

Congress of the United States
Washington, DC 20510

October 14, 2021

The Honorable John G. Roberts, Jr.
Chief Justice
Supreme Court of the United States
1 First Street NE
Washington, DC 20543

Dear Mr. Chief Justice:

We write seeking information regarding an alarming report that over 130 federal judges have violated federal law and the Code of Conduct for U.S. Judges by “overseeing court cases involving companies in which they or their family owned [individual] stock.”¹ These actions raise questions about the judgment and integrity of these individuals and will justifiably reduce public confidence in the justice system. Likewise, they raise questions about whether you have done enough in your role as the presiding officer of the Judicial Conference of the United States to establish and enforce ethics rules and uphold the integrity of the federal judiciary.

The scope of the ethics violations by dozens of federal judges—as reported by the *Wall Street Journal*²—is stunning. Judges must “avoid impropriety and the appearance of impropriety in all activities.”³ Both 28 U.S.C. § 455 and Canon 3 of the Code of Conduct require that judges disqualify themselves from proceedings when the judge, their spouses, or their minor children have a “financial interest in ... a party to the proceeding ... , however small.”⁴ But the *Journal* revealed that 131 federal judges—appointed by presidents spanning from Lyndon Johnson to Donald Trump and involved in hundreds of cases across the country—failed to properly recuse themselves in violation of these provisions between 2010 and 2018.⁵ These conflicts of interest have affected hundreds of cases and the integrity of the justice system. Already, “56 of the judges have directed court clerks to notify parties in 329 lawsuits that they should have recused themselves,” potentially leading to new assignments of judges and upending rulings.⁶ Judges

¹ Wall Street Journal, “131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest,” James V. Grimaldi, Coulter Jones, and Joe Palazzolo, September 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>.

² *Id.*

³ United States Courts, “Code of Conduct for United States Judges,” <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#c>.

⁴ 28 U.S.C. § 455(b)(4) & (d)(4); United States Courts, “Code of Conduct for United States Judges,” <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#d>.

⁵ Wall Street Journal, “131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest,” James V. Grimaldi, Coulter Jones, and Joe Palazzolo, September 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>.

⁶ *Id.*

ruled for parties in which they had a financial interest in two-thirds of contested motions.⁷ Furthermore, current Supreme Court Justices have similarly failed to recuse themselves from cases in recent years when they have had financial interests in parties before the Court, including through ownership of individual stock.⁸ It would be surprising if even a single judge or Justice was unaware of or ignored these important ethics protections; the fact that dozens did so represents a systemic failure that requires accountability.

These extensive ethics breaches are, at least in part, a direct result of the inadequate processes for judicial accountability. Although federal judges are required to file annual financial disclosures, the disclosures are not published online.⁹ Litigants may request disclosures, but judges are notified upon such requests, disincentivizing parties before the judge from acting.¹⁰ Even when judges recuse themselves, they frequently do not state their reasons for recusal.¹¹ And when litigants discover that a judge failed to properly disqualify, they often have little recourse; there are no civil or criminal penalties for violating the federal disqualification statute,¹² the Judicial Conference rarely imposes consequences on judges for misconduct,¹³ and the Code of Conduct does not even formally bind Supreme Court Justices.¹⁴

Our comprehensive ethics legislation—the *Anti-Corruption & Public Integrity Act*¹⁵—would close these gaps in our judicial ethics system, restoring public trust in the federal judiciary. First, it would enhance transparency. In lieu of today’s cumbersome disclosure process, the Judicial Conference would be required to post judges’ financial disclosure reports online, at no cost, and no later than 90 days after filing. Second, it would overhaul our recusal system. Instead of allowing judges to decide whether to recuse themselves from cases without comment, my legislation would empower Chief Judges to establish binding recusal processes and require written explanations for recusal decisions. Third, it would eliminate the possibility of

⁷ Wall Street Journal, “131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest,” James V. Grimaldi, Coulter Jones, and Joe Palazzolo, September 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>.

⁸ Fix the Court, “Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests,” October 8, 2021, <https://fixthecourt.com/2021/10/recent-times-justice-failed-recuse-despite-clear-conflict-interest>.

⁹ 5 U.S.C. App. § 101; Wall Street Journal, “131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest,” James V. Grimaldi, Coulter Jones, and Joe Palazzolo, September 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>.

¹⁰ 5 U.S.C. App. § 105; Wall Street Journal, “131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest,” James V. Grimaldi, Coulter Jones, and Joe Palazzolo, September 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>.

¹¹ Citizens for Responsibility and Ethics in Washington, “Reforming Judicial Ethics,” December 2, 2020, pp. 152-153, <https://www.citizensforethics.org/wp-content/uploads/2020/11/Section-7-Reforming-Judicial-Ethics.pdf>.

¹² 28 U.S.C. § 455; Wall Street Journal, “A Post-Watergate Law Some Judges Overlook,” James V. Grimaldi, Joe Palazzolo, and Coulter Jones, September 28, 2021, <https://www.wsj.com/articles/a-post-watergate-law-some-judges-overlook-11632834199>.

¹³ Wall Street Journal, “A Post-Watergate Law Some Judges Overlook,” James V. Grimaldi, Joe Palazzolo, and Coulter Jones, September 28, 2021, <https://www.wsj.com/articles/a-post-watergate-law-some-judges-overlook-11632834199>.

¹⁴ Citizens for Responsibility and Ethics in Washington, “Reforming Judicial Ethics,” December 2, 2020, p. 148, <https://www.citizensforethics.org/wp-content/uploads/2020/11/Section-7-Reforming-Judicial-Ethics.pdf>.

¹⁵ Anti-Corruption and Public Integrity Act, S. 5070, <https://www.congress.gov/bill/116th-congress/senate-bill/5070>.

the most troubling financial conflicts, including the ones described by the *Journal*. For instance, federal judges—including Supreme Court Justices—would be forbidden from owning individual stocks, radically reducing the likelihood of conflicts of interest without the need for recusal proceedings. Fourth, it would establish real consequences for violations of federal ethics laws, including civil penalties, prohibitory injunctions, and expedited disqualification and impeachment processes.


While Congress should act swiftly to pass these reforms, a decisive response from the judiciary is urgent and necessary. As the presiding officer of the Judicial Conference of the United States, you are responsible for the policies and administration of the federal courts. To better understand your response to these reported widespread violations of federal law and the Code of Conduct, we ask that you answer the following questions by October 28, 2021:


1. How did 131 federal judges fail to disqualify themselves from cases with companies in which they or their family members owned individual stock between 2010 and 2018?
2. Are you, or any officials within the Judicial Conference of the United States, aware of any additional judges besides the 131 described by the *Wall Street Journal* that have presided over cases where they have conflicts of interest? If so, please provide a summary of how many have done so, the nature of their conflicts, and the number of affected cases.
3. In response to the *Journal*'s report, the Administrative Office of the U.S. Courts said that it was "carefully reviewing the matter."¹⁶
 - a. What have been the results of the investigation so far?
 - b. When do you expect the investigation to be complete?
 - c. Will you commit to publicly disclosing the findings and recommendations of the investigation once it is finished?
4. What specific actions has the Judicial Conference taken in response to the *Journal*'s investigation? What specific actions will the Judicial Conference commit to taking to prevent future violations?
5. Will you and your fellow Justices commit to disqualifying yourselves from cases as required by 28 U.S.C. § 455, including when you have a financial interest in a party to a proceeding?
6. Will you and your fellow Justices commit to formally adopting the Code of Conduct for U.S. Judges or an alternative binding code of conduct for the Supreme Court?
7. Do you believe that the Judicial Conference has sufficient existing authority and resources to ensure an impartial and ethical judiciary, including by performing thorough and timely conflicts checks?
 - a. If so, why did the described ethics violations happen nonetheless?
 - b. If not, what authority and resources could Congress provide to prevent the described ethics violations from happening again?

Thank you for your attention to this matter.

¹⁶ Wall Street Journal, "131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest," James V. Grimaldi, Coulter Jones, and Joe Palazzolo, September 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>.

Sincerely,


Elizabeth Warren
United States Senator


Pramila Jayapal
Member of Congress