



*A 10-point plan to help the Supreme Court recover
from the Justice Thomas-Ginni Thomas election subversion scandal*

Actions for Article I

1. Congress should ensure that SCOTUS adopts an ethics code

It's [no secret](#) that the justices need a formal code of conduct. Congress should give Chief Justice Roberts and his colleagues one final opportunity [over the next month](#) to write it – recall that Justice Kagan [told](#) a House panel in 2019 a code was “something that’s being thought very seriously about” by Roberts – and if Roberts demurs, the House and Senate Judiciary Committees should work with ethics experts to write one for the court.

2. Congress should hold hearings

The House Judiciary Committee’s Courts Subcommittee had a hearing on judicial ethics scheduled for March 8, but it was postponed due to a scheduling conflict. We believe it’ll be rescheduled for just after the Easter recess, and we look forward to related hearings being held on the Senate side.

3. Congress should update the recusal statute and require recusal explanations

The federal law governing recusals hasn’t been changed in any significant way since 1974. It’s time for an update; here are two ideas to start: (a) if a judge's spouse is a paid contractor of an individual or organization that, while the contract is operative or within a few years of its conclusion, finds itself in litigation before that judge: recusal required; (b) if a judge accepts a gift or free travel from an individual or organization, and within a few years the gift-giver finds themselves before that judge: recusal required. Additionally, requiring recusal explanations would change the atmosphere around SCOTUS recusal, as justices would start viewing the process as something more public with an accountability angle to it.

4. Congress should take judges’ spouses’ work out of the judicial security bill

As [first noted](#) by *Politico*’s Josh Gerstein, the version of the judicial security bill ([S. 2340](#)) that advanced through Senate Judiciary in December would permit a judge or justice to get the “the name and address of an employer of immediate family” completely scrubbed from the Internet. That provision, along with a few others, like scrubbing a judge’s date of birth, should be removed before the bill reaches the Senate floor.

Actions for Article II

5. Respond to Fix the Court’s FOIA of DOJ brass’ emails with Ginni

On Mar. 29, Fix the Court submitted FOIA requests to the Justice Department requesting any correspondence between Ginni Thomas and Jeffrey A. Rosen, Richard P. Donoghue and Jeffrey B. Clark between Nov. 1, 2020, and Jan. 20, 2021. (The former two didn't want to subvert the election results, but Ginni still might have reached out.)

Actions for Article III

6. SCOTUS should strike problematic amicus briefs

In January, Fix the Court [asked](#) the high court to adopt a rule whereby an amicus brief may be struck if its existence on the docket could cause the impartiality of a justice to be reasonably questioned. Inspired by the Frank Gaffney-signed brief backing the Trump administration’s Muslim ban (Gaffney was paying Ginni Thomas at the time he signed on to it),

and the National Association of Scholars brief in the upcoming affirmation action cases (Ginni sits on an NAS board), we believe SCOTUS should grant itself this authority, which some circuit courts have employed since 2018.

7. Financial disclosures should include consulting contracts

When judges and justices fill out their annual financial disclosure reports, they are required to list their spouse's "non-investment income." But the filing directions say ([p. 22](#)), "If a spouse is self-employed in business or a profession, only the nature of such business or profession and the words 'self-employed' should be reported (e.g., self-employed attorney or self-employed financial consultant)." That doesn't cut it. The Judicial Conference should change the rule so a self-employed judicial spouse should be required to list the source and amount of any consulting contracts greater than \$1,000.

8. The Codes of Conduct Committee should issue new guidance on political activity to ensure this type of episode doesn't happen again

The Judicial Conference should update its own codes of conduct to indicate that texting the White House chief of staff about subverting democracy is not acceptable. In other words, canon 5 of the code – which says little more than "A Judge Should Refrain from Political Activity" – needs more specificity, especially knowing the Thomas coattails are long; with 10 former Thomas clerks having been installed in lifetime appointments in the judiciary since 2017, we wouldn't want them getting any ideas.

Actions for the fourth estate

9. When the justices are out giving public talks, journalists and regular citizens should ask them to respond to these lapses

Six non-Thomas justices have spouses. They should be asked: what would they do on Jan. 6 cases if their wives or husband were involved in the attempted coup? All nine should be asked: do you believe SCOTUS needs an ethics code? What's a justice's responsibility to the public for explaining a decision to participate in a case where there's an apparent conflict? Such questions would internalize these issues and perhaps spring the justices to action vis-a-vis an ethics code or stronger recusal rules.

10. Motions to recuse should be easier to file

We believe Justice Thomas should recuse from any future Supreme Court cases and petitions involving Jan. 6 or the 2020 election. But he may decline that invitation. Currently, it's not easy to file a recusal motion because there are no directions or templates on [SupremeCourt.gov](https://www.supremecourt.gov). Have no fear; [FixTheCourt.com/recusalmotion](https://www.fixthecourt.com) will be up with a template by the end of March.