



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

July 19, 2023

The Honorable Dick Durbin  
Chair, Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lindsey Graham  
Ranking Member, Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Re: The SCERT Act

Dear Chairman Durbin and Ranking Member Graham:

I am writing on behalf of Citizens for Responsibility and Ethics in Washington (CREW), a nonpartisan nonprofit focused on government ethics, transparency and accountability, to convey our strong support for S.359, the Supreme Court Ethics, Recusal, and Transparency Act (“SCERT Act”). We urge you to pass this bill out of committee and begin the process of addressing the glaring problems with the Supreme Court’s ethics regime. It is far past time that our nation’s highest court is held to the highest ethical standards.

For decades, liberal and conservative justices alike have publicly tested the limits of the judiciary’s weak ethical framework, while activists and advocates, regardless of motivation or ideology, have found troubling ways to exploit every gap they can find. In just the last year alone, the public has learned of a decades-long “influence” campaign whereby patrons of the Court’s Historical Society seemingly purchased unparalleled access to the Supreme Court, possibly obtaining information about the Court’s decision in *Burwell v. Hobby Lobby Stores Inc.* prior to it being publicly released.<sup>1</sup> Earlier this year, reporting revealed that Justice Clarence Thomas accepted, and failed to disclose, hundreds of thousands of dollars in gifts and travel from Harlan Crow, a billionaire political benefactor who has donated millions of dollars to groups dedicated to tort reform and conservative jurisprudence.<sup>2</sup> And most

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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), <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

<sup>2</sup>Joshua Kaplan, Justin Elliott, and Alex Mierjeski, *Clarence Thomas and the Billionaire*, ProPublica (Apr. 6, 2023), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>. Taken together, Justice Thomas’s ethical violations are so substantial that they caused my organization to call for his resignation. See Noah Bookbinder Letter to Justice Clarence Thomas (May 9, 2023), <https://www.citizensforethics.org/wp-content/uploads/2023/05/Clarence-Thomas-Resignation-Letter.pdf>.

recently, reporting by *ProPublica* revealed that in 2008 Justice Samuel Alito accepted but failed to disclose travel on billionaire Paul Singer's private jet to a luxury fishing trip in Alaska organized and attended by Leonard Leo, a leader of the Federalist Society.<sup>3</sup> After the trip, Justice Alito then failed to recuse himself in at least 10 cases in which Singer's hedge fund appeared before the court.<sup>4</sup> Moreover, in prior years, Justices Ruth Bader Ginsburg and Stephen Breyer heard cases in which they likely should have recused themselves due to personal and financial interests.<sup>5</sup> In fact, every currently serving Supreme Court justice has participated in a case that raises questions about their impartiality.<sup>6</sup>

These scandals are the latest manifestation of the crisis of ethics that is undermining our federal judiciary. The SCERT Act would bring much-needed transparency and accountability to the Supreme Court's ethical framework, transforming the way the justices approach their ethical obligations. Although measured in its approach, the bill would create a critically important recusal and disclosure system, including review of recusal decisions, and in so doing bring much-needed transparency and accountability to the judiciary's current system of self-monitoring and self-reporting. We believe that the standards imposed by the SCERT Act are wholly appropriate to help put the judiciary on a path towards a more robust and transparent ethical framework.

Congress's power to subject the Supreme Court to basic ethics rules is supported by the Constitution's structure and text, as well as centuries of practice.<sup>7</sup> In fact, many of the laws that the SCERT Act would expand have been operative on the Supreme Court for decades without challenge; for instance, 28 U.S.C. § 455, the federal disqualification statute, has applied to Supreme Court justices as well as lower federal court judges for 75 years, the Ethics in Government Act for 45 years, and the Ethics Reform Act for 34 years.<sup>8</sup>

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<sup>3</sup> Justin Elliot, Joshua Kaplan, and Alex Mierjeski, *Justice Samuel Alito Took Luxury Fishing Vacation With GOP Billionaire Who Later Had Cases Before the Court*, *ProPublica* (June 20, 2023), <https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court>.

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., Mark Paoletta, *The Hypocrisy of Supreme Court Ethics Journalism*, *Wall Street Journal* (Oct. 8, 2022), [https://www.wsj.com/articles/the-hypocrisy-of-supreme-court-reporting-politico-barrett-client-law-firm-disclosure-rbg-scalia-11665175010?st=kip6f2w9tf3qcpq&reflink=article\\_email\\_share](https://www.wsj.com/articles/the-hypocrisy-of-supreme-court-reporting-politico-barrett-client-law-firm-disclosure-rbg-scalia-11665175010?st=kip6f2w9tf3qcpq&reflink=article_email_share); Fix the Court, *Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests* (May 11, 2023), <https://fixthecourt.com/2022/12/recent-times-justice-failed-recuse-despite-clear-conflict-interest/>.

<sup>6</sup> See, e.g., See Fix the Court, *Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests* (May 11, 2023); see also Alliance for Justice, *Accountable to None: The Urgent Need for Supreme Court Ethics Reforms*, [https://www.afj.org/wp-content/uploads/2022/06/JudicialEthicsReport\\_Final.pdf](https://www.afj.org/wp-content/uploads/2022/06/JudicialEthicsReport_Final.pdf).

<sup>7</sup> Joanna R. Lampe, *A Code of Conduct for the Supreme Court? Legal Questions and Considerations*, Cong. Rsch. Serv. (Apr. 6, 2022), <https://sgp.fas.org/crs/misc/LSB10255.pdf> ("Some observers have argued that imposing a code of conduct upon the Supreme Court would amount to an unconstitutional legislative usurpation of judicial authority. . . . On the other hand, some commentators emphasize the ways that Congress may validly act with respect to the Supreme Court, for example through its authority to impeach Justices and decide whether Justices are entitled to salary increases. By extension, according to this argument, requiring the Supreme Court to adopt a code of conduct would constitute a permissible exercise of Congress's authority.").

<sup>8</sup> Testimony of Prof. Amanda Frost, Hearing on Supreme Court Ethics Reform, Before the S. Comm. on the Judiciary (May 2, 2023), <https://www.judiciary.senate.gov/imo/media/doc/2023-05-02%20-%20Testimony%20-%20Frost.pdf>; see also An Act to Establish the Judicial Courts of the United States, ch. 20, 1 Stat. 73 (1789); and 28 U.S.C. § 453 (establishing the nearly identical oath used today).

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The judiciary is built on a foundation of public trust; without it, its credibility erodes. The current ethics scandals we are seeing at the Supreme Court were entirely preventable if the Court had been willing to reform its lax ethics and recusal systems. In the absence of the judiciary showing any leadership on this issue, however, Congress now has an obligation to pass legislation to protect our democracy and implement much-needed judicial ethics reform. The SCERT Act does just that. We urge the Senate Judiciary Committee to pass the SCERT Act out of committee as soon as possible and demonstrate that, although federal judges and justices may interpret the law, they are not above it.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder". The signature is stylized and fluid, with a prominent initial "N" and a long, sweeping underline.

Noah Bookbinder  
President and Chief Executive Officer

cc: The Honorable Sheldon Whitehouse  
Chair, Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action,  
and Federal Rights

The Honorable John Kennedy  
Ranking Member, Senate Judiciary Subcommittee on Federal Courts, Oversight,  
Agency Action, and Federal Rights