



PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

April 27, 2022

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary

Dear Chairman Nadler:

On behalf of the Alliance for Justice (AFJ), a national association representing over 130 public interest and civil rights organizations, I write to thank you for holding the hearing, "*Building Confidence in the Supreme Court Through Ethics and Recusal Reform*."

All federal judges except the justices of the U.S. Supreme Court must follow the [Code of Conduct for United States Judges](#) — a set of ethical guidelines codified by the U.S. Judicial Conference. While all other federal judges are accountable to the Code, including its rules on extrajudicial and political conduct, the Supreme Court justices merely use the Code for "guidance." In the absence of a mandatory code, questionable conduct by Supreme Court justices has proliferated, creating escalating concerns about the integrity of our court system. Clearly, a voluntary system is not enough. The nation's most powerful Court, whose decisions shape the lives of all Americans, must be subject to a code of conduct.

The credibility of our federal judicial branch rests upon the ethical conduct of judges. As stated in the Code of Conduct, "the integrity and independence of judges depend in turn on their acting without fear or favor." Ethical conduct by judges is also necessary to preserve public confidence in the courts as fair and impartial arbiters. The Supreme Court itself recognized in [Caperton v. A.T. Massey Coal Co.](#) that judicial ethics play a critical role in preserving our democracy: "The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity."

Since the time of the country's founding, federal judges have pushed the boundaries of ethical political engagement. In response, the courts, and Congress, have sought reform. The Code of Conduct for United States Judge was adopted in 1973, after decades of advocacy. The Code contains five Canons. Canon 1 of the Code states that "a judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved." Canons 2, 4, and 5 concern judges' extrajudicial and political activity. For instance, Canon 5 states that judges "must refrain from all political activity," which includes making speeches for political organizations, donating to political candidates or organizations, or purchasing a ticket to attend political events. The Code also prohibits judges

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from engaging in fundraising activities, for political and apolitical organizations alike, and even conduct that leads to “the appearance of impropriety.”

However, like the ethical reforms before it, the Code did not bind Supreme Court justices. And while justices claim that they follow the Code, their behavior indicates otherwise. Since its passage, Supreme Court justices appear to have engaged in conduct that would violate the Code, with conduct growing worse in the last two decades. In a 2011 [memo](#) about the Code of Conduct, AFJ catalogued allegations of extrajudicial, political misconduct by Supreme Court justices, particularly Justice Clarence Thomas and the late Justice Antonin Scalia. Since then, the allegations have not stopped.

While recent reporting has focused on Justice Thomas’s potential misconduct, he is not the only justice with credible allegations of misconduct. A few recent examples of misconduct include:

- Judge Thomas’s wife, Ginni Thomas, has a long history of involvement with ultra-conservative causes that consistently raise ethical issues for Justice Thomas. For example, [after](#) the 2020 election, she vehemently advocated for the invalidation of the election results to Trump’s Chief of Staff Mark Meadows and attended the January 6 Stop the Steal rally at the White House. In likely violation of Canon 2, Justice Thomas has already participated in two 2020 election cases and plans to participate in another case related to the January 6 insurrection.
- Justices Alito and Kavanaugh arguably ran afoul of Canon 2 when they [met](#) with the head of the National Organization for Marriage (NOM) at the Supreme Court in 2019. NOM is a leading opponent of same-sex marriage which has repeated falsehoods about LGBTQ+ Americans. In addition to litigation, the organization spearheads state-based campaigns against LGBTQ+ equality. At the time of the Supreme Court meeting, NOM had submitted amicus briefs in three ongoing cases: *Bostock v. Clayton Co.*, *Altitude Express v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC*.
- Justice Gorsuch likely violated Canons 2, 4, and 5 when he [spoke](#) at a 2022 Florida Federalist Society event that included appearances by Governor Ron DeSantis, former Vice President Mike Pence, and former White House Press Secretary Kayleigh McEnany. The event was closed to the press and included a panel “The End of *Roe v. Wade*?” which featured Mississippi Solicitor General Scott Stewart who had asked Justice Gorsuch to overturn *Roe v. Wade* only months before in *Dobbs v. Jackson Women’s Health Organization*.

These examples are only the tip of the iceberg. Without ethics rules and enforcement for the Supreme Court, there is no comprehensive list of misconduct allegations, and justices will continue to play by their own rules. Several justices, especially those recently in the news for far-right political activity, have allegedly engaged in partisan politics, improper fundraising activities, and other conduct that would lead any reasonable person to question their impartiality.

Their behaviors obstruct the Court’s substantive decision-making and wreak havoc on public confidence in the institution. As of September 2021, [just](#) 40% of Americans approve of the job of the U.S. Supreme Court, according to a Gallup poll. The same poll indicated that just 54% of Americans have confidence in the federal judiciary overall, down from a high of 80% in the late 1990s. The decline in approval noted by the Gallup poll is true for Democrats, Independents, and Republicans alike. Only [38%](#) of Americans would rate the honesty and ethical standards of judges as high or very high.

Alliance for Justice

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Thank you for holding this hearing to shed light on this threat to our democracy and equal justice. If the Court does not adopt the Code as binding, or create a similar set of binding ethical rules, Congress must take action. [The 21st Century Courts Act](#), introduced earlier this month, is a great step forward in reforming the Court's ethics. AFJ looks forward to working with this Committee to ensure our federal courts are dispensing fair and impartial justice.

Sincerely,

A handwritten signature in black ink that reads "Rakim Brooks". The signature is written in a cursive, slightly slanted style.

Rakim Brooks
President, Alliance for Justice