

November 29, 2022

Chair Dick Durbin  
Senator Sheldon Whitehouse, Chair, Subcommittee on Federal Courts, Oversight, Agency  
Action, and Federal Rights  
Committee on the Judiciary  
Washington, DC 20510

Dear Chairs Durbin and Whitehouse:

We write to urge you to investigate recent reports regarding an alleged ethical violation by Supreme Court Justice Samuel Alito and a broader effort by the organization Faith and Action to lobby justices to adopt increasingly conservative positions in pending cases. Reports suggest that, as a result of this lobbying campaign, Justice Alito met with wealthy political donors and apparently divulged to them the outcome of a case that was pending before the Court. This is an urgent reminder of the critical need for Supreme Court ethics reform and demands a thorough investigation.

According to the *New York Times*, on June 3, 2014, Justice Alito and his wife had dinner with Don and Gayle Wright, who were large donors to Faith and Action, a conservative non-profit organization.<sup>1</sup> The dinner took place just months after the oral argument in *Burwell v. Hobby Lobby*, which Mr. and Mrs. Wright had observed from seats that were reserved for guests of Justice Alito and late Justice Antonin Scalia. The report details evidence that at the dinner, Justice Alito apparently disclosed to the Wrights that he was the author of the forthcoming opinion and that Hobby Lobby would win its case. Mrs. Wright then shared the information with Rev. Rob Schenck, the founder and leader of Faith and Action, who was able to use the advance notice to prepare a public relations response to the decision. Justice Alito's alleged leak of the outcome of the *Burwell v. Hobby Lobby* calls for a thorough investigation and, if true, constitutes a shocking betrayal of the Court's confidences that deserves immediate accountability.

Moreover, this dinner was apparently part of Faith and Action's broader effort to persuade justices to adopt more conservative positions in their legal opinions. In fact, reporting from this summer suggests that Justices Scalia, Thomas, and Alito all met with representatives of the organization as part of the lobbying initiative.<sup>2</sup> Though the campaign has been ongoing for years, its impropriety has become much more acute since 2018, when Faith and Action changed its name to Faith and Liberty and became part of the Liberty Counsel. Liberty Counsel appears regularly before the Court and just this year filed an amicus brief in *Dobbs v. Jackson Women's*

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<sup>1</sup> Jodi Kantor and Jo Becker, Former Anti-Abortion Leader Alleges Another Supreme Court Breach, *New York Times*, Nov. 19, 2022, available at <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

<sup>2</sup> Peter S. Canellos and Josh Gerstein, 'Operation Higher Court': Inside the religious right's efforts to wine and dine Supreme Court justices, *Politico*, July 8, 2022, available at <https://www.politico.com/news/2022/07/08/religious-right-supreme-court-00044739>.

*Health Organization* and directly litigated and won *Shurtleff v. City of Boston*. According to a separate report, shortly after the Court issued its *Dobbs* opinion overturning *Roe v. Wade*, the vice president of Faith and Liberty claimed to have prayed with some of the justices inside the Court building itself.<sup>3</sup>

This lobbying effort by Faith and Action, as well as the apparent acquiescence of Justices Alito, Thomas and Scalia to it, pose serious ethical concerns and serve as a stark reminder that Supreme Court justices must be held to account. It is a disservice to the American people that the justices of our highest Court are not bound by a code of ethics, unlike every other federal judge in the country. This lack of accountability undoubtedly contributes to the Supreme Court's historically low approval ratings and to the American public's declining faith in the institution.

In a statement following the newest revelations, Chairman Durbin suggested that his Committee would review the allegations,<sup>4</sup> and Senator Whitehouse and Congressman Hank Johnson issued a joint letter stating that, if the Court "is not willing to undertake fact-finding inquiries into possible ethics violations that leaves Congress as the only forum."<sup>5</sup> We appreciate your immediate attention to the matter, and we strongly urge you to pursue an investigation without delay. The Supreme Court has repeatedly failed to voluntarily address the very real and understandable concerns Americans have about its members' ethical violations, including yet another dismissive response yesterday.<sup>6</sup> Senator Whitehouse and Congressman Johnson's response today, that "The Court's letter is an embodiment of the problems at the Court around ethics issues," underscores that the Senate Judiciary Committee must step in and investigate the leak allegation made against Justice Alito, as well as the allegations made against Justices Alito and Thomas of pressure from outside sources and the inherent conflicts of interest it creates. The Committee's investigation should include testimony from the whistleblower in these reports, Rev. Rob Schenck.

Finally, this latest incident serves as a reminder that the Supreme Court increasingly faces a legitimacy crisis and is in desperate need of ethics reform. If the Court refuses to do it themselves, then Congress must step in to quickly consider and pass meaningful legislation to bring accountability and transparency to a Court that has evaded it for far too long.

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<sup>3</sup> Kara Voght and Tim Dickinson, [SCOTUS Justices 'Prayed With' Her - Then Cited Her Bosses to End Roe](https://www.rollingstone.com/politics/politics-features/roe-supreme-court-justices-1378046/), *Rolling Stone*, July 6, 2022, available at

<https://www.rollingstone.com/politics/politics-features/roe-supreme-court-justices-1378046/>.

<sup>4</sup> <https://twitter.com/judiciarydems/status/1594111368281849856>.

<sup>5</sup> Josh Gerstein, [Senior Democratic lawmakers demand answers on alleged Supreme Court leak](https://www.politico.com/news/2022/11/20/supreme-court-roberts-whitehouse-johnson-00069673), *Politico*, Nov. 21, 2022, available at

<https://www.politico.com/news/2022/11/20/supreme-court-roberts-whitehouse-johnson-00069673>.

<sup>6</sup> Greg Stohr, [Supreme Court Counsel Says No Evidence of Alito Ethical Lapse in 2014 Case](https://www.bloomberg.com/news/articles/2022-11-28/supreme-court-official-says-no-evidence-justice-samuel-alito-had-ethical-lapse?sref=qZIN2rKN&leadSource=uverify+wall), *Bloomberg*, November 28, 2022, available at

<https://www.bloomberg.com/news/articles/2022-11-28/supreme-court-official-says-no-evidence-justice-samuel-alito-had-ethical-lapse?sref=qZIN2rKN&leadSource=uverify+wall>

Congress must respond to the mounting ethical concerns surrounding the Supreme Court, through both investigation and legislation, without delay.

Sincerely,

- Action Together Florida
- Alliance for Justice
- American Atheists
- American Constitution Society
- American Humanist Association
- Americans United for Separation of Church & State
- Baltimore Nonviolence Center
- Be the Change Bmore
- Catholics for Choice
- Cause Communications
- Center for American Progress
- Center for Popular Democracy Action
- Citizens for Responsibility and Ethics in Washington (CREW)
- Clean Elections Texas
- Committee for a Fair Judiciary (CFJ)
- Community Change Action
- Demand Justice
- DemCast USA
- Don't Shop on Tuesday #DSOT
- DoTheMostGood
- End Citizens United / Let America Vote Action Fund
- Equality California
- For the People -- Maryland
- Free Speech For People
- Freedom From Religion Foundation
- Future Coalition
- Get Money Out -- Maryland
- Hispanic Federation
- Indivisible
- Indivisible Chicago Alliance
- Indivisible Howard County
- Indivisible Illinois
- Indivisible Marin
- Indivisible Montgomery
- Indivisible Santa Fe
- JustLeadershipUSA
- Lambda Legal
- League of Conservation Voters
- MALDEF (Mexican American Legal Defense and Educational Fund)
- March On
- Maryland Legislative Coalition
- Maryland Poor People's Campaign
- Maryland WISE Women
- Muslim Advocates
- NARAL Pro-Choice America
- National Center for Transgender Equality
- National Council of Jewish Women
- National Immigration Law Center (NILC)
- National Organization for Women
- National Partnership for Women & Families
- Oregonizers
- Our Revolution Baltimore City/County
- P Street/Progressive Change Institute
- People's Parity Project
- Planned Parenthood Federation of America
- Population Connection Action Fund
- Reproaction
- Silver State Equality-Nevada
- Stand Up America
- Take Back the Court Action Fund
- The Workers Circle
- True North Research
- Voices for Progress
- We Said Enough