



**STATEMENT OF  
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THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**HEARING ON “SUPREME COURT ETHICS REFORM”**

**MAY 2, 2023**

Chair Durbin, Ranking Member Graham, and members of the committee:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 230 national organizations working to build an America as good as its ideals, we thank you for convening today’s hearing on “Supreme Court Ethics Reform.” We appreciate this opportunity to reiterate our ongoing calls for a judiciary that truly provides equal justice for all, including immediate passage of robust ethics reform and transparency legislation with an enforceable Code of Conduct for Supreme Court justices, as well as continued oversight and investigation into deeply concerning patterns of alleged ethics violations by justices.

Given the important role that the judiciary has in recognizing, protecting, and advancing our rights, for decades The Leadership Conference has convened the civil and human rights community to work together to bolster our democracy and create a judiciary that lives up to the promise inscribed above the Supreme Court — Equal Justice Under Law. We have a long way to go to achieve this vision, which is why we continue to bring organizations together to advocate for issues related to our federal courts — including judicial nominations and court modernization efforts — in order to build an equal justice judiciary that protects the rights of all people in America.

**The Supreme Court Ethics Crisis**

To advance equal justice and strengthen our democracy, the Supreme Court must work for all of us, not just the wealthy and powerful. Yet media reports have alleged escalating and egregious patterns of ethics violations and misconduct by the justices who serve for life on our nation’s highest court. These concerns about our Supreme Court — and all our federal courts — are not academic or theoretical. Rather, they are fundamentally about who our courts serve and whose rights are upheld. There has been a long-term, well-funded agenda to roll back civil and human rights that has upended our most basic freedoms, and the lack of binding ethical standards and transparency around who has access to the most powerful jurists in our nation is deeply concerning. For our democracy to function, the Supreme Court must have the public’s faith that its decisions are informed by facts and law, not influenced by wealth and power. It is

unacceptable that the nine justices on our nation’s highest court are the only federal jurists who are not bound by a code of conduct. For years, this Court has ignored requests from across the political spectrum to initiate its own binding code of conduct, strengthen recusal standards, and increase transparency. Amidst constant reports of unethical and potentially unlawful behavior by justices, and the refusal of the Supreme Court to act, the need for serious and immediate congressional action on judicial ethics has never been more clear.

The judicial ethics crisis is not a recent phenomenon; it is an ongoing problem that the Supreme Court has declined to meaningfully solve. In a 2011 Senate Judiciary Committee hearing responding to similar ethics concerns, Chair Durbin questioned Justices Stephen Breyer and Antonin Scalia on whether the justices should be required to follow the Code of Conduct for United States judges.<sup>1</sup> This Code of Conduct, among other requirements, states that federal judges should “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” and avoid even the appearance of improper behavior.<sup>2</sup> Then, as now, justices purport to consult this Code of Conduct, yet they are not required to do so. In the years since that hearing, people across America have seen the Supreme Court erode our most fundamental civil and human rights. This has occurred amidst an onslaught of reports of justices refusing to recuse themselves from cases where they have a personal interest,<sup>3</sup> ultraconservative extremists attempting to purchase access to influence and embolden justices,<sup>4</sup> justices failing to disclose lavish gifts and luxury travel funded by billionaires,<sup>5</sup> and numerous other examples of misconduct. At a minimum, such reports call into question the actual and perceived impartiality of the justices. It is unsurprising that public confidence in the Supreme Court has plummeted to historic lows,<sup>6</sup> and it is disappointing that the Court has refused to implement the binding reforms needed to create a fairer judiciary and restore the public’s faith that our nation’s highest court is not rigged in favor of the powerful few. It is past time for Congress to take action.

### **The Civil Rights Movement’s Continuous Calls for Ethics Reform**

The civil rights community has consistently called for congressional action in response to the ongoing judicial ethics crisis. The Leadership Conference has long recognized that ethics reform is a critical part of the work to build an equal justice judiciary, and we have repeatedly urged Congress to prioritize passage of judicial ethics reform, including a Code of Conduct for Supreme Court justices, and further transparency measures.<sup>7</sup> We reiterated these calls in July 2021, when our then-interim President and CEO Wade Henderson testified before the Presidential Commission on the Supreme Court of the United States,

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<sup>1</sup> [“Considering the Role of Judges Under the Constitution of the United States: Hearing before the Committee on the Judiciary, United States Senate.”](#) 112th Congress (2011).

<sup>2</sup> Canon 2, [“Code of Conduct for United States Judges.”](#) *Judicial Conference*. Effective March 12, 2019.

<sup>3</sup> Totenberg, Nina. [“Legal ethics experts agree: Justice Thomas must recuse in insurrection cases.”](#) *NPR*. March 30, 2022.

<sup>4</sup> Kantor, Jodi and Becker, Jo. [“Former Anti-Abortion Leader Alleges Another Supreme Court Breach.”](#) *New York Times*. Nov. 19, 2022.

<sup>5</sup> Kaplan, Joshua; Elliott, Justin; and Mierjeski, Alex. [“Clarence Thomas and the Billionaire.”](#) *ProPublica*. April 6, 2023.

<sup>6</sup> [“Positive Views of Supreme Court Decline Sharply Following Abortion Ruling.”](#) *Pew Research*. September 1, 2022.

<sup>7</sup> See [“The Leadership Conference on Civil and Human Rights Top Task Force Priorities for 118th Congress,”](#) *The Leadership Conference*, January 24, 2023; [“The Leadership Conference on Civil and Human Rights Priorities – 117th Congress,”](#) *The Leadership Conference*, November 24, 2020; [“Leadership Conference Priorities for the 116th Congress,”](#) *The Leadership Conference*, December 12, 2018.

urging the commission to consider in its review of the problems at the Court the ways in which the judiciary impacts the lives and rights of communities it has traditionally marginalized.<sup>8</sup> We highlighted the need to implement changes that strengthen our democracy, including common-sense reforms such as a Supreme Court Code of Conduct.<sup>9</sup>

In December 2022, amidst reports that anti-abortion activist Rev. Rob Schenck attempted to influence and embolden particular justices, The Leadership Conference joined 100 other organizations in renewing the call for a Supreme Court ethics code and calling for an investigation into these deeply concerning reports.<sup>10</sup> Most recently, in April 2023, we revived these calls in response to reporting that Justice Clarence Thomas has, for decades, failed to disclose lavish gifts he received from billionaire Republican donor Harlan Crow, despite the disclosure requirements in the 1978 Ethics in Government Act.<sup>11</sup> Media outlets continue to reveal new and concerning allegations, such as reports that Crow purchased three properties from Justice Thomas, which the justice similarly failed to disclose.<sup>12</sup> This escalating misconduct by justices who hold lifetime appointments is unacceptable and poisonous to our democracy. The status quo cannot continue.

Today, the civil rights community once more lifts up the demands for a judiciary that works for all of us, not just the privileged few. To that end, we call for:

- immediate passage of robust ethics legislation that includes, at a minimum, a Code of Conduct for Supreme Court justices and a mechanism to enforce adherence to ethics and recusal rules, in addition to further necessary recusal and transparency measures; and
- sustained oversight of and investigation into these reports and other instances of misconduct by Supreme Court justices and other federal jurists.

This must occur as the Biden administration and Senate continue to prioritize nominating and confirming ethical, fair-minded, and highly qualified judicial nominees who have a demonstrated commitment to civil and human rights and who reflect and represent our nation's rich diversity. Confirming such nominees helps to improve judicial decision-making and to build the public's trust in the federal judiciary.

Each of these strategies is necessary to build a judiciary that administers the equal justice that our nation needs and deserves. Ethics and transparency must be immediately strengthened, reports of unethical behavior must be fully investigated, and all judicial vacancies must be filled by diverse nominees who will meet the high ethical standards we expect of our public servants and who are committed to equal justice and the rights of all of us. Inaction will only excuse misconduct by justices and further erode the public's trust in the independence and fairness of our federal judiciary.

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<sup>8</sup> [“Statement of Wade Henderson to the Presidential Commission on the Supreme Court of the United States.”](#) *The Leadership Conference*. July 20, 2021.

<sup>9</sup> *Id.*

<sup>10</sup> [Joint letter to Senate on the Supreme Court ethics crisis.](#) *Alliance for Justice; The Leadership Conference; National Women's Law Center; People for the American Way*. December 14, 2022.

<sup>11</sup> [“Leadership Conference Letter on Judicial Ethics.”](#) *The Leadership Conference*. April 18, 2023.

<sup>12</sup> Elliott, Justin; Kaplan, Joshua; and Mierjeski, Alex. [“Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn't Disclose the Deal.”](#) *ProPublica*. April 13, 2023.

### **The Need for Congressional Action**

These are urgent and enduring priorities for the civil rights community, and we are encouraged by the steps Congress has taken to address these issues. The Leadership Conference commends Chair Durbin's swift response to the ongoing judicial ethics crisis, including convening this hearing and inviting Chief Justice John Roberts or a justice of his choosing to testify.<sup>13</sup> While we respect and protect judicial decision-making in cases that come before the Court, Congress plays an important constitutional role in the administration of our federal courts. Such administration is not limited to congressional impeachment powers, but also includes basic ethical and transparency measures. Thus, it is disappointing that the Chief Justice refused to appear or designate another justice to appear at this hearing, especially given the seriousness of the judicial ethics crisis, the resulting crisis of faith in the independence of the Supreme Court, and the history of this committee's work with Supreme Court justices.<sup>14</sup> Indeed, it has been necessary and important for the public to hear directly from justices on this precise issue, such as the Senate Judiciary Committee's hearing in 2011 where Justices Breyer and Scalia testified on judicial ethics. Absent a strong response from the Court, such as creating a binding code of conduct or testifying about ways in which the Court has taken action, we are left with the impression that the Court is not taking this judicial ethics crisis seriously.

Additionally, we have long appreciated the calls for change from across the political spectrum and from both chambers. This includes recent bicameral calls led by Senator Sheldon Whitehouse and Representative Hank Johnson for the chief justice to investigate the allegations about Justice Thomas and other patterns of ethics violations,<sup>15</sup> as well as their request for the Judicial Conference to refer Justice Thomas to the attorney general for further action.<sup>16</sup> We applaud continued oversight and investigation, including Senate Finance Committee Chair Ron Wyden's request that Harlan Crow provide a full accounting of the properties he purchased from Justice Thomas as well as the lavish gifts he provided.<sup>17</sup> And we are heartened to see renewed efforts, including some that are bipartisan, to pass legislation that would help address this crisis.

We welcome the opportunity to work with you and your colleagues in Congress to ensure that any legislative response to the ethics crisis is robust, transparent, and includes an enforcement mechanism to ensure Supreme Court justices are bound to ethics rules. Your work towards accountability and transparency is necessary to restore the public's faith in an institution whose independence has been compromised by consistent reports of unethical and potentially unlawful behavior. We urge you to continue this important oversight and investigative work alongside passage of robust, enforceable ethics reforms and continued processing of diverse judicial nominees who are fair-minded and committed to our rights.

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<sup>13</sup> [Chair Durbin invitation to Chief Justice Roberts to testify before the Judiciary Committee regarding Supreme Court ethics.](#) *U.S. Senate Committee on the Judiciary.* April 20, 2023.

<sup>14</sup> [Chief Justice Roberts letter to Chair Durbin declining to testify.](#) April 25, 2023.

<sup>15</sup> [Whitehouse-Johnson letter to Chief Justice Roberts to investigate ethics allegations.](#) April 7, 2023.

<sup>16</sup> [Whitehouse-Johnson letter to Judicial Conference regarding referral to Attorney General.](#) April 14, 2023.

<sup>17</sup> [Chair Wyden letter to Harlan Crow.](#) *U.S. Senate Committee on Finance.* April 24, 2023.



For our democracy to work, all people need to be able to trust that jurists make decisions without bias and free from undue influence. Indeed, our communities depend on federal judges and justices to fairly administer justice for all of us. Congress must immediately address the ongoing judicial ethics crisis and ensure that our Supreme Court lives up to its promise of equal justice under law.

Thank you for the opportunity to submit this statement for the record. If you have any questions, please contact Lena Zwarensteyn, senior director of the fair courts program, at [zwarensteyn@civilrights.org](mailto:zwarensteyn@civilrights.org).