

July 18, 2023

Dear Ranking Member Graham and Republican Members of the Senate Judiciary Committee,

Our organizations worked with the *Wall Street Journal* in 2021-22 on its “Hidden Interests” series, which found 131 federal judges participated in 685 cases despite having a financial stake in one of the parties, and collaborated with Senators Cornyn and Coons on the ensuing Courthouse Ethics and Transparency Act (CETA) that passed the House and Senate unanimously and was signed into law by President Biden last year. As you know, the legislation requires all federal judges, including Supreme Court justices, to post their annual financial disclosure reports online and to complete, file, and post reports any time they buy or sell more than \$1,000 in stock — something lawmakers have had to do for a decade.

To date, the justices have abided by both the disclosure and the stock-reporting requirements.

In advance of Thursday’s markup of S. 359, the Supreme Court Ethics, Recusal and Transparency Act (SCERT), we write to highlight SCERT’s bipartisan provisions that, like CETA, would bring ethical guidelines for the Supreme Court in line with those in other government institutions. The impartiality of the Court cannot be assured without urgent and necessary ethics reform.

In 2021, a [letter](#) written by Senators Graham and Whitehouse asked the Court, “What plans, if any, [it has...] to bring its gift travel and hospitality restrictions and disclosure policies in line with those of [...] Congress?” The revelations of the last several months concerning justices’ gifts and travel underscore how prescient and important the senators’ inquiry was. Yet, to date, the Court has not offered a substantive response. Consistent with the letter’s request, SCERT would require the Court to “establish rules governing the disclosure of all gifts, income, or reimbursements” that are, at a minimum (and akin to CETA), on par with the rules governing disclosures for members of Congress.

In 2018, the GOP-led House Judiciary Committee passed a [bill](#) out of Committee unanimously that would have required a Supreme Court Code of Conduct and brief explanations of the justices’ recusals.<sup>1</sup> SCERT would require the same.

In 2017, then-Chairman Grassley introduced a [bill](#) that would create an Inspector General for the judiciary to investigate waste, fraud and abuse across the branch, including at the Supreme Court. Similarly, SCERT would create a complaints panel that could investigate potential ethics violations by the justices. Both bills, like the current lower court misconduct process, would filter out frivolous complaints, and the end result in each would be a public report on findings that, rather than being punitive, would describe steps that could be taken to improve behavior and comply with the relevant laws or ethical guidelines.

Finally, both Congress and the executive branch employ “cooling off” periods, placing important limits on the ability of former federal government employees to represent anyone before their erstwhile employer. Republican and Democratic ex-lawmakers alike regularly abide by such a rule. SCERT creates an analogous requirement, prohibiting a justice from participating in a party’s case if that party has provided a gift to the justice in the prior six years.

In sum, we hope you will consider supporting SCERT as a way to rebuild faith in the Supreme Court and that during Thursday’s markup and beyond you will continue to back, as you did a year ago, commonsense reforms concerning the ethics, disclosures and oversight of Washington’s least accountable institution.

Sincerely,

Project On Government Oversight

Free Law Project

Fix the Court

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<sup>1</sup> Our recollection is there was no Senate companion not for lack of interest but because the bill also increased the number of authorized lower court judgeships per the Judicial Conference’s recommendation, and senators had been waiting on Republicans and Democrats in the House to reach an agreement on how to pay for the judgeships before proceeding — a task the lower chamber was unable to complete before the session ended.