

Emailed May 10, 2022

The Honorable Jerrold Nadler
Chairman
U.S. House Committee on the Judiciary
2141 Rayburn House Office Building
Washington DC 20515

The Honorable Hank Johnson
Subcommittee Chairman
Subcommittee on the Courts, Intellectual Property and the Internet
Committee
2141 Rayburn House Office Building
Washington DC 20515

Dear Mr. Nadler and Mr. Johnson:

We, the undersigned organizations, write to express our strong support for the Supreme Court Ethics, Recusal, and Transparency Act of 2022 (“SCERT Act”) and to urge you to advance this and other judicial ethics legislation without delay.

Recent news has brought to the forefront the desperate need for Supreme Court ethics reform. Details continue to mount about Ginni Thomas’s involvement in the efforts to overturn the results of the 2020 election,¹ even as cases regarding that election and its aftermath continue to percolate in the lower courts.² Yet Justice Clarence Thomas, has offered no explanation for why he refused to recuse himself from multiple cases in which his spouse had interests that could be substantially affected by the outcome, and he has declined to offer any assurances that he would recuse himself from such cases in the future.³

While the recent revelations regarding Justice Thomas’s conflicts of interest are jaw-dropping, they are only the latest in a long list of examples of the Court failing to enforce basic standards of judicial ethics. In 2019, for instance, Justices Samuel Alito and Brett Kavanaugh met at the Court with the head of National Organization for Marriage, an anti-LGBTQ group that had filed an amicus brief in a case for which the Court heard oral arguments less than three weeks

¹ Danny Hakim and Jo Becker, The Long Crusade of Clarence and Ginni Thomas, New York Times, Feb. 22, 2022, available at

<https://www.nytimes.com/2022/02/22/magazine/clarence-thomas-ginni-thomas.html>.

² Kyle Cheney, Judge rejects Eastman effort to slow down Jan. 6 committee, Politico, March 4, 2022, available at <https://www.politico.com/news/2022/03/04/eastman-delay-jan-6-committee-emails-00014320>.

³ Adam Liptak, Justice Thomas Ruled on Election Cases. Should His Wife’s Texts Have Stopped Him?, New York Times, March 25, 2022, available at <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html>.

earlier.⁴ The three men posed for a photograph that was later tweeted with the message “Great day at US Supreme Court.”⁵

In 2017, Justice Neil Gorsuch gave a speech addressing a conservative group at the Trump International Hotel, shortly after he was nominated to the Court by Trump himself and less than two weeks before the Court heard oral arguments in a case challenging Trump’s Muslim travel ban.⁶

On three separate occasions, Chief Justice John Roberts has failed to recuse himself from cases before the Court in which he owned stock related to one of the parties.⁷

We appreciate that the House Judiciary Committee understands the urgency of this issue, and we are grateful that you have introduced the SCERT Act and are advancing it through committee. The SCERT Act is a critical first step in restoring confidence in the Supreme Court by imposing meaningful and enforceable ethics guidelines on the justices. Not only will it impose a binding code of conduct on justices of the Supreme Court, who have for all of our nation’s history been uniquely unaccountable to the other branches of government or to the American public that they serve, but it will clarify and strengthen the duty of justices to recuse from cases in which they have conflicts of interest and it will increase transparency into what those conflicts might be. It is well past time for the justices to be held accountable, and this legislation is an excellent first step toward that goal.

We would also encourage you to adopt additional legislation that would provide even further transparency and accountability of the Supreme Court. In particular, we would ask you to consider:

- The Twenty-First Century Courts Act, which contains many of the provisions of the SCERT Act but would also require live-streaming of oral arguments in both the Supreme Court and the U.S. Courts of Appeals; tighten restrictions on sealing court filings; and provide even greater guidance regarding recusal decisions.⁸
- The Judicial Ethics and Anti-Corruption Act of 2022, which would ban individual stock ownership by judges and justices; require judges and justices to divest from privately-owned assets that could present conflicts, including large companies and commercial real estate; provide a mechanism for investigating misconduct by a retired

⁴ Ephrat Livni, An unseemly meeting at the US Supreme Court raises ethics questions, Quartz, Nov. 2, 2019, available at <https://qz.com/1740845/scotus-justices-impartiality-questioned-after-unseemly-meeting/>.

⁵ <https://twitter.com/briansbrown/status/1189213352167428096>.

⁶ Adam Liptak, Neil Gorsuch Speech at Trump Hotel Raises Ethical Questions, New York Times, Aug. 17, 2017, available at <https://www.nytimes.com/2017/08/17/us/politics/gorsuch-speech-trump-hotel-ethics.html>.

⁷ Fix The Court, John Roberts Voted. But He Shouldn’t Have., Nov. 7, 2018, available at <https://fixthecourt.com/2018/11/cjrecusalerror3/>.

⁸ Press Release, Whitehouse, Johnson, Blumenthal, Nadler, Quigley, Cicilline, Jones Introduce Legislation to Enforce Accountability, Transparency for Justices & Judges, Apr. 6, 2022, available at <https://hankjohnson.house.gov/media-center/press-releases/whitehouse-johnson-blumenthal-nadler-quigley-cicilline-jones-introduce>.

judge; and establish a review process for ethics complaints against Supreme Court justices.⁹

Each of these bills would serve to bolster accountability and transparency, and to enhance public trust in our judiciary.

The Supreme Court has failed to voluntarily address the very real and understandable concerns Americans have about the judiciary. Now Congress must quickly step in and work to restore public trust in our courts. We implore you to promptly pass the SCERT Act and complementary legislation to bring accountability and transparency to a Court that has evaded it for far too long.

Sincerely,

Alliance for Justice
American Atheists
American Humanist Association
Bay Area Lawyers for Individual Freedom (BALIF)
Center for Popular Democracy Action
CenterLink: The Community of LGBT Centers
Demand Justice
Equal Justice Society
Equality California
Equality Federation
FORGE, Inc.
Freedom From Religion Foundation
Indivisible
interACT: Advocates for Intersex Youth
League of Conservation Voters
Minority Veterans of America
National Education Association
People's Parity Project
Secular Coalition for America
Stand Up America

⁹ Press Release, Warren, Jayapal, Colleagues Introduce Bill to Reform Broken Judicial Ethics System, May 10, 2022, available at <https://www.warren.senate.gov/newsroom/press-releases/warren-jayapal-colleagues-introduce-bill-to-reform-broken-judicial-ethics-system>.