

Congress of the United States

Washington, DC 20515

September 27, 2023

The Honorable Clarence Thomas
Associate Justice
Supreme Court of the United States
1 First Street NE
Washington, DC 20543

Dear Justice Thomas:

Recent public reports have yet again raised serious questions about ethical violations by you.¹ In this particular case, your participation in political donor events hosted by the Koch network, as well as your surreptitious relationship with David and Charles Koch, requires you to recuse yourself from the upcoming *Loper Bright Enterprises v. Raimondo* case, in which the plaintiffs are represented by staff attorneys for the Koch network.

Fundraising Events with the Kochs

On Friday, ProPublica published a report that alleged you have attended at least two Koch donor summits over the last several years.² During one of those summits in January 2018, you were purportedly flown to Palm Springs, California – a flight you did not disclose on your annual financial disclosure form – to attend a private dinner for the Koch network’s donors. According to the report, you were specifically brought to the fundraising event to speak “in the hopes that such access would encourage donors to continue giving.”³

As you are no doubt aware, under Canon 5(A)(3) of the Code of Conduct for United States Judges, a judge should not “solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.”⁴ Additionally, consistent with Canon 4B(1), judges are advised “not to associate themselves with entities that are publicly identified with controversial legal, social, or political positions or that regularly engage in adversarial proceedings in the federal courts.”⁵ In short, your reported conduct would be in violation of the Code of Conduct for United States Judges.

¹ Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Secretly Participated in Koch Network Donor Events*, PROPUBLICA (Sep. 22, 2023), <https://www.propublica.org/article/clarence-thomas-secretly-attended-koch-brothers-donor-events-scotus>.

² *Id.*

³ *Id.*

⁴ Guide to Judiciary Policy, Vol. 2: Ethics and Judicial Conduct Pt. A: Codes of Conduct (p.18), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

⁵ Guide to Judiciary Policy, Vol. 2: Ethics and Judicial Conduct, Pt. B: Ethics Advisory Opinions (p. 177), https://s3.documentcloud.org/documents/23986647/advisory-opinions-guide-vol02b-ch02-2019_final.pdf.

The allegations against you regarding your attendance at these fundraising events demonstrate unambiguously unethical behavior that is unacceptable for a judge at any level. Unfortunately, that Code of Conduct that applies to every district and appeals court judge in the country does not apply to the Supreme Court. In fact, as you well know, Supreme Court justices are not subject to any binding code of conduct. Therefore, short of impeachment, there is currently little recourse to hold justices accountable for their violations of ethics or disclosure rules.

Conflict of Interest with Kochs

There is one remaining mechanism to ensure that the Court's decisions are not infected with conflicts of interest: recusal. As you undoubtedly know, for decades the Koch network has openly sought to overturn *Chevron* — both by challenging it in the courts and through lobbying Congress to pass legislation.⁶ They have even bankrolled law professors with millions of dollars in grants to publicly make their case for them.⁷

Notably, even though you have a well-earned reputation for taking firm and consistent views, you have flip-flopped on this issue. In 2005, many years after you joined the Court, you wrote the majority opinion in *National Cable & Telecommunications Association v. Brand X Internet Services* arguing for the expansion of *Chevron*'s protections for government agencies.⁸ However, in 2020, you completely reversed course in *Howard L. Baldwin v. United States* and renounced those views, writing: “Although I authored *Brand X*, ‘it is never too late to surrender former views to a better considered position.’”⁹

While not widely known until ProPublica's recent reporting, your extensive personal relationship with both Charles and David Koch raises serious questions about whether you had a conflict of interest in *Baldwin*. But there is no question that your lengthy relationship with the Kochs, including your participation in donor retreats for the Koch network, requires recusal in the upcoming case that the Koch network has teed up in an attempt to overturn *Chevron*. Moreover, as you should be aware, the Koch network's staff attorneys represent the plaintiffs in this case.¹⁰

Under the Code of Conduct for United States Judges, a judge “shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned,” when said judge has “a personal bias or prejudice concerning a party.”¹¹

⁶ Christopher Leonard, *Charles Koch's Big Bet on Barrett*, NY TIMES (Oct. 12, 2020), <https://www.nytimes.com/2020/10/12/opinion/charles-koch-amy-coney-barrett.html>.

⁷ Valerie Strauss, *Professor: A disturbing story about the influence of the Koch network in higher education*, WASH. POST (Apr. 22, 2018), <https://www.washingtonpost.com/news/answer-sheet/wp/2018/04/22/professor-a-disturbing-story-about-the-influence-of-the-koch-network-in-higher-education/>.

⁸ *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U. S. 967 (2005).

⁹ *Howard L. Baldwin v. United States*, 589 U. S. ____ (2020).

¹⁰ Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Secretly Participated in Koch Network Donor Events*, ProPublica (Sep. 22, 2023), <https://www.propublica.org/article/clarence-thomas-secretly-attended-koch-brothers-donor-events-scotus>.

¹¹ Guide to Judiciary Policy, Vol. 2: Ethics and Judicial Conduct Pt. A: Codes of Conduct (p.8) https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

Here, the Kochs — political activists that you have personally helped fundraise for and personally financially benefited from while their crusade to overturn *Chevron* was public and well-known — are a party to this case. If you do not recognize that your behavior disqualifies you from ruling on such a consequential case and you do not recuse yourself, it will do irreparable harm to the Court's credibility and to the public's faith in the impartial rulings of the entire federal judiciary.

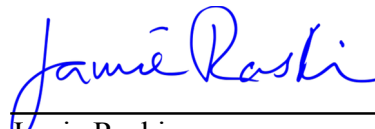
Sincerely,



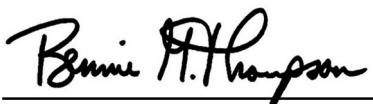
Dan Goldman
Member of Congress



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



Jamie Raskin
Member of Congress



Bennie G. Thompson
Member of Congress



Adam B. Schiff
Member of Congress



Earl Blumenauer
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



Julia Brownley
Member of Congress



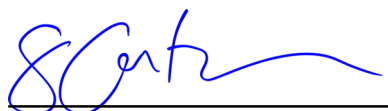
Cori Bush
Member of Congress



Tony Cárdenas
Member of Congress



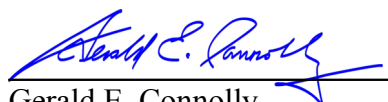
André Carson
Member of Congress



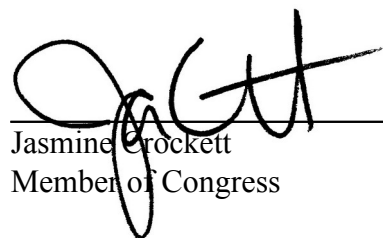
Sean Casten
Member of Congress



Emanuel Cleaver, II
Member of Congress



Gerald E. Connolly
Member of Congress



Jasmine Crockett
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Danny K. Davis
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Madeleine Dean
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Rosa L. DeLauro
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Mark DeSaulnier
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Adriano Espaillat
Member of Congress



Jesús G. "Chuy" García
Member of Congress



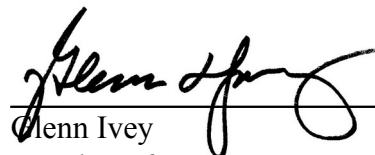
Robert Garcia
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Jimmy Gomez
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Jared Huffman
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Glenn Ivey
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Sheila Jackson Lee
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Barbara Lee
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Summer Lee
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Ted W. Lieu
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Stephen F. Lynch
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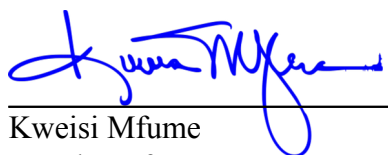
Seth Magaziner
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Betty McCollum
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James P. McGovern
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Kweisi Mfume
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Kevin Mullin
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Eleanor Holmes Norton
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Chellie Pingree
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Stacey E. Plaskett
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Mark Pocan
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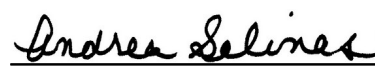
Katie Porter
Member of Congress



Mike Quigley
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Delia C. Ramirez
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Andrea Salinas
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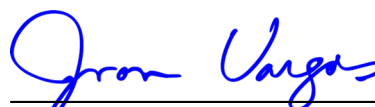
Melanie Stansbury
Member of Congress



Eric Swalwell
Member of Congress



David J. Trone
Member of Congress



Juan Vargas
Member of Congress

A handwritten signature in blue ink that reads "Bonnie Watson Coleman".

Bonnie Watson Coleman
Member of Congress

A handwritten signature in blue ink that reads "Nikema Williams".

Nikema Williams
Member of Congress

A handwritten signature in blue ink that reads "Frederica S. Wilson".

Frederica S. Wilson
Member of Congress

cc: Chief Justice John Roberts