

Statement of Kedric Payne

**Vice President, General Counsel, and Senior Director of Ethics
Campaign Legal Center**

**Senate Committee on the Judiciary
Subcommittee on Federal Courts, Oversight, Agency Action
and Federal Rights**

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Accountability for 21st Century Courts”
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Thank you for the opportunity to appear before you today to testify about the need to enhance Supreme Court ethics rules to provide more transparency, guidance, and compliance. I am the Vice President, General Counsel and Senior Director of Ethics at Campaign Legal Center, a nonpartisan 501(c)(3) organization dedicated to advancing American democracy through law. For nearly 20 years, I have specialized in government ethics, lobbying law, and election law. Today I am focusing on Supreme Court ethics rules, how they lag behind executive branch and legislative branch ethics rules, and what fundamental provisions are needed.

**Supreme Court Ethics Rules Lag Behind
the Executive and Legislative Branches**

Ethics laws are essential to maintaining public trust in government. Although some ethics laws apply to each branch of federal government, Supreme Court Justices have fewer fundamental ethics provisions governing their conduct than the other branches. Specifically, Supreme Court ethics rules do not include: a compliance mechanism for recusal requirements; a code of conduct; or full disclosure of privately sponsored travel. Over the past decade, the absence of these provisions has resulted in persistent ethics concerns implicating actual or perceived conflicts of interest involving the Justices. Reform of Supreme Court ethics laws and rules can mitigate the risk of diminishing public trust and confidence in the Court.

I. **The Supreme Court Recusal Requirement Lacks a Compliance Mechanism**

Recusal requirements exist in all three branches of the federal government to disqualify public officials from participating in decisions where they have conflicts of interest. The legislative branch has limited recusal rules in very specific circumstances because of concern that a lawmaker’s recusal from voting denies constituents of representation.¹ Although, the executive and judicial branches have

¹ See U.S. House of Representatives Comm. on Standards of Conduct, 110th Cong., 2d Sess., *House Ethics Manual*, 237 (2008) (“House precedents favor ‘the idea that there is no authority in the House

broader recusal requirements, frequent allegations of the failure of Justices to recuse from matters where they have conflicts strongly suggests that the Supreme Court recusal requirement needs improvement. Increased transparency can improve public confidence in Supreme Court recusal decisions.

A. Supreme Court Recusal Requirement

Pursuant to federal law, Supreme Court Justices shall recuse from any proceeding where the Justice has conflicts of interest listed in the disqualification statute, 28 U.S.C. § 455 (“§ 455”). The listed conflicts include, “any proceeding in which [the Justice’s] impartiality might be reasonably questioned,” and circumstances where the Justice has a financial interest or personal bias concerning a party.²

The purpose of the recusal law is to resolve the ambiguity of previous recusal provisions.³ Congress found “the existence of dual standards . . . couched in uncertain language” not only put judges and Justices in a difficult position to decide whether to recuse, but also could “weaken public confidence in the judicial system.”⁴ Indeed, a Justice’s choice to recuse or not to recuse directly implicates their oath of impartiality.⁵ “Recusal aims to ensure both actual judicial impartiality and the appearance of judicial impartiality, which are necessary to ensure due process.”⁶ Despite the intent behind the recusal requirement to uphold the integrity of the Court and strengthen public confidence in the judicial system, public controversies involving Justices deciding not to recuse themselves continue.

During the past decade alone, there have been numerous allegations of Justices failing to comply with the recusal requirement. For example, in 2011, Justices Elena Kagan and Clarence Thomas were criticized for failing to disqualify themselves from participating in a decision to determine the fate of the Affordable Care Act. Justice Thomas’ perceived conflict of interest involved the political activities of his spouse in opposition to the healthcare law while Justice Kagan was allegedly involved in developing the legal defense of the law during her prior role as

to deprive a Member of the right to vote.’ Given the size of today’s districts, when a Member refrains from voting, well over half a million people are denied a voice on the pending legislation.”), https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf.

² 28 U.S.C. § 455.

³ Previously, there were two ethics provisions that judges had to consider. The first stated that a judge should not preside when a near relative is a party and the second stated that a judge should not participate in a case where their substantial personal interests are involved. Neither provision defined their terms, making it unclear what was considered a “near relative” and what is a “substantial interest.”

⁴ H.R. Rep. No. 93-1453, 93d Cong., 2d Sess., reprinted in 1974 U.S.C.C.A.N. 6351, 6355.

⁵ Debra Lyn Bassett, *Recusal and the Supreme Court*, 56 HASTINGS L.J. 657, 661 (2005).

⁶ *Id.* at 662.

Solicitor General.⁷ From 2015 to 2021, there were at least 14 instances where Justices allegedly failed to recuse despite perceived or actual conflicts of interest.⁸ The allegations involve multiple Justices, including Justices Samuel Alito, Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy, and Chief Justice John Roberts. The conflicts of interests range from owning stock in one of the parties to the litigation, to prior work on the matter while previously serving in government positions. In 2022, Justice Thomas was criticized for failing to recuse from participating in a case that determined whether certain White House records must be provided to Congress where correspondence from his spouse were later revealed in connection with the same investigation.⁹

One reason for the recurrent criticism of the recusal law is the absence of any compliance mechanism. The Justices decide if and when they should recuse themselves, and they are not required to provide any rationale for these decisions. In addition, there is not even an informal, non-binding review of the recusal decision to inform the public whether the decision is considered appropriate and aligns with prior decisions by other Justices.

B. Executive Branch Recusal Requirement

The Supreme Court's approach to compliance with recusal stands in stark contrast to the transparency of executive branch recusals. Federal criminal law and the executive branch code of conduct require that executive branch officials recuse themselves from participating in decisions where they have conflicts of interest. The criminal statute, 18 U.S.C. § 208, requires recusal for conflicts involving certain financial interests. The code of conduct is broader and requires recusal "to avoid an appearance of loss of impartiality in the performance of . . . official duties."¹⁰

⁷ See Amanda Frost, *Judicial Ethics and Supreme Court Exceptionalism*, 26 GEO. J. LEGAL ETHICS 443, n.6 (2013) citing Editorial, *The Supreme Court's Recusal Problem*, N.Y. TIMES, Dec. 1, 2011, at A38 ("Liberals in Congress have called for Justice Clarence Thomas to recuse himself from the review of the health care reform law because his wife, Virginia, has campaigned fervently against it. Conservatives insist that Justice Elena Kagan should remove herself from the case because, they claim, as solicitor general she was more involved in shaping the law than she lets on."); Josh Gerstein, *No Sign Elena Kagan, Clarence Thomas will recuse on health care law*, POLITICO (Nov. 14, 2011), <https://www.politico.com/blogs/under-the-radar/2011/11/no-sign-elena-kagan-clarence-thomas-will-recuse-on-health-care-law-040802>.

⁸ *Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests*, FIX THE COURT (Jan. 18, 2022), <https://fixthecourt.com/2022/01/recent-times-justice-failed-recuse-despite-clear-conflict-interest/>.

⁹ Jordan S. Rubin, *Where Ginni Thomas's Texts Meet High-Court Ethics: Explained (1)*, BLOOMBERG LAW (Mar. 30, 2022), <https://news.bloomberglaw.com/us-law-week/ginni-thomas-texts-and-recusal-calls-top-court-ethics-explained>; Nina Totenberg, *Legal ethics experts agree: Justice Thomas must recuse in insurrection cases*, NPR (Mar. 30, 2022), <https://www.npr.org/2022/03/30/1089595933/legal-ethics-experts-agree-justice-thomas-must-recuse-in-insurrection-cases>; Adam Liptak, *Justice Thomas Ruled on Election Cases. Should His Wife's Texts Have Stopped Him?*, N.Y. TIMES (Mar. 25, 2022), <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html>.

¹⁰ 5 C.F.R. § 2635.101.

Circumstances that create an appearance of loss of impartiality include those where the official has a certain business or personal relationship with a party in the matter.¹¹ In addition, senior officials are subject to an ethics pledge to ensure recusal from matters involving work performed prior to entering public service.¹²

To facilitate compliance with the recusal requirement, the Office of Government Ethics (OGE) enters into ethics agreements with senior officials. These agreements lists the matters from which an official will recuse, the financial interests they will divest, or the termination of business relationships that conflict with official duties. The disclosure is available online and enables the public to know about: specific recusals from matters involving certain parties with personal or business relationships with the official; specific assets divested to avoid conflicts; recusals related to a spouse's employer; and resignations from affiliated entities with conflicts.¹³ Furthermore, any ethics pledge waivers granted to officials are made public by OGE.¹⁴

OGE does not have authority to enforce the recusal requirement or issue sanctions for those who do not comply with the recusal requirement.¹⁵ However, publicly available ethics agreements facilitate compliance by creating precedents for the types of matters that officials determine require recusal.

C. Reforming the Supreme Court Recusal Requirement

As the executive branch demonstrates, increased transparency improves implementation of a recusal requirement. The Supreme Court can better achieve the purpose of § 455 if Justices are required to disclose the rationale of their recusal decision when a party before the Court requests recusal. Whether or not a party agrees with the recusal decision, publishing the rationale behind the decision decreases uncertainty and speculation about the reason for the Justice's choice.

To support consistency with recusal decisions and provide needed guidance, the Committee on Codes of Conduct of the Judicial Conference should issue non-

¹¹ 5 C.F.R. § 2635.502.

¹² Exec. Ord. No. 13989, 86 Fed. Reg. 14 7029 (Jan. 25, 2021).

¹³ See, e.g., Janet Yellen Ethics Agreement (Dec. 29, 2020), [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/18A4D129DD5675888525864F0081071C/\\$FILE/Yellen.%20Janet%20L.%20final%20EA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/18A4D129DD5675888525864F0081071C/$FILE/Yellen.%20Janet%20L.%20final%20EA.pdf); Antony Blinken Ethics Agreement (Dec. 30, 2020), [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/709E518A700361B08525864F008106BB/\\$FILE/Blinken.%20Antony%20%20final%20EA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/709E518A700361B08525864F008106BB/$FILE/Blinken.%20Antony%20%20final%20EA.pdf); Shereef Elnahal Ethics Agreement (Apr. 19, 2022), [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/3D6ED41B788CEB258525882D002E47C9/\\$FILE/Elnahal.%20Shereef%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/3D6ED41B788CEB258525882D002E47C9/$FILE/Elnahal.%20Shereef%20%20finalEA.pdf).

¹⁴ See, e.g., U.S. Off. of Gov't Ethics, *Pledge Waivers (E.O. 13989) – Biden Administration*, [https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+\(EO+13989\)](https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+(EO+13989)) (last visited Apr. 28, 2022).

¹⁵ The Standards of Ethical Conduct for Employees of the Executive Branch calls for agencies to create their own corrective or disciplinary regulations. 5 C.F.R. § 2635.106.

binding reviews on whether a recusal appears to comply with § 455. These reviews from the Judicial Conference are not disciplinary actions and do not direct the Justices to take any action. Instead, the reviews create much needed informal interpretations of the application of § 455 to provide guidance to Justices about compliance with the recusal requirement.

II. The Supreme Court Lacks a Code of Conduct

The executive and legislative branches have adopted codes of conduct to prohibit common conflicts of interest and support public trust in government, but the Supreme Court has not. Unless the Supreme Court establishes a code of conduct to formally define and prohibit ethical misconduct, the judicial branch will remain the branch with the least developed ethical standards.

A. Supreme Court Code of Conduct

The Judicial Conference, the policy-making body for federal courts, has promulgated the Code of Conduct for United States Judges that applies to most federal judges. The Judicial Conference acknowledges that complying with the code “helps to maintain public confidence in the impartiality of the judiciary,” while “violation of this [c]ode diminishes public confidence in the judiciary and injures our system of government under law.”¹⁶ But this code of conduct is considered a set of “aspirational rules” for federal judges, and not a binding code.

This Code of Conduct tells judges to (1) uphold the integrity and independence of the judiciary; (2) avoid not only impropriety but the appearance thereof; (3) perform the duties of their offices fairly, impartially, and diligently; (4) avoid extrajudicial activities that would be inconsistent with the obligations of judicial office; and (5) refrain from political activity.¹⁷ While this code also does not contain an enforcement mechanism, a judicial discipline process does exist.¹⁸

Most importantly, neither the code nor the judicial discipline process governs Supreme Court Justices, and the Supreme Court has not promulgated its own ethics code. Chief Justice Roberts has indicated that Justices consult the Code of Conduct for United States Judges and other authorities to “resolve specific ethical issues,” but there is no specific or formal way the Supreme Court handles ethics issues that arise.¹⁹

¹⁶ Code of Conduct for United States Judges, *Guide to Judiciary Policy*, United States Courts, Vol. 2A, Ch. 2 at 3, (Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/vol02a-ch02_0.pdf.

¹⁷ *Id.* at 1.

¹⁸ See 28 U.S.C. §§ 351-364.

¹⁹ *Chief Justice's 2011 Year-End Report on the Federal Judiciary*, Supreme Court of the United States at 5 (Dec. 31, 2011), <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

The only ethics laws that apply to the Supreme Court are: the Ethics in Government Act, which requires Justices to file annual reports on their financial interest;²⁰ the Ethics Reform Act of 1989, which restricts outside employment and gifts;²¹ and the § 455 recusal rule discussed above. Without a code of conduct, Justices do not have any ethical obligations related to the numerous other potential conflicts of interest that are addressed by codes of conduct in the executive and legislative branches.

B. Codes of Conduct in Executive and Legislative Branches

Both the executive and legislative branches contain clear standards of conduct that cover specific situations that could lead to ethical issues. These rules provide officials ethics guidance and address circumstances where the public may reasonably question an official's actions as benefitting themselves rather than the public. Beyond creating a set of rules for officials to follow, most of these codes of conduct also contain a disclosure component to increase transparency.

The executive branch ethics code of conduct is titled “Standards of Ethical Conduct for Employee of the Executive Branch” and is codified in 5 C.F.R. Part 2635. The extensive provisions cover common ethical issues, including gifts,²² conflicting financial interests,²³ impartiality,²⁴ future employment negotiations,²⁵ misuse of position,²⁶ and outside activities.²⁷

Similarly, each chamber of Congress has a code of conduct. Explaining the purpose and importance of the code of conduct, the House Ethics Committee noted “[t]hat ‘public office is a public trust’ has long been a guiding principle for government. To uphold this trust, Congress has bound itself to abide by certain standards of conduct. . . .”²⁸ The House and Senate codes of conduct provide rules related to gifts, travel, outside employment, financial disclosure, outside activities, and other topics.²⁹

²⁰ Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824.

²¹ *Id.* (codified as amended at 5 U.S.C. app. § 502(a)).

²² 5 C.F.R. §§ 2635.201-2635.304.

²³ 5 C.F.R. §§ 2635.401-2635.403.

²⁴ 5 C.F.R. §§ 2635.501-2635.503.

²⁵ 5 C.F.R. §§ 2635.601-2635.607.

²⁶ 5 C.F.R. §§ 2635.701-2635.705.

²⁷ 5 C.F.R. §§ 2635.801-2635.809.

²⁸ *House Ethics Manual*, *supra* note 1, at 2.

²⁹ See U.S. House of Representatives Comm. on Standards of Conduct, 110th Cong., 2d Sess., *Code of Official Conduct*, Rule 23 (2008), <https://ethics.house.gov/publications/code-official-conduct#:~:text=9,->

[.A%20Member%2C%20Delegate%2C%20Resident%20Commissioner%2C%20officer%2C%20or%20employee.color%2C%20religion%2C%20sex%20\(including\);](https://ethics.house.gov/publications/code-official-conduct#:~:text=9,-.A%20Member%2C%20Delegate%2C%20Resident%20Commissioner%2C%20officer%2C%20or%20employee.color%2C%20religion%2C%20sex%20(including);) U.S. Senate, Select Comm. on Ethics, 117th Cong., 1st Sess., *The Senate Code of Official Conduct* Rule 35, (2021)

The EIGA and the Ethics Reform Act of 1989 apply to all three branches of government; yet the legislative and executive branches have opted to go above and beyond the ethics requirements of those two laws. The judiciary branch is the only branch that has not adopted a substantial and enforceable code of conduct to address ethical issues that fall outside those that have been prohibited by law. The conspicuous absence of a code of conduct for the Supreme Court raises questions about whether ethics are prioritized in the judiciary.

C. Establishing a Supreme Court Code of Conduct

For the Supreme Court to raise its ethical standards closer to the executive and legislative branches, the Justices need a code of conduct. The code of conduct for the Court may not be as extensive as the other branches, which encounter broader conflicts of interest based on the nature of each branch. Nevertheless, more comprehensive ethics rules for the Court are necessary and should increase public confidence in the judiciary.

A Supreme Court code of conduct should provide concrete standards for what a Justice can and cannot do. A code of conduct can help prove to the public that the Supreme Court is willing to hold itself accountable for conflicts of interest and other ethics issues that are not currently recognized in law. If the Court includes a compliance mechanism, the code of conduct can hold Justices accountable and restore the dwindling public trust in the institution.³⁰

III. Supreme Court Privately Sponsored Travel Lacks Transparency

All three branches of government have rules regarding officials accepting travel from private sources because of the potential for conflicts of interest associated with receipt of expensive and recreational gifts. The executive branch has the most restrictive rules, which limit senior officials from accepting privately sponsored travel in most circumstances.³¹ The legislative branch established extensive disclosure requirements for its members in response to corruption scandals involving privately sponsored travel. In contrast, Supreme Court Justices routinely attend trips paid for by private entities, but the limited information publicly disclosed about these trips has caused speculation about potential conflicts of interest. Enhanced disclosure requirements for Justices' privately sponsored

https://www.ethics.senate.gov/public/_cache/files/3507e6ae-2525-40ac-9ec8-7c6dbfe35933/2021--red-book---the-senate-code-of-official-conduct.pdf.

³⁰ *Public's Views of Supreme Court Turned More Negative Before News of Breyer's Retirement*, PEW RSCH. CTR. (Feb. 2, 2022), <https://www.pewresearch.org/politics/2022/02/02/publics-views-of-supreme-court-turned-more-negative-before-news-of-breyers-retirement/>.

³¹ See, e.g., 5 C.F.R. § 2635.807(a)(2)(iii).

travel could increase confidence in the integrity of the Court by providing the public with more information of potential conflicts of interest.

A. Disclosure of Privately Sponsored Travel for Justices

Justices can accept gifts of privately sponsored travel under certain circumstances, but it must be disclosed. The Supreme Court voluntarily agreed in 1991 to follow the Judicial Conference’s gift regulations.³² Under the rules, a judicial officer or employee “is not permitted to accept a gift from anyone who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer’s or employee’s official duties.”³³ However, the rules provide a broad exception for travel expenses “to attend a bar-related function, an educational activity, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.”³⁴

For travel reimbursements aggregating more than \$415 in value received from a single source, Justices must report the identity of the source and a brief description including travel locations, dates, and the nature of the expenses provided.³⁵ Justices are required to disclose privately sponsored travel only at the end of the year as part of the gifts and reimbursements sections of their financial disclosures.³⁶ The public is unable to adequately determine whether any permissible exception applies or if there are additional potential conflicts of interest associated with privately-sponsored travel because of the limited disclosure requirements. Specifically, Justices’ disclosures are missing four important features: details on the purpose of the trip; attendees of the trip; the cost of the trip; and immediate reporting of the trip.

The lack of transparency surrounding travel has raised questions about the influence that private parties funding or attending the trips can exert over individual Justices. From 2004 to 2018, Justices reported attending more than 1,300 privately sponsored trips.³⁷ Justice Antonin Scalia notably frequently traveled at third parties’ expense, taking 258 privately sponsored trips over the

³² Comm. on Codes of Conduct of the Judicial Conference (adopted Jan. 18, 1991), memorandum of Chief Justice Rhenquist, https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2012/02/21/National-Politics/Graphics/1991_Resolution.pdf.

³³ *Guide to Judiciary Policy*, United States Courts, Vol. 2, Pt. C, Ch. 6 §620.30, <https://www.uscourts.gov/sites/default/files/vol02c-ch06.pdf>.

³⁴ *Id.* at §620.35(b)(3).

³⁵ *Guide to Judiciary Policy*, United States Courts, Vol. 2, Pt. D, Ch. 3 §330, <https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf>.

³⁶ *Id.*

³⁷ Karl Evers-Hillstrom, *Supreme Court justices continue to rack up trips on private interest dime*, OPEN SECRETS (June 13, 2019), <https://www.opensecrets.org/news/2019/06/scotus-justices-rack-up-trips/>

course of 11 years;³⁸ but many other Justices traveled at the expense of private parties.

For example, in 2019, Justice Brett Kavanaugh was reimbursed for a 2-week teaching trip to the U.K. by George Mason University.³⁹ In 2018, Justice Ginsburg took 14 privately sponsored trips,⁴⁰ Justice Alito took six trips,⁴¹ and Justice Sonia Sotomayor took 13 trips.⁴² In 2014, six Justices received paid trips to Europe. That year, Justice Scalia went on 23 privately funded trips, including to Hawaii, Ireland, and Switzerland.⁴³ Justice Kennedy took a three-week trip paid for by the Aspen Institute and the University of the Pacific, with destinations of Salzburg, San Francisco, and Aspen.⁴⁴

As a result of the partial information disclosed about the trips, the public cannot determine if all of the travel definitely falls under the gift exemption for certain travel. More importantly, the public is not aware of the cost of the trip and participants, which, if known, could trigger the recusal requirement by bringing into question the impartiality of the Justice. Without more detailed and frequent reporting of privately sponsored travel, public confidence in the integrity of the Court may continue to decrease.

B. Disclosure of Privately Sponsored Travel for the Legislative Branch

Congress has robust reporting requirements for privately sponsored travel. One reason for the detailed reporting requirements is that Congress acknowledges

³⁸ Eric Lipton, *Scalia Took Dozens of Trips Funded by Private Sponsors*, N.Y. TIMES (Feb. 26, 2016), <https://www.nytimes.com/2016/02/27/us/politics/scalia-led-court-in-taking-trips-funded-by-private-sponsors.html>.

³⁹ *Financial Disclosure Report for Calendar Year 2019* at 2 (May 14, 2020), https://fixthecourt.com/wp-content/uploads/2020/06/Kavanaugh-BM-J3.-SC_SR_19.pdf (financial disclosure report of Justice Brett Kavanaugh).

⁴⁰ *Financial Disclosure Report for Calendar Year 2018* (May 15, 2019), https://s3.amazonaws.com/pfds.opensecrets.org/N99999924_2018.pdf (financial disclosure report of Justice Ruth Bader Ginsburg); *supra*, note 37.

⁴¹ *Financial Disclosure Report for Calendar Year 2018* (May 23, 2019), https://s3.amazonaws.com/pfds.opensecrets.org/N99999926_2018.pdf (financial disclosure report of Justice Samuel Alito).

⁴² *Financial Disclosure Report for Calendar Year 2018* (May 10, 2019), https://s3.amazonaws.com/pfds.opensecrets.org/N99999915_2018.pdf (financial disclosure report of Justice Sonia Sotomayor).

⁴³ *Financial Disclosure Report for Calendar Year 2014* (May 15, 2014), <https://embed.documentcloud.org/documents/2157458-scalia-antonin-2014> (financial disclosure report of Justice Antonin Scalia).

⁴⁴ *Financial Disclosure Report for Calendar Year 2014* (Mar. 11, 2015), <https://embed.documentcloud.org/documents/2157457-kennedy-anthony-2014> (financial disclosure report of Justice Anthony Kennedy); Reity O'Brien and Rachel Baye, *Supreme Court justices bolstered by free travel, royalties, rental income*, CTR. FOR PUB. INTEGRITY (July 2, 2015), <https://publicintegrity.org/politics/supreme-court-justices-bolstered-by-free-travel-royalties-rental-income/>.

that “travel may be among the most attractive and expensive gifts.”⁴⁵ The nature of the gift could create the appearance of a lawmaker using public office for private gain, and therefore certain travel is permitted only if it complies with the disclosure and pre-approval process. The disclosure is filed immediately following the trip and includes details about the sponsor of the trip, scheduled events, attendees, and costs.

Members of the House of Representatives, for example, are required by House Rule 25 to disclose the receipt of travel expenses from a private source if that travel is in connection with the lawmaker’s official duties within 15 days after the travel is completed, after which the disclosures are made available for public inspection on the Clerk of the House’s website.⁴⁶ This disclosure is in addition to the requirement to disclose gifts of private travel on the representative’s annual financial disclosure form.

Prior to the trip, members must submit details to the Ethics Committee for pre-approval to attend the trip. The extensive disclosures for pre- and post-trip reports include:

- *Pre-Travel Disclosure*
 - The member reports the date and location of the travel; the sponsor paying for the travel; the family accompanying the member; justification for the trip and how it is connected to official duties; and a certification that no registered lobbyists or foreign agents were involved in organizing, requesting, or arranging the trip.⁴⁷
 - The private sponsor reports 30 days prior to the start of the trip the name of the primary sponsor of the trip; an attestation that the trip is not financed in any part by a registered lobbyist or foreign agent; the true source of the sponsor’s funds and any additional sponsors; the sponsor’s interest in the trip and reason for the trip; and the anticipated cost of expenses, among other details of the trip.⁴⁸
- *Post-Travel Disclosure*
 - The member confirms attending the trip and provides the trip itinerary.⁴⁹

⁴⁵ *House Ethics Manual*, *supra* note 1, at 87.

⁴⁶ U.S. House of Representatives, 115th Cong., Rule 25, *Gift Travel Filings*, <https://disclosures-clerk.house.gov/PublicDisclosure/GiftTravelFilings>.

⁴⁷ U.S. House of Representatives, Comm. on Ethics, Rule, *Traveler Form*, https://ethics.house.gov/sites/ethics.house.gov/files/documents/2021_Travel_Traveler%20Form_Interactive.pdf.

⁴⁸ U.S. House of Representatives, Comm. on Ethics, *Primary Trip Sponsor Form*, https://ethics.house.gov/sites/ethics.house.gov/files/documents/2021_Primary_Trip_Sponsor%20Form_V2_Interactive.pdf.

⁴⁹ U.S. House of Representatives, Comm. on Ethics, *Member/Officer Post-Travel Disclosure Form*, https://ethics.house.gov/sites/ethics.house.gov/files/documents/2021_Travel_Member_Officer%20Post-Travel_Disclosure_Form_Interactive.pdf (last revised March 2021).

- The private sponsor provides the amount of expenses paid on behalf of, or reimbursed to, each individual traveler.⁵⁰

Willful or knowing misrepresentations on any of the preceding forms subject the signer to criminal prosecution under 18 U.S.C. §1001.

The Senate has similar travel disclosure requirements under Senate Rule 35.⁵¹ The Senate requires 30-day advanced approval from the Senate Select Committee on Ethics by submitting a Private Sponsor Travel Certification Form⁵² along with the invitation for the travel and the itinerary for the travel. If the travel is approved, a post-travel disclosure package must be submitted within 30 days of completion of the privately sponsored travel. That package includes a Post-Travel Disclosure of Expenses,⁵³ the travel invitation, the completed and signed Private Sponsor Travel Certification Form, and any attachments. These documents are made available by the Secretary of the Senate.⁵⁴

Congress established these enhanced disclosure requirements following ethics scandals involving lawmakers accepting travel from private sources without oversight or transparency.⁵⁵ The experience of the legislative branch suggests that risks of ethics scandals will increase if the judicial branch continues to allow Justices to accept privately sponsored travel without at least increasing disclosure.

⁵⁰ U.S. House of Representatives, Comm. on Ethics, *Sponsor Post-Travel Disclosure Form*, https://ethics.house.gov/sites/ethics.house.gov/files/documents/2021_Travel_Sponsor%20Post-Travel_Disclosure%20Form_Interactive%20%28002%29.pdf (last revised March 2021).

⁵¹ U.S. Senate, Select Comm. on Ethics, 117th Cong., 1st Sess., *The Senate Code of Official Conduct Rule 35*, (2021), https://www.ethics.senate.gov/public/_cache/files/3507e6ae-2525-40ac-9ec8-7c6dbfe35933/2021--red-book--the-senate-code-of-official-conduct.pdf.

⁵² U.S. Senate, Ethics Comm., *Private Sponsor Travel Certification Form*, [ethics.senate.gov/public/_cache/files/e3282b35-ddee-43e5-9c59-10920eedae26/private-sponsor-travel-certification-form.pdf](https://www.ethics.senate.gov/public/_cache/files/e3282b35-ddee-43e5-9c59-10920eedae26/private-sponsor-travel-certification-form.pdf).

⁵³ U.S. Senate, Ethics Comm., *Senators and Officers Post-Travel Disclosure of Travel Expenses*, https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=C1735D98-6E76-4D6B-A89E-A06B47DAB8CA (last revised Jan. 3, 2011).

⁵⁴ U.S. Senate, Select Comm. on Ethics, *S.R. 35 Requirements*, https://www.senate.gov/legislative/Public_Disclosure/Rule_35_Travel.htm (last visited Apr. 28, 2022); U.S. Senate, *Gift Rule/Outside Paid Travel Database*, <https://giftrule-disclosure.senate.gov/> (last visited Apr. 28, 2022).

⁵⁵ “Under the previous version of the gift rule, the Standards Committee did not have authority to approve trips paid for by a private source. The previous rule placed on individual Members and officers, for themselves and their staff, the responsibility of making the determination that a particular trip was in connection with official duties and would not create the appearance of using public office for private gain. Pursuant to the rules adopted at the beginning of the 110th Congress, no such travel may be accepted without first receiving written approval by the Standards Committee.” *House Ethics Manual*, *supra* note 1, at 88; *See, e.g.*, Juan Williams, *Cleaning Up Capitol Hill After Abramoff*, NPR (Jan. 20, 2006), <https://www.npr.org/templates/story/story.php?storyId=516521>.

C. Increasing Transparency of Privately Sponsored Travel for Justices

To improve public confidence in the Supreme Court and its impartiality, Justices should disclose additional details concerning their acceptance of privately sponsored travel, including: the cost of the travel, attendees, and all scheduled events during the trip. Moreover, the disclosures should become public immediately following the trip instead of annually. The prompt disclosures will provide the public and litigants with adequate notice of any potential conflicts of interest with pending matters before the Court.

Congress' disclosure requirements for privately sponsored travel demonstrate that providing the public with clear information about the nature of a trip can decrease speculation of whether the trip is improper. Current Supreme Court ethics rules appear to allow outside sources the ability to provide lavish trips to Justices without the public ever knowing the full nature of the relationship between the Justices and the host of the trip or other participants—or whether those parties have interests before the Court. Reform of the disclosure requirement is needed to restore public trust.

IV. Conclusion

The ethics laws that apply to Supreme Court Justices are not expected to exactly match those that apply to the executive and legislative branches because of the relatively small size of the Supreme Court and the nature of the role of the judicial branch. Nevertheless, the history of repeated ethics concerns with Justices' potential conflicts of interest demonstrates the limits of the current Supreme Court ethics rules. Establishing specific and relevant ethics practices that are effective in the other two branches to the Supreme Court can increase public trust in the judiciary.