

ORAL TESTIMONY OF DONALD K. SHERMAN

HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, AND THE INTERNET HEARING ON
JUDICIAL ETHICS REFORM

Chairman Johnson, Ranking Member Issa, and members of the Subcommittee – thank you for the opportunity to testify before you today about the urgent need for Congress to ensure that federal judges meet the highest ethical standards.

My organization, Citizens for Responsibility and Ethics in Washington, is a non-partisan, non-profit organization focused on ensuring the integrity of our government institutions.

Today, there is a crisis of confidence in our federal judiciary. This crisis is the result of a number of overlapping failures, but chief among them is the judiciary’s apparent inability to abide by the rules of ethical conduct their high office requires. In a nine-year period, more than 130 federal judges have presided over at least 650 cases in which they have a material financial interest in one of the parties.

These conflicts have or will touch every congressional district in America. In addition, Supreme Court Justices across the ideological spectrum have engaged in conduct that raises ethical or impartiality concerns.

One of the more egregious examples in recent memory arises from a spousal conflict. Earlier this year, Justice Clarence Thomas failed to recuse from a case, *Trump v. Thompson*, where he was the lone dissent from the Court's decision to reject former President Trump's attempt to block the release of documents requested by the January 6th Committee. He did this despite his wife, Ginni Thomas's active support of and communications with Trump administration officials about the subject of the Committee's inquiry – the former president's efforts to overturn the 2020 election.

By deciding to hear this case, Justice Thomas has undermined public trust in the Court's impartiality. But the ethics issues facing the Court are longstanding and not limited to one Justice.

The patchwork of rules and regulations that the federal judiciary developed to police itself has failed, and the Supreme Court's unwritten "honor system" is clearly broken. Public confidence in the third branch is at or near all-time lows, with 53% of Americans having an unfavorable view of the high court. For an institution whose currency is credibility, this is an abject failure.

Despite having the power of judicial review and enjoying life tenure, federal judges have substantially fewer ethical checks than their counterparts in the legislative and executive branches.

We require even low level executive branch employees to abide by a rigorous code of conduct, and we have numerous ways to hold them accountable, including by subjecting them to the criminal conflicts of interest statute. Yet our federal judges and justices are exempt from this provision.

Not only do most government ethics rules not apply to federal judges at all levels, but the Supreme Court does not even have a code of conduct to provide clear and binding ethical guidance or a transparent process for recusals when conflicts do arise.

It has become clear that the judiciary cannot or will not effectively regulate itself. It is now time for Congress to step in.

We recommend three immediate actions that Congress can take to rebuild the federal judiciary's ethics regime:

First, Congress needs to direct the Supreme Court to adopt a code of ethical conduct. Specifically, the code needs to include detailed standards to protect the court's impartiality, and clear guidance regarding recusal, spousal conflicts, gifts, speeches, financial conflicts and other issues that I address in greater detail in my written testimony.

Second, Congress should enact a blanket prohibition on all federal judges, their spouses, and their dependent children owning or trading any individual stocks or other financial instruments.

Banning judges and their families from buying and owning individual stocks is the simplest way to address the financial conflicts that are undermining our judicial system. Many judges have claimed they are unfamiliar with their own assets or ethical obligations. Litigants often don't feel comfortable policing conflict concerns. But Congress can address this issue at scale.

Third, Congress should apply the federal criminal conflict of interest statute, 18 U.S.C. § 208, to the entire federal judiciary. By expanding this key law, Congress would be adding a powerful tool to combat egregious ethical misconduct in the judiciary, while binding it to similar rules as the other branches, as Ranking Member Issa put it in October.

In closing, it is important to note that the crisis of ethics in our government is the result of decades of benign neglect by leaders in all three branches of government for decades, not the misconduct of one or even a few people. Ethics is not a partisan issue.

The public can and should demand that federal judges are held to the highest ethical standards. As the public's representatives in Congress, the task is now yours to mandate reform. Though judges and justices interpret and sometimes strike down federal law, they are not above it.

Thank you for the opportunity to testify on this important topic. I look forward to your questions.