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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 10, 2023

The Honorable John G. Roberts, Jr.  
Chief Justice  
Supreme Court of the United States  
1 First Street NE  
Washington, DC 20543

Dear Chief Justice Roberts:

We write regarding the April 6, 2023 report by *ProPublica* entitled “Clarence Thomas and the Billionaire.”<sup>1</sup> The report describes conduct by a sitting Justice that he did not disclose to the public and that is plainly inconsistent with the ethical standards the American people expect of any person in a position of public trust.

The Senate Judiciary Committee, which has legislative jurisdiction over Federal courts and judges, has a role to play in ensuring that the nation’s highest court does not have the federal judiciary’s lowest ethical standards. You have a role to play as well, both in investigating how such conduct could take place at the Court under your watch, and in ensuring that such conduct does not happen again. We urge you to immediately open such an investigation and take all needed action to prevent further misconduct.

This is not the first time that members of this Committee have written you regarding concerns over the Supreme Court’s ethical standards. Eleven years ago, several members of the Committee, including the current Chair, sent you the attached letter urging the Court to adopt a resolution stating that the Justices of the Court abide by the Judicial Conference’s Code of Conduct for United States Judges—a Code that binds every other judge in the federal judiciary. You responded that the Court “does not plan to adopt the Code of Conduct for United States Judges through a formal resolution,”<sup>2</sup> and referenced your 2011 Year-End Report, in which you said “the Court has had no reason to adopt the Code of Conduct as its definitive source of ethical guidance.”<sup>3</sup> We submit that the Court has compelling reasons to do so, and urge prompt adoption of the Code of Conduct. While last month’s revision to the Judicial Conference’s guidance on judicial financial disclosures was a modest step in the right direction, further action is needed.

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<sup>1</sup> Kaplan, et al, *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023), available at <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

<sup>2</sup> Robert Barnes, *Chief Justice Roberts Rejects Request for Code of Conduct*, THE WASHINGTON POST (Feb. 21, 2012), [https://www.washingtonpost.com/politics/chief-justice-roberts-rejects-request-for-code-of-conduct/2012/02/21/gIQAliawRR\\_story.html](https://www.washingtonpost.com/politics/chief-justice-roberts-rejects-request-for-code-of-conduct/2012/02/21/gIQAliawRR_story.html).

<sup>3</sup> 2011 Year-End Report on the Federal Judiciary, available at <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf> at p. 5.

Notably, on October 5, 2011, Justices Antonin Scalia and Stephen Breyer testified before the Judiciary Committee and engaged in a discussion with Committee members about the Court's ethical standards.<sup>4</sup> In its reporting on that hearing, the *New York Times* noted that “[t]he ethical conduct of the Supreme Court has been under growing scrutiny” and that “[q]uestions have been raised over Justice Clarence Thomas’s appearances before Republican-backed groups and his acceptance of favors from a contributor in Texas, Harlan Crow” (emphasis added).<sup>5</sup>

It is troubling that your 2011 year-end report, which dismissed the call for the Justices to adopt the Code of Conduct, was written notwithstanding the known concerns about Mr. Crow’s largesse. This problem could have been resolved then. Instead, according to *ProPublica*’s reporting, Mr. Crow’s dispensation of favors escalated in secret during the years that followed. Now the Court faces a crisis of public confidence in its ethical standards that must be addressed.

In the coming days, the Senate Judiciary Committee will hold a hearing regarding the need to restore confidence in the Supreme Court’s ethical standards. And if the Court does not resolve this issue on its own, the Committee will consider legislation to resolve it. But you do not need to wait for Congress to act to undertake your own investigation into the reported conduct and to ensure that it cannot happen again. We urge you to do so.

Thank you for your attention to this matter of critical importance.

Sincerely,



Richard J. Durbin  
Chair



Dianne Feinstein  
United States Senator



Sheldon Whitehouse  
United States Senator



Amy Klobuchar  
United States Senator

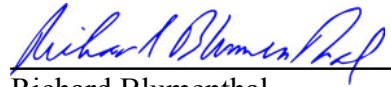
<sup>4</sup> Hearing before the Committee on the Judiciary, United States Senate, “Considering the Role of Judges Under the Constitution of the United States,” S. Hrg. 112-137 (Oct. 5, 2011), available at <https://www.govinfo.gov/content/pkg/CHRG-112shrg70991/html/CHRG-112shrg70991.htm>

<sup>5</sup> Emmarie Huetteman, *Breyer and Scalia Testify at Senate Judiciary Hearing*, THE NEW YORK TIMES (Oct. 5, 2011) available at <https://www.nytimes.com/2011/10/06/us/politics/breyer-and-scalia-testify-at-senate-hearing.html>.



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Christopher A. Coons  
United States Senator



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Richard Blumenthal  
United States Senator



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Mazie K. Hirono  
United States Senator



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Cory A. Booker  
United States Senator



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Alex Padilla  
United States Senator



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Jon Ossoff  
United States Senator



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Peter Welch  
United States Senator

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TOM COBURN, OKLAHOMA

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

February 13, 2012

The Honorable John Roberts  
Chief Justice of the United States  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

Dear Chief Justice Roberts:

We write to follow up on your discussion of ethics issues and the Supreme Court in the 2011 Year-End Report on the Federal Judiciary (hereinafter Year-End Report). We appreciate your effort to provide greater clarity about the Supreme Court's adherence to financial regulations and the Judicial Conference's Code of Conduct for United States Judges (hereinafter Code of Conduct).

Last fall, the Judiciary Committee held an important hearing entitled "Considering the Role of Judges Under the United States Constitution." We were honored to have Justices Scalia and Breyer participate in a lively and educational conversation. Senator Durbin posed several questions concerning financial and ethics restrictions. The response was similar to your clarification in the Year-End Report which implies that Justices of the Supreme Court do follow the Code of Conduct which binds lower court judges. We write today to request greater transparency about the internal resolutions the Court has adopted to address ethical issues.

On page six of the Year-End Report, you noted that the Members of the Court adopted "an internal resolution" in 1991 which stated that they agreed to follow the Judicial Conference's regulations on gifts and outside income, honoraria, and employment, which apply to other federal judges. Thank you for providing us with a copy of the resolution. We request that the Court make this internal resolution cited in the Year-End Report public, just as it did with its Statement of Recusal Policy in 1993. If there are any other Court resolutions of this nature, we suggest they be released as well.

As you noted in your Year-End Report, there have been a number of calls recently to make the Code of Conduct binding on the Court. You indicated that "the Code remains the starting point and a key source of guidance for the Justices as well as their lower court colleagues." As you point out, since the Code may not answer all ethics considerations, the Court, like all other federal judges, may also consult judicial opinions, treatises, scholarly articles, and disciplinary decisions. Since the Court already appears to follow the Code in practice, why not adopt a resolution, similar to the 1991 resolution, stating that Members of the Court abide by the Code of Conduct?

Because we have a high regard for the Supreme Court and its Members, we emphasize that we do not intend to question or impugn the ethics of any individual Justice or the Court itself by making these requests. We have worked for many years to increase openness and transparency in government, and we hope to increase public trust and confidence in all of our institutions, including the Supreme Court. We firmly believe that full disclosure of the Court's rules and its processes can only lead to greater confidence in the Court, and we look forward to working with you and the other Members of the Court to achieve this goal.

Sincerely,



RICHARD J. DURBIN  
United States Senator



PATRICK LEAHY  
Chairman



SHELDON WHITEHOUSE  
United States Senator



AL FRANKEN  
United States Senator



RICHARD BLUMENTHAL  
United States Senator