

Congress of the United States
Washington, DC 20510

March 28, 2022

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

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

Dear Chief Justice Roberts and Justice Thomas:

We write regarding alarming new reports about Justice Thomas’s potential conflicts of interest in his role as a Supreme Court Justice—specifically with regards to the efforts of his wife, Ms. Virginia “Ginni” Thomas, to overturn the results of the 2020 election—and the urgent need for significant ethics reform at the Supreme Court.

Last week, the Washington Post and CBS News published a disturbing set of stories detailing Ms. Thomas’s efforts to persuade then-White House Chief of Staff Mark Meadows to “pursue unrelenting efforts to overturn the 2020 presidential election.”¹ The stories document 29 text messages between Thomas and Meadows starting immediately after Election Day 2020 and ending only days after the January 6th attack on the U.S. Capitol. In the messages, Ms. Thomas “spread false theories, commented on cable news segments and advocated with urgency and fervor that the president and his team take action to reverse the outcome of the election,” calling for specific tactics such as the promotion of Sidney Powell—one of President Trump’s lawyers—and describing the election as “the greatest Heist of our History.”² Meadows responded with his shared “belief that the election was stolen” and expressed his “solidarity of purpose and faith.”³

¹ Washington Post, “Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show,” Bob Woodward and Robert Costa, March 24, 2022, <https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts>; CBS News, “Ginni Thomas, Justice Clarence Thomas’ wife, exchanged texts with Mark Meadows about efforts to overturn the 2020 election,” March 24, 2022, <https://www.cbsnews.com/news/ginni-thomas-clarence-wife-mark-meadows-texts-2020-election-overturn>.

² Washington Post, “Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show,” Bob Woodward and Robert Costa, March 24, 2022, <https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts>.

³ *Id.*

These revelations—combined with prior reporting about Ms. Thomas’s efforts to nullify the results of the 2020 election—raise serious questions about Justice Thomas’s participation in cases before the Supreme Court involving the 2020 election and the January 6th insurrection.

Federal law clearly states the standards for a judge’s recusal from a case. Under 28 U.S.C. § 455, any judge—including a Supreme Court Justice—must disqualify himself from “any proceeding in which his impartiality might reasonably be questioned.”⁴ And any judge must do the same when he knows that his spouse has “any ... interest that could be substantially affected by the outcome of the proceeding.”⁵ Ignorance or willful blindness is simply no excuse.

But given the recent disclosures about Ms. Thomas’s efforts to overturn the election and her specific communications with White House officials about doing so, Justice Thomas’s participation in cases involving the 2020 election and the January 6th attack is exceedingly difficult to reconcile with federal ethics requirements. Ms. Thomas was not simply another attendee at the January 6th “Stop the Steal” rally outside the White House;⁶ she was one of nine board members for a conservative political group that helped lead the “Stop the Steal” movement,⁷ she signed a letter calling on House Minority Leader Kevin McCarthy to punish Republicans who participated in the U.S. House Select Committee investigating the January 6th attack,⁸ and as last week’s reporting indicates, she was in direct communication with the White House and congressional aides about strategies to overturn the 2020 presidential election as the Trump Administration was coordinating litigation before the Supreme Court on the topic.⁹ Despite his wife’s potential “interest” in these proceedings and ample rationale to “reasonably question” his impartiality, Justice Thomas has neither disclosed the extent of his knowledge about Ms. Thomas’s activities nor recused himself from multiple Court cases involving the 2020 election and the attempted insurrection that followed.¹⁰ In fact, Justice Thomas was the sole dissenting Justice who would have blocked the January 6th Committee’s access to presidential records involving the Trump Administration’s efforts to disrupt the peaceful transfer of

⁴ 28 U.S.C. § 455(a).

⁵ 28 U.S.C. § 455(b)(4).

⁶ Vanity Fair, “Ginni Thomas Didn’t Just Praise MAGA Supporters on January 6. She Actually Attended the ‘Stop The Steal’ Rally,” Caleb Ecarma, March 14, 2022, <https://www.vanityfair.com/news/2022/03/ginni-thomas-attended-stop-the-steal-rally>.

⁷ New York Times, “The Long Crusade of Clarence and Ginni Thomas,” Danny Hakim and Jo Becker, February 22, 2022, <https://www.nytimes.com/2022/02/22/magazine/clarence-thomas-ginni-thomas.html>.

⁸ Letter from Conservative Action Project to House Minority Leader Kevin McCarthy, December 15, 2021, <http://conservativeactionproject.com/conservative-leaders-remove-chenev-and-kinzinger-from-house-republican-conference>.

⁹ Washington Post, “Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show,” Bob Woodward and Robert Costa, March 24, 2022, <https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts>; NBC News, “Ginni Thomas pressed for GOP lawmakers to protest 2020 election results,” Scott Wong, March 25, 2022, <https://www.nbcnews.com/politics/congress/ginni-thomas-pressed-gop-lawmakers-protest-2020-election-results-rcna21644>.

¹⁰ New York Times, “Justice Thomas Ruled on Election Cases. Should His Wife’s Texts Have Stopped Him?,” Adam Liptak, March 25, 2022, <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html>.

power¹¹—records that could very well contain communications between Ms. Thomas and top White House officials given what we now know.¹²

Independent legal experts and scholars across the political spectrum have amplified these concerns. As one expert concluded after reviewing the new disclosures, Justice Thomas “had an obligation not to sit in any case related to the election, the Jan. 6 committee or the Capitol invasion.”¹³ Another expert argued that Justice Thomas should not have been involved in disputes about the 2020 election or Congress’s investigation of the January 6th attack considering that “his spouse’s reputation, and even potential liability, [was] at stake.”¹⁴ Or as yet another expert explained, “[w]hen your spouse is conversing with people who have some control over litigation to challenge an election, you shouldn’t be sitting on the Supreme Court deciding that election or any aspect of it.”¹⁵

Unfortunately, this is not the first major ethics breach at the Supreme Court in recent years. Justice Thomas failed to disclose his wife’s income from her work at the Heritage Foundation on five occasions between 2003 and 2007—totaling \$686,589—in violation of the Ethics in Government Act.¹⁶ Notwithstanding a federal law requiring judges to disqualify themselves from proceedings whenever they have a “financial interest in ... a party to the proceeding ... , however small,”¹⁷ multiple Justices have failed to recuse themselves from cases before the Court while owning individual stocks in the parties.¹⁸ In 2004, Justice Scalia went on a hunting trip with Vice President Cheney while the Supreme Court was actively considering a case in which Cheney was a defendant.¹⁹ And the Justices regularly accept “expensive memberships and memorabilia, donations to causes they support, and lavish international trips,” in stark contrast to the gifts allowed under ethics restrictions imposed on other branches of government.²⁰

¹¹ *Trump v. Thompson*, 595 U.S. ____ (2022).

¹² Washington Post, “Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show,” Bob Woodward and Robert Costa, March 24, 2022, <https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts>.

¹³ New York Times, “Justice Thomas Ruled on Election Cases. Should His Wife’s Texts Have Stopped Him?,” Adam Liptak, March 25, 2022, <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html>.

¹⁴ New Yorker, “Legal Scholars Are Shocked By Ginni Thomas’s ‘Stop the Steal’ Texts,” Jane Mayer, March 25, 2022, <https://www.newyorker.com/news/news-desk/legal-scholars-are-shocked-by-ginni-thomass-stop-the-steal-texts>.

¹⁵ New York Times, “Justice Thomas Ruled on Election Cases. Should His Wife’s Texts Have Stopped Him?,” Adam Liptak, March 25, 2022, <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html>.

¹⁶ New York Times, “Thomas Cites Failure to Disclose Wife’s Job,” Eric Lichtblau, January 24, 2011, <https://www.nytimes.com/2011/01/25/us/politics/25thomas.html>.

¹⁷ 28 U.S.C. § 455(b)(4) & (d)(4).

¹⁸ Fix the Court, “Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests,” January 18, 2022, <https://fixthecourt.com/2022/01/recent-times-justice-failed-recuse-despite-clear-conflict-interest>.

¹⁹ New York Times, “Scalia’s Trip With Cheney Raises Questions of Impartiality,” Michael Janofsky, February 6, 2004, <https://www.nytimes.com/2004/02/06/us/scalia-s-trip-with-cheney-raises-questions-of-impartiality.html>.

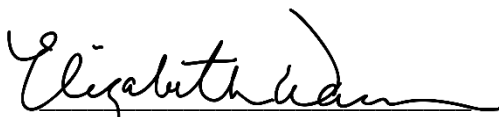
²⁰ Brennan Center for Justice, “Supreme Court Ethics Reform: The Need for an Ethics Code and Additional Transparency,” Johanna Kalb and Alicia Bannon, September 2019, p. 5, https://www.brennancenter.org/sites/default/files/2019-09/Report_2019_09_SCOTUS_Ethics_FINAL.pdf.

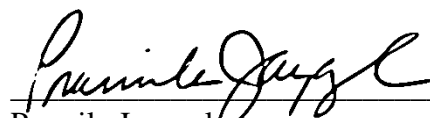
As Congress considers its response to these latest revelations involving Justice Thomas’s potential violations of ethics laws, the Supreme Court has the responsibility and the power to act now. In particular, given the serious conflict-of-interest issues presented by Ms. Thomas’s leadership in the efforts to overturn the 2020 presidential election, we call upon Justice Thomas to immediately issue a written explanation for his failure to recuse himself in prior Supreme Court cases involving efforts to overturn the 2020 election or the January 6th attack on the Capitol and promptly recuse himself from any future Supreme Court cases involving efforts to overturn the 2020 election or the January 6th attack on the Capitol.²¹ And we request that Chief Justice Roberts commit no later than April 28, 2022 to creating a binding Code of Conduct for the Supreme Court—the only court in the country not currently subject to a judicial code of ethics—that includes (1) enforceable provisions to ensure that the Justices comply with this Code and (2) a requirement that all Justices issue written recusal decisions.

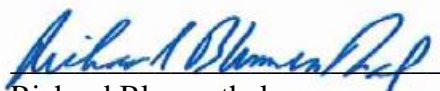
Chief Justice Roberts has often spoken about the importance of the Supreme Court’s “credibility and legitimacy as an institution.”²² That trust, already at all-time lows with the American public,²³ must be earned.


Thank you for your attention to this important matter.

Sincerely,


Elizabeth Warren
United States Senator


Pramila Jayapal
Member of Congress

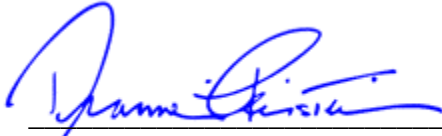

Richard Blumenthal
United States Senator


Cory A. Booker
United States Senator

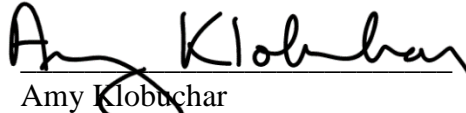
²¹ At a minimum, Justice Thomas’s explanation should include a description of his knowledge of his wife’s activities to overturn the 2020 presidential election.

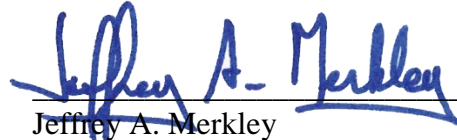
²² The Atlantic, “Roberts’s Rules,” Jeffrey Rosen, January 2007, <https://www.theatlantic.com/magazine/archive/2007/01/robertss-rules/305559>.

²³ Gallup, “Approval of U.S. Supreme Court Down to 40%, a New Low,” Jeffrey M. Jones, September 23, 2021, <https://news.gallup.com/poll/354908/approval-supreme-court-down-new-low.aspx>.

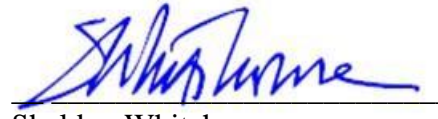

Dianne Feinstein
United States Senator


/s/
Mazie Hirono
United States Senator


Amy Klobuchar
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Jeffrey A. Merkley
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Sheldon Whitehouse
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Member of Congress


Cori Bush
Member of Congress

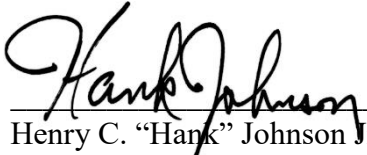
/s/
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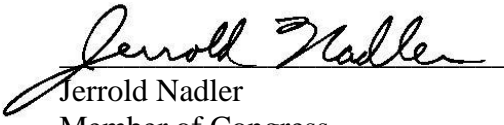
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Jerrold Nadler
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