

Congress of the United States

Washington, DC 20515

August 16, 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 to follow up to our previous letter dated June 27, 2023,¹ urging you to establish an independent investigative body and dedicated ethics counsel within the Supreme Court to restore trust and confidence in the institution. We appreciate your response dated July 6, 2023,² but find it insufficient and unavailing, especially in light of recent reporting of additional serious ethics violations by Justices.

Accordingly, we renew and reaffirm our recommendations to address the Court's escalating crisis of legitimacy. We have copied the Judicial Conference of the United States in the hopes that you will coordinate with that body to adopt appropriate ethics standards for the highest Court that apply to all other federal judges.

New Allegations against Justice Thomas

Since our last letter, public reporting has exposed even more severe allegations of impropriety by Justice Clarence Thomas. According to a recent ProPublica report, Justice Thomas has received the following unreported gifts during his time on the Court:

1. At least 38 destination vacations, including a previously unreported voyage on a yacht around the Bahamas.
2. 26 private jet flights, plus an additional eight by helicopter.
3. A dozen VIP passes to professional and college sporting events, typically in the skybox.
4. Two stays at luxury resorts in Florida and Jamaica.
5. One standing invitation to an uber-exclusive golf club overlooking the Atlantic coast.³

As the report points out, while some of these instances of personal hospitality such as stays in personal homes may not require disclosure, that is not the case for flights, yacht cruises and expensive sports tickets. These extravagant gifts are even more problematic when considering the benefactors: Paul Novelly, H. Wayne Huizenga, David Sokol and Harlan Crow — four billionaires who reportedly first met Justice Thomas after his appointment to the Court. It has become increasingly clear that Justice Thomas, at a minimum, has created an appearance of conflicts of interest — if not actual conflicts — in violation of the Ethics in Government Act of 1978.⁴

Justice Alito's Extreme Rhetoric

¹ Letter from Rep. Daniel Goldman, et al., to Hon. John Roberts (Jun. 27, 2023).

² Letter from Hon. John Roberts to Rep. Daniel Goldman, et al. (Jul. 6, 2023) (referring to the ethical concerns raised in the previous letter as "important matters").

³ Brett Murphy and Alex Mierjeski, *Clarence Thomas' 38 Vacations: The Other Billionaires Who Have Treated the Supreme Court Justice to Luxury Travel*, ProPublica (Aug. 5, 2023), <https://www.propublica.org/article/clarence-thomas-other-billionaires-sokol-huizenga-novelly-supreme-court>.

⁴ Guide to Judiciary Policy, Vol. 2: *Ethics and Judicial Conduct*, Pt. D: *Financial Disclosure* (March 23, 2023), <https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf>.

We are further troubled by recent comments by Justice Samuel Alito questioning Congress's oversight authority over the Supreme Court. In a recent interview with the *Wall Street Journal*, Justice Alito stated: "No provision in the Constitution gives them the authority to regulate the Supreme Court—period."⁵ This statement undermines the Constitution's basic principle of checks and balances among the three branches of government, and demonstrates a troubling hostility to essential ethics reforms for the Court.

In response to this assault on Congressional authority and inappropriate comments on an issue that may come before the Court, members of the Senate Committee on the Judiciary, including Chairman Richard Durbin, have rightfully called for Justice Alito to recuse himself from all future cases involving existing legislation that regulates the Court.⁶ As the Senators point out, Justice Alito's assertion that Congress has no role in regulating the Court's ethical standards is not supported by historical precedent or Constitutional authority — in fact, quite the opposite. Further, they correctly find it "unacceptable for the highest court in the land to have the lowest ethical standards."⁷

We agree wholeheartedly.

Justice Kagan's Dissent

At least one justice has publicly criticized Justice Alito's absolutist views of the Court's sovereignty. During a recent appearance at the Ninth Circuit Judicial Conference in Portland, Oregon, Justice Elena Kagan defended the principle of interbranch checks and balances.

Responding to a question about Justice Alito's comments, Justice Kagan argued: "it just can't be that the court is the only institution that somehow is not subject to any checks and balances from anybody else."⁸ She added that the Court is "not imperial" and that it is "part of a checking and balancing system in various ways."⁹

We agree. The Court does not have exclusive authority to place checks on other branches of government without being subject to similar checks and balances. As the first branch of government, Congress is vested with "*All legislative Powers*".¹⁰ Congress has previously used these powers to regulate certain judicial matters, including ethical standards applicable to the Court.¹¹

Even Justice Alito, however, must agree that the Court itself has the authority to implement ethics reforms that become increasingly necessary by the day. Yet additional comments by Justice Kagan raise further concerns that certain justices have become roadblocks within the Court — hampering meaningful, consensus reforms of its own ethical standards.¹² If the Court can and will police itself, as you have insisted, we once again urge you

⁵ David B. Rivkin Jr. and James Taranto, *Samuel Alito, the Supreme Court's Plain-Spoken Defender*, Wall Street Journal (Jul. 28, 2023), <https://www.wsj.com/articles/samuel-alito-the-supreme-courts-plain-spoken-defender-precedent-ethics-originalism-5e3e9a7>.

⁶ Letter from Hon. Richard Durbin, Chair, Senate Committee on the Judiciary, et al., to Hon. John Roberts (Aug. 3, 2023).

⁷ *Id.*

⁸ Melissa Quinn, *Kagan says Congress has power to regulate Supreme Court: "We're not imperial"*, CBS News (Aug. 4, 2023), <https://www.cbsnews.com/news/elena-kagan-congress-regulate-supreme-court-ethics-code/>.

⁹ *Id.*

¹⁰ U.S. CONST. art. 1, § 1.

¹¹ Congress has substantial authority to regulate the Supreme Court and exercises it consistently, controlling, for example, the Court's size (28 U.S.C. § 1), the time and place of the Court's sitting (28 U.S.C. § 2), and the justices' oath of office (28 U.S.C. § 453). Congress has also on numerous occasions enacted ethics legislation that applies to the justices, including the Ethics in Government Act, the Federal Gift Statute, the Foreign Gifts and Decorations Act, and the Federal Recusal Statute.

¹² The Associated Press, *Justice Kagan supports ethics code but says Supreme Court divided on how to proceed*, NBC News (Aug. 3, 2023) (Justice Kagan: "It's not a secret for me to say that we have been discussing this issue. And it won't be a surprise to know that the nine of us have a variety of views about this."), <https://www.nbcnews.com/politics/supreme-court/kagan-supports-ethics-code->

to take action. And if justices who have run roughshod over basic ethical standards are objecting to ethics reforms, then that further confirms the need for you to take decisive steps to restore confidence in the Court.

We face escalating allegations of ethical transgressions by justices on the Court that would never be tolerated under the Judicial Code of Ethics applicable to all other judges. This ethics crisis at the top of the judicial system undermines the legitimacy of the Supreme Court and reflects poorly on the entire judiciary. In order to restore credibility to the Judiciary Branch, we strongly restate our recommendation that you adopt an independent investigative body and a dedicated ethics counsel to establish and enforce essential ethics reforms for the Supreme Court.

The stakes are simply too high to wait any longer.

Sincerely,



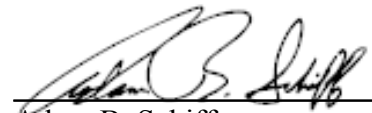
Dan Goldman
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



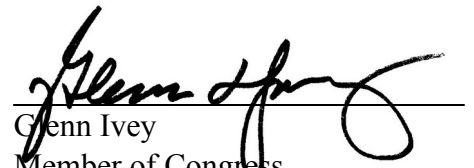
Ted W. Lieu
Member of Congress



Adam B. Schiff
Member of Congress




Raja Krishnamoorthi
Member of Congress



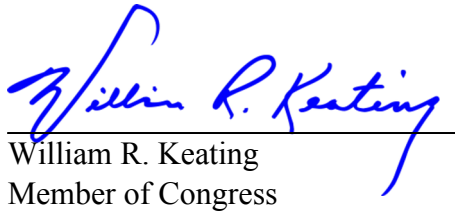
Glenn Ivey
Member of Congress



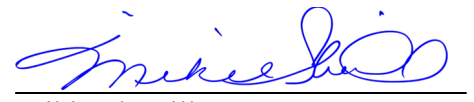
Jamie Raskin
Member of Congress




C. A. Dutch Ruppersberger
Member of Congress



William R. Keating
Member of Congress



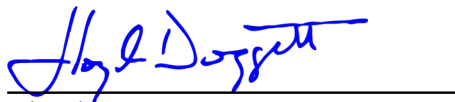
Mikie Sherrill
Member of Congress



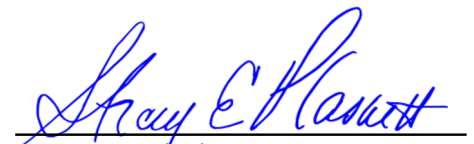
Steve Cohen
Member of Congress



Sheila Jackson Lee
Member of Congress



Lloyd Doggett
Member of Congress



Stacey E. Plaskett
Member of Congress



Sylvia R. Garcia
Member of Congress

cc: The Judicial Conference of the United States