

DEMAND JUSTICE

Chairman Hank Johnson
Subcommittee on the Courts, Intellectual Property, and the Internet
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Johnson:

We write to encourage you to call a hearing regarding the Roberts Court's increasing conservative bias and the detrimental impact it is having on our democracy. In a forthcoming article in the *Harvard Law and Policy Review*, Judge Lynn Adelman of the U.S. District Court for the Eastern District of Wisconsin cataloged the transformation of the Supreme Court from one that protects ordinary Americans to one that serves to "increase[] the political power of corporations and wealthy individuals" upon whom Republicans depend to stay in power and who ultimately determine the party's policy agenda.¹ In the article, Judge Adelman traces the path from the rise of a conservative legal movement nearly 50 years ago to the Roberts Court's current jurisprudence, which overwhelmingly serves the interests of the rich and powerful, usually at the expense of everyone else.² He concludes that our country "desperately need[s] public officials who will work to revitalize our democratic republic" and that "the conservative Justices on the Roberts Court are not among them."³

Judge Adelman's choice to speak out in such blunt terms suggests profound concern within the federal judiciary about the state of the Supreme Court, and the American people deserve to hear directly from him. He has been on the bench for more than twenty years and has seen the development of the pro-corporate, pro-Republican judiciary first-hand during that time. In this article, he uses those first-hand observations to blow the whistle on a federal judiciary that is no longer serving the interests of our democracy.

It's also clear that others within the judiciary are increasingly concerned about the Roberts Court's blatant pro-Republican, anti-democracy bias. Justice Sotomayor, for instance, wrote in a dissent last month that "the Court's recent behavior on stay applications has benefited one litigant over all others."⁴ She was referring to the Court's penchant for consistently making procedural calls that benefit the Trump administration, while repeatedly failing to give every other litigant the same courtesy.

¹ Adelman, Lynn, *The Roberts Court's Assault on Democracy* (February 18, 2020). *Harvard Law & Policy Review*, Forthcoming . Available at SSRN: <https://ssrn.com/abstract=3540318>.

² *Id.*

³ *Id.*

⁴ *Wolf v. Cook County, Illinois*, 589 U.S. ____ (2020) (Sotomayor, dissenting).

Earlier this year, the Committee on Codes of Conduct of the Judicial Conference of the United States proposed an advisory opinion that demonstrates some members of the judiciary’s concern about ideological influence. The Committee has proposed that federal judges should not be members of the Federalist Society or the American Constitution Society, after having determined that membership in those organizations is inconsistent with a judge’s ethical obligations to neutrality and impartiality.⁵ The need for such a rule—and further evidence of the very politicization the judiciary is seeking to limit—was shown by the swift, coordinated reaction of conservatives, from the Wall Street Journal editorial board calling it “political mischief masked in high-sounding rhetoric”⁶ to Justice Clarence Thomas’ open criticism a Federalist Society speaking engagement.⁷

Several United States senators have also recently raised the problem of an overly politicized Court. For instance, Senator Whitehouse led an amicus brief with four senators in *New York State Rifle & Pistol Association v. City of New York* that noted “with bare partisan majorities, the Court has influenced sensitive areas like voting rights, partisan gerrymandering, dark money, union power, regulation of pollution, corporate liability, and access to federal court” and that “every single time, corporate and Republican political interests prevailed.”⁸

Many people who have witnessed our judiciary from the inside are clearly concerned about the increasingly partisan, biased nature of our system, and Americans need to hear from Judge Adelman about why he chose to speak up. We encourage you to call a hearing, and to invite Judge Adelman to testify regarding his personal knowledge and the research that he has undertaken on this important issue.

Sincerely,

Christopher Kang
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Demand Justice

⁵ Madison Alder, Judges’ Ties to Federalist, American Constitution Societies Eyed, Bloomberg Law, Jan. 22, 2020, available at <https://news.bloomberglaw.com/us-law-week/judges-ties-to-federalist-american-constitution-societies-eyed>.

⁶ Judicial Political Mischief, Wall Street Journal, Jan. 21, 2020, available at <https://www.wsj.com/articles/judicial-political-mischief-11579652574>.

⁷ Kevin Daley, Clarence Thomas Says New Ethics Rule Will ‘Silence’ Federalist Society, Daily Signal, Feb. 7, 2020, available at <https://www.dailysignal.com/2020/02/07/clarence-thomas-says-new-ethics-rule-will-silence-federalist-society/>.

⁸ Brief of Senators Sheldon Whitehouse, Mazie Hirono, Richard Blumenthal, Richard Durbin, and Kirsten Gillibrand as Amici Curiae in Support of Respondents, *New York State Rifle and Pistol Association v. City of New York*, No. 18-280 (U.S.).