

December 8, 2022

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

Dear Chairman Nadler:

We, the undersigned organizations, write to thank you for scheduling today's hearing on "Undue Influence: Operation Higher Court and Politicking at SCOTUS" and for your continued commitment to bringing transparency and accountability to the Supreme Court of the United States. We also urge the House to pursue a legislative response to the justices' multiple ethical lapses by passing the Supreme Court Ethics, Recusal, and Transparency Act of 2022 ("SCERT Act"), [H.R. 7647](#), which your Committee reported in May. In just the past month, two more incidents have been reported that make crystal clear the urgent need for Supreme Court ethics reform and this important legislation.

First, as your hearing will further explore, reporting from the *New York Times* reveals that Justice Samuel Alito may have divulged confidential information about a pending case to wealthy donors of Faith and Action, a conservative non-profit organization with a vested interest in the outcome of the case.¹ Faith and Action was then able to use the advance notice to prepare a public relations response to the decision and cultivate a new prospective donor. More significantly, the dinner between Justice Alito and the donors 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.²

Second, Justice Clarence Thomas once again intervened in a case involving efforts to overturn the 2020 election, despite obvious conflicts of interest that exist because of his wife's involvement in those efforts. In this most recent case, Arizona Republican Party chair Kelli Ward sought to block a subpoena from the House Select Committee to Investigate the January 6th Attack on the United States Capitol. Given earlier reporting that Ginni Thomas communicated with dozens of Arizona legislators in the lead-up to the January 6 attack, such a subpoena could clearly unearth material that implicates her directly.³ Though a seven-justice majority of the

¹ 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>.

² 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>.

³ Emma Brown, [Ginni Thomas pressed 29 Ariz. lawmakers to help overturn Trump's defeat, emails show](#), *Washington Post*, June 10, 2022, available at <https://www.washingtonpost.com/investigations/2022/06/10/ginni-thomas-election-arizona-lawmakers/>.

Court declined to block the subpoena, Justice Thomas dissented from that decision.⁴ He was joined only by Justice Alito. This is just the latest example of Justice Thomas's refusal to recuse himself from cases related to the 2020 election and January 6 insurrection,⁵ even as details continue to mount about Ginni Thomas's involvement in the efforts.⁶

While these most recent examples are damning, they are only the latest in a long list of the Court failing to enforce basic standards of judicial ethics. Earlier this week, Justice Amy Coney Barrett sat for oral arguments in a case being litigated by an organization that has paid her, personally, for at least five speaking engagements since 2011.⁷ In 2019, Justices 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 earlier.⁸ 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.⁹ 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.¹⁰

Confidence in the Supreme Court has been in a freefall in recent years, and the justices' approval ratings recently hit an all time low.¹¹ Meanwhile, a vast majority of the American public supports Supreme Court ethics reform.¹² The Court has failed to voluntarily address the very real and understandable concerns Americans have about the judiciary, so now, Congress must quickly step in and address the eroding public trust in our courts.

It is well past time for the justices to be held accountable, and the SCERT Act will show the American people that the House is serious about common sense judicial ethics reforms. This important legislation would:

⁴ Jackie Calmes, Clarence Thomas' Jan. 6 conflicts of interest are showing again, *Los Angeles Times*, Nov. 23, 2022, available at <https://www.latimes.com/opinion/story/2022-11-23/clarence-thomas-recusal-supreme-court-jan-6>.

⁵ 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>.

⁶ Emma Brown, Ginni Thomas pressed Wisconsin lawmakers to overturn Biden's 2020 victory, *Washington Post*, Sept. 1, 2022, available at <https://www.washingtonpost.com/investigations/2022/09/01/ginni-thomas-wisconsin-bernier-tauchen/>.

⁷ Lynn Edwards, Amy Coney-Barrett to rule on LGBTQ case whose anti-LGBTQ attorneys paid her 5 times for speaking engagements, *Raw Story*, Sept. 7, 2022, available at <https://www.rawstory.com/supreme-court-docket-2658159280/>.

⁸ 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/>.

⁹ 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>.

¹⁰ Fix The Court, John Roberts Voted. But He Shouldn't Have., Nov. 7, 2018, available at <https://fixthecourt.com/2018/11/cjrrrecusalerror3/>.

¹¹ Jeffrey M. Jones, Confidence in U.S. Supreme Court Sinks to Historic Low, *Gallup*, June 23, 2022, available at <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx>.

¹² Alison Durkee, Trust In Supreme Court Drops To New Low, Poll Finds As Ethics Bill Moves Forward In House, *Forbes*, May 15, 2022, available at <https://www.forbes.com/sites/alisondurkee/2022/05/12/trust-in-supreme-court-drops-to-new-low-poll-finds-as-ethics-bill-moves-forward-in-house/>.

- Require the Supreme Court to finally adopt a binding and enforceable code of conduct on the justices. It also would clarify and strengthen the duty of justices to recuse themselves from cases in which they have conflicts of interest and require public notification into what those conflicts might be.
- Mandate that the Justices must adhere to, at a minimum, the same gift, travel, and income disclosure standards as Members of Congress.
- Require a clear duty for a judge/justice to know their and their family's financial interests and interests that could be substantially affected by cases before them.
- Shine a light on dark money and the courts by requiring all parties and amici to list any lobbying or substantial expenditures in support of a justice's nomination, confirmation, or appointment; and any gifts, income, or reimbursements made to the justices. The bill would also require parties that file amicus briefs to disclose their major sources of funding and authorize the courts to strike amicus briefs that would otherwise require a judge to recuse.

We urge the House of Representatives to swiftly pass the SCERT Act and bring accountability and transparency to a Court that has evaded it for far too long.

Sincerely,

National Organizations:

Advocates for Youth

American Atheists

American Humanist Association

American Oversight

Bayard Rustin Liberation Initiative

Blue Wave Postcard Movement

Catholics for Choice

Cause Communications

Center for American Progress

Center for Popular Democracy

CenterLink: The Community of LGBT Centers

Citizens for Responsibility and Ethics in Washington (CREW)

Clean Water Action

Climate Hawks Vote

Committee for a Fair Judiciary

Defend Democracy Project

Demand Justice

Demand Progress

DemCast USA

Demos Action

Digital Democracy Project

End Citizens United / Let America Vote Action Fund
Free Speech For People
Freedom From Religion Foundation
Friends of the Earth
Government Accountability Project
Government Information Watch
Greenpeace USA
Hispanic Federation
Indivisible
Interfaith Alliance
Jean-Michel Cousteau's Ocean Futures Society
Lawyers for Good Government (LAGG)
League of Conservation Voters
Lights for Liberty
NARAL Pro-Choice America
National Center for Transgender Equality
National Council of Jewish Women (NCJW)
National Employment Law Project
National Employment Lawyers Association
National Immigration Law Center
National Organization for Women
P Street/Progressive Change Institute
People's Parity Project
Pride At Work
Protect Our Care
Revolving Door Project
Secure Elections Network
Stand Up America
Take Back the Court Action Fund
The Secular Coalition for America
The Workers Circle
True North Research
UltraViolet
ValidatetheVoteUSA.org
Voices for Progress
Walking to Fix Our Democracy
We Said Enough
Women's March

State and Local Organizations:

Baltimore Nonviolence Center
Broward for Progress
CD2Action
Clean Elections Texas
Courts Matter Illinois
Equality California

Fix Democracy First
For the People -- Maryland
Get Money Out -- Maryland
Houston Immigration Legal Services Collaborative
Indivisible CA Green Team
Indivisible Chicago Alliance
Indivisible Hawaii
Indivisible Illinois
Indivisible Marin
Indivisible MN03
Indivisible North Mateo
Indivisible Northern Nevada
Indivisible Santa Fe
National Council of Jewish Women - Cleveland
National Council of Jewish Women - Greater Dallas Section
National Council of Jewish Women - Maryland Action Team
National Council of Jewish Women - Saddleback Section
National Council of Jewish Women - St Louis
Oregonizers
Plymouth Area Indivisible (MN)
Wisconsin Democracy Campaign