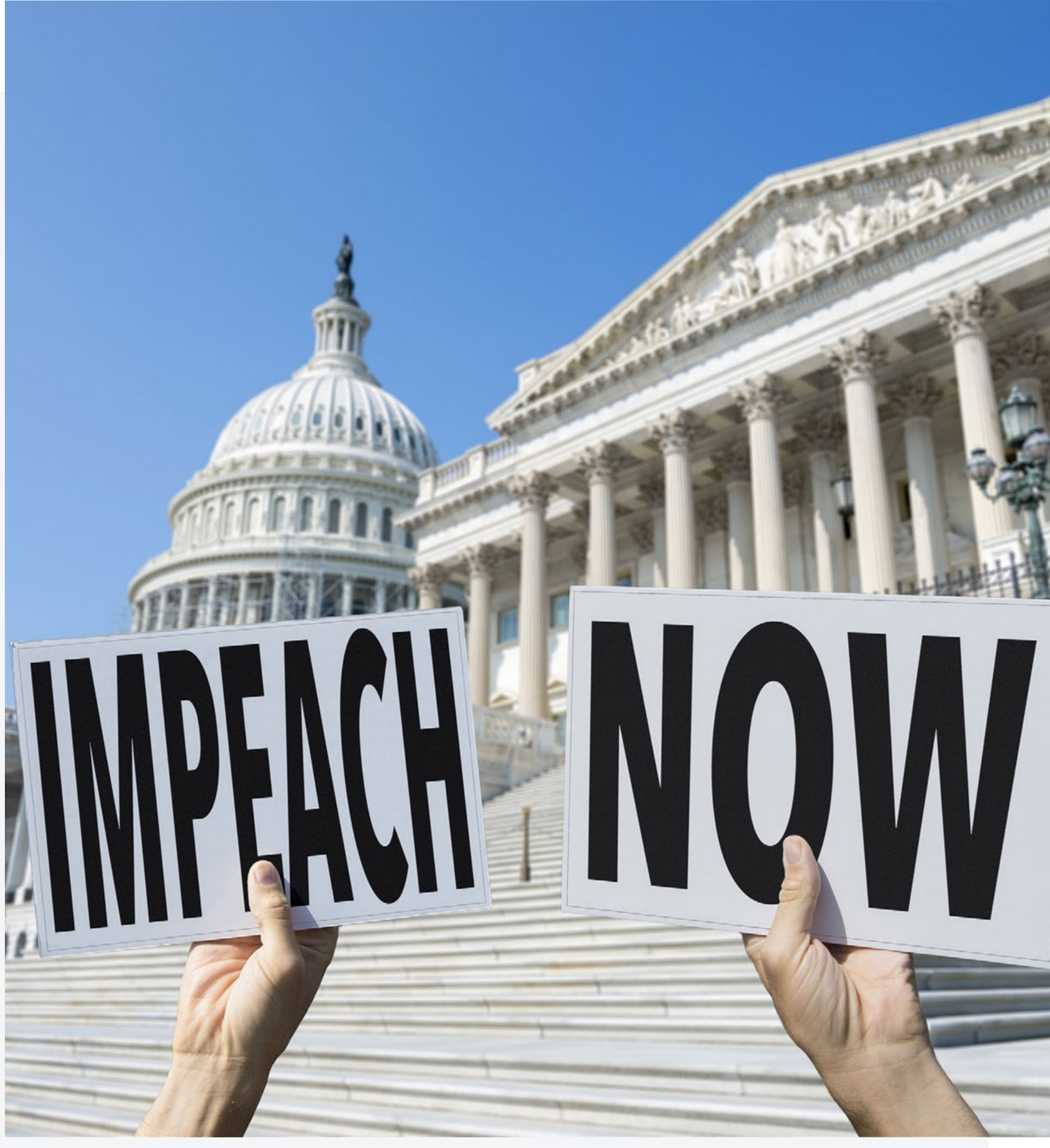
Wyden's is the most prominent proposal advocating Supreme Court expansion, a shift with many benefits, like promoting ideological balance, and few downsides — so long as expansion takes place through staggered appointments. There's nothing magic about nine: The size of the Supreme Court, which is up to Congress, has varied from five to 10 justices. Expansion is important not only to SCOTUS but the overburdened lower federal courts, which, until the 1990s, were regularly expanded by Congress to keep up with population growth.

Impeachment

Far from an extreme solution, impeachment is both the simplest and the intended solution to judicial misdeeds. It's the mechanism *written into the Constitution* for lawmakers dealing with concerns presented by misconduct and corruption. The standard for impeachment is lower than that for appointing a special prosecutor to pursue criminal charges or committee proceedings, which depend on multiple outside government actors and processes. After all, the basis for impeachment need not be criminal: In the past, grounds for judicial impeachment have been as simple as "bring[ing] his court into scandal and disrepute" — as applied to federal judge Halsted Ritter, who lost his office but was acquitted of criminal wrongdoing.

On July 10, 2024, Rep. Ocasio-Cortez introduced articles of impeachment against both Justice Thomas and Justice Alito, joined by 19 co-sponsors in each instance. The articles of impeachment against Justice Thomas lead with his failure to disclose "financial income, gifts and reimbursements, property interests, liabilities, transactions, among other information." Ocasio-Cortez notes "at least 15 years" of gifts from Harlan Crow; travel to New Zealand, Greece, the Adirondacks, New Haven, Dallas, and New York City as well as Crow's magnanimousness in paying for Thomas's nephew's education.

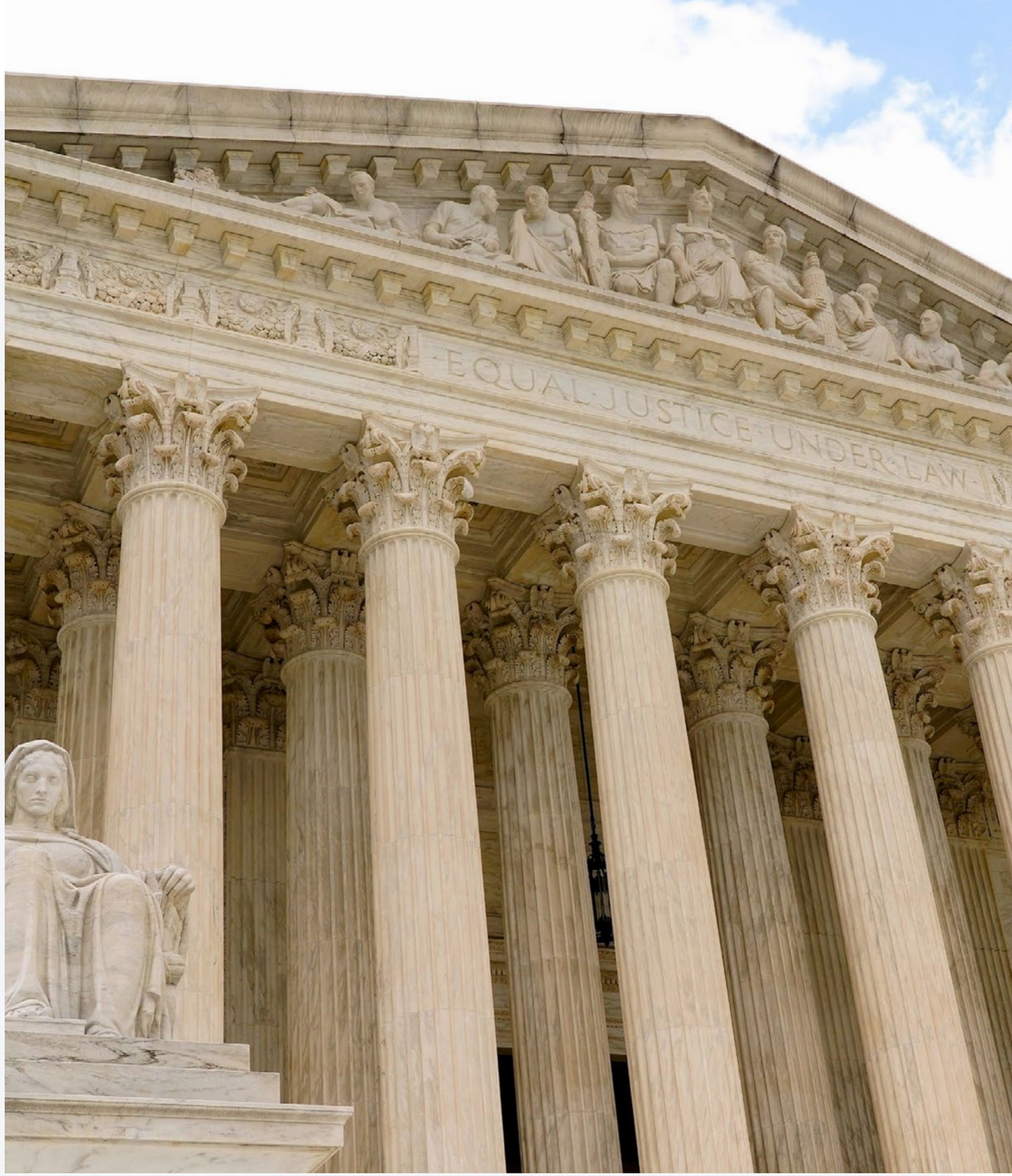
The articles of impeachment for Justice Alito cite the flags flown outside his home affiliated with insurrectionists and his refusal to recuse himself from three major cases concerning the insurrection. Because he "disregard[ed] his impartiality and align[ed] himself through public conduct and statements with the insurrectionary cause," the articles read, "the laws of the United States required Justice Alito to recuse himself in *Trump v. United States, Fischer v. United States, and Trump v. Anderson*." The articles also note Alito's failure to report his luxury vacation with billionaire Paul Singer and failure to recuse himself from Singer-related cases.



V. Conclusion: The Stakes

When we speak about judicial reform, it's not just the integrity of the Supreme Court but that of the entire federal judiciary that's at stake. That's part of why even typically low-profile lower court judges are speaking out against the Supreme Court. And why deliberately high-profile circuit court judges like James Ho of the Fifth Circuit are vocally courting the conservative majority — and Republicans politicians' — favor. Repairing the integrity and capacity of the judiciary must remain a priority, even in the absence of a congressional majority.

Americans need and deserve an impartial judiciary both to resolve day-to-day legal conflicts and questions and as an assurance of the enduring vitality of American democracy, founded on the separation of powers — executive, legislative, and judiciary — and the separation of church and state. The dysfunction of the judiciary and its members' willfully unethical behaviors pose both a constitutional and an existential crisis — not in the future, not in theory, but right now.



ALLIANCE
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