



## FACT SHEET: SUPREME COURT ETHICS

January 29, 2019

**Support for a Supreme Court ethics code is nearly unanimous nationwide.**  
***This morning's House Judiciary hearing could change the minds of the few holdouts.***

Though Supreme Court justices are required to follow the rudimentary federal recusal [statute](#), which is based on the common law maxim that no one should be a judge in his own case, **they are exempt from adhering to the [Code of Conduct for U.S. Judges](#)**, which states that federal judges should:

- Uphold the integrity and independence of the judiciary (canon 1)
- Avoid impropriety and the appearance of impropriety in all activities (canon 2)
- Perform the duties of the office fairly, impartially and diligently (canon 3)
- Avoid activities that detract from the dignity of the office or reflect adversely on one's impartiality (canon 4)
- Refrain from political activity (canon 5)

The justices' exemption from an ethics code has been criticized by Republicans and Democrats alike (*see end of fact sheet*), not to mention top legal ethicists Charles Geyh and Stephen Gillers, who in 2013 [wrote](#):

***"A code of ethics binds nearly every judge in America. The sole exceptions are the justices of the Supreme Court.***

***"Today, for example, no ethics rule prevents a justice from engaging in political activity, speaking at the fundraising event of a partisan organization, or joining a club that discriminates based on race, sex, religion or national origin. Ethics rules for all other federal judges forbid these activities. This vacuum is unacceptable."***

**Every year, the public is again reminded that the integrity of the Supreme Court should not be taken for granted.**

- In 2018, then-Judge Kavanaugh, in emotional Senate Judiciary [testimony](#), belied his impartiality in violation of canon 3
- In 2017, Justice Gorsuch [addressed](#) several funders of the term's major organized labor case, at Trump International Hotel in D.C., no less, in violation of canon 4
- In 2016, Justice Ginsburg gave [interviews](#) insulting then-candidate Donald Trump in violation of canon 5

**Last Congress marked the first time Republicans and Democrats joined together to support SCOTUS ethics reform.**

- On Sept. 13, the House Judiciary Committee, by voice vote, passed the Judiciary ROOM Act (H.R. 6755), which directs the third branch to create a code of conduct that would apply to all Article III judges, **including Supreme Court justices.**
- In an effort to once again bring the parties together on this pro-accountability measure, **Section 7001 of H.R. 1 uses the same language as Section 201 of the ROOM Act.**

**The language of H.R. 1 balances the need for a Supreme Court ethics code while acknowledging that the high court may need to be carved out of certain provisions.**

- Supreme Court justices are not fungible like district or circuit court judges, so the clause stating that certain "provisions" of the code may only be "applicable [...] to certain categories of judges or justices" is purposeful and sensible.

**The language also accounts for participation from the Supreme Court in the creation of the code.**

- The provision states it's the Judicial Conference that "shall issue a code of conduct," and since the Chief Justice of the U.S. is the [presiding officer](#) of the Judicial Conference, the justices will have a seat at the table in drafting the code.

**Detractors say that a conduct code would not be fully enforceable at Supreme Court, given there's no recourse or reprimand for non-compliance save the high bar of impeachment, and that justices already "consult" the code.**

- The code should not be viewed as a burden. Rather, it is an opportunity to clarify how justices should deal with the ethical challenges they all face.
- Since we know from [memoranda, reports](#) and [congressional testimony](#) that each justice has his or her own way of viewing the ethical responsibilities of the office, a uniform code would promote consistency in judicial integrity.
- The American people agree with Fix the Court: according to polling from 2018, [86% of Americans](#) (80% of independents, 85% of Democrats and 89% of Republicans) say they are in favor of implementing a SCOTUS ethics code.

### **Postscript: Judiciary Committee Criticizes the Lack of SCOTUS Ethics Rules [2/14/17]**

In the last Congress, the House Judiciary's Courts, IP and the Internet Subcommittee held a hearing at which Republicans and Democrats alike decried the third branch's lack of accountability and suggested reforms to improve oversight in the courts, including a code of conduct. Timestamps are from [this link](#).

***Previous Courts Subcommittee Chairman Darrell Issa (22:56):*** "When it comes to transparency [...], when it comes to the ethics of the judiciary, we have an obligation. We cannot alone simply say we'll wait to impeach a judge from time to time."

***Current Full Committee Chairman Jerry Nadler (30:30):*** "My deep respect for the judiciary does not mean that there are no improvements we can make to the courts system, particularly when it comes to transparency. This includes stronger ethics and disclosure requirements, particularly with respect to the Supreme Court, which is not bound by the code of ethics that applies to other federal judges."

***Previous Full Committee Chairman Bob Goodlatte (32:52):*** "The trust that the American people have in our courts system is crucial to its success. While this trust has been cultivated over many generations, it can be quickly lost. This is why it is important that the judiciary continue to operate in a transparent manner at all times and handle the disputes before it efficiently, ethically and impartially."

***Current Courts Subcommittee Chairman Hank Johnson (1:31:28):*** "Is there any constitutional reason that would prevent Congress from imposing upon the Supreme Court justices a rule that they abide by the Code of Conduct for United States Judges or that they write a code of conduct for themselves and abide by it?"

Indiana University Law Prof. Charles Geyh: "[Legal ethicist] Steve Gillers and I are both of the opinion that the 'necessary and proper' clause coupled with the power to regulate the appellate jurisdiction of the Supreme Court gives [Congress] the power to insist on a code of conduct."