

United States Senate
Committee on the Judiciary

“Supreme Court Ethics Reform”

May 2, 2023

Amanda Frost
John A. Ewald Jr. Research Professor of Law
University of Virginia School of Law

Introduction

Thank you for inviting me to testify regarding Congress's role in regulating the ethical obligations of U.S. Supreme Court Justices.

I am a professor of law at the University of Virginia School of Law. My areas of expertise include federal courts and judicial ethics, and I have authored academic articles on these topics. *See, e.g.,* Amanda Frost, *Judicial Ethics and Supreme Court Exceptionalism*, 26 *GEORGETOWN JOURNAL OF LEGAL ETHICS* 443 (2013); Amanda Frost, *Keeping Up Appearances: A Process-Oriented Approach to Judicial Recusal*, 53 *UNIVERSITY OF KANSAS LAW REVIEW* 531 (2005).

Part I of my testimony describes questions and concerns raised by the Supreme Court's April 25, 2023, Statement on Ethics Principles and Practices. The deficiencies in that Statement confirm the need for new legislation clarifying the recusal process, as well as an enforceable Code of Conduct for the U.S. Supreme Court. Part II explains that Congress has the constitutional authority to regulate the ethical standards of all members of the federal judiciary, including the Justices on the U.S. Supreme Court.

I. Questions and Concerns Raised by the Court's Statement on Ethics Principles and Practices

A. Background

In recent years, Justices have repeatedly violated laws regulating judicial ethics. For example, some Justices have repeatedly failed to recuse themselves as required by 28 U.S.C. § 455, the federal recusal statute. *See* "Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interest," Fix the Court, available at <https://fixthecourt.com/2023/03/recent-times-justice-failed-recuse-despite-clear-conflict-interest/>. Others have repeatedly failed to disclose outside income and gifts as required by the Ethics in Government Act of 1978. *See* "The Justices' Financial Disclosure Omissions," Fix the Court, available at <https://fixthecourt.com/2023/04/justices-financial-disclosure-omissions-this-will-be-updated-as-additional-info-becomes-available/>;

On April 6, 2023, an article in *ProPublica* described Justice Clarence Thomas' failure to disclose his acceptance of gifts of vacations and transportation on private jets and a private yacht. *See* Joshua Kaplan, Justin Elliott, and Alex Mierjeski, "Clarence Thomas and the Billionaire," *ProPublica*, Apr. 6, 2023, available at <https://www.propublica.org/article/clarence-thomas-scotus->

[undisclosed-luxury-travel-gifts-crow](#). After *ProPublica* published its account, Justice Thomas issued a short public statement explaining that he had been advised by “colleagues and others in the judiciary” that “this sort of personal hospitality from close personal friends, who did not have business before the Court, was not reportable.” See [Statement of Justice Clarence Thomas](#), April 7, 2023. A subsequent *ProPublica* article, published on April 13, 2023, revealed that Justice Thomas also failed to disclose a real estate transaction. See Justin Elliott, Joshua Kaplan, and Alex Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas. The Justice Didn’t Disclose the Deal,” *ProPublica*, Apr. 13, 2023, available at <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus>.

On April 20, 2023, Senator Richard Durbin, Chair of the Senate Judiciary Committee, invited Chief Justice John Roberts, or an associate Justice designated by Roberts, to testify before the Senate Judiciary Committee. Senator Durbin’s letter noted the “steady stream of revelations regarding Justices falling short of the ethical standards,” as well as the lack of communication about these problems from the Court. The letter concluded: “The time has come for a new public conversation on ways to restore confidence in the Court’s ethical standards. I invite you to join it, and I look forward to your response.” [Letter from R. Durbin to J. Roberts](#), April 20, 2023.

On April 25, 2023, Chief Justice Roberts declined Senator Durbin’s invitation to testify before the Senate Judiciary Committee, citing “separation of powers concerns and the importance of preserving judicial independence.” Accompanying the letter was a five-page “Statement on Ethics Principles and Practices” (hereinafter “Court’s Ethics Statement” or “Statement”), signed by all nine sitting Justices. The goal of this Statement was to “reaffirm and restate foundational ethics principles and practices to which [the Justices] subscribe in carrying out their responsibilities as Members of the Supreme Court of the United States.”

The Justices’ decision to publicize information regarding their ethics practices is a welcome development, particularly in the wake of Justices’ recurring ethics violations and a general lack of transparency on these issues. Unfortunately, however, the Court’s Ethics Statement raises more questions than it answers, confirming the need for congressional legislation of the Justices’ ethical obligations.

B. Questions and Concerns Raised by the Court’s Ethics Statement

Listed below are questions and concerns raised by Chief Justice Roberts’ letter to Senator Durbin and the Court’s Ethics Statement that accompanied it.

1) Chief Justice John Roberts’ Decision Not to Testify

In the first paragraph of his letter to Senator Durbin, Chief Justice Roberts declined Senator Durbin’s invitation to testify before the Senate Judiciary Committee. In the second paragraph, he stated that “testimony before the Senate Judiciary Committee by the Chief Justice of the United States is exceedingly rare,” and implied that testifying would jeopardize judicial independence and/or violate separation of powers.

Chief Justice Roberts’ response is puzzling. Appearances by the Justices before Congress are not rare. Sitting Justices have testified before Congress at 92 hearings since 1960 on a variety of matters regarding judicial administration.¹ Senator Durbin’s letter of invitation made clear that the questions would be limited to judicial ethics and, in any case, the Chief Justice could decline to answer any question he feared would undermine the Court’s independence. His testimony regarding ethics policies would contribute to interbranch dialogue on this important aspect of judicial administration, and would not interfere with the Court’s decisional independence. To the contrary, such testimony could benefit the Court by providing the Justices’ perspective on proposed ethics legislation, thereby improving the final legislation.

¹ For example, Justice Antonin Scalia and Justice Stephen Breyer appeared before the Senate Judiciary Committee on October 5, 2011, at a hearing entitled: “Considering the Role of Judges Under the Constitution of the United States,” and Justice Anthony Kennedy appeared before the Senate Judiciary Committee on February 14, 2007, at a hearing entitled “Judicial Security and Independence.” Many of the hearings at which Justices appeared concerned appropriations, but Justices were asked and answered a variety of questions regarding judicial administration at those hearings. Most recently, in 2019, Justice Elena Kagan testified before a House Subcommittee that the Court was “seriously” considering adopting a code of conduct. *See* Robert Barnes and Ann Marimow, “Supreme Court Justices discussed, but did not agree on, code of conduct,” *Washington Post*, Feb. 9, 2023.

2) The Justices' Failure to Comply with Federal Ethics Laws

The Court's Ethics Statement declares:

In 1991, Members of the Court voluntarily adopted a resolution to follow the substance of the Judicial Conference Regulations [implementing ethics legislation]. Since then Justices have followed the financial disclosure requirements and limitations on gifts, outside earned income, outside employment, and honoraria. They file the same annual financial disclosure reports as other federal judges.

As a threshold matter, the Court's Ethics Statement could be read to suggest that the Justices follow these federal ethics laws "voluntarily." In fact, those laws are binding on "judicial officers"—a term that includes the Justices—and so the Justices' compliance is not voluntary. 5 U.S.C. 13101(10).

Furthermore, the Court's Ethics Statement does not address some Justices' repeated failures to report income and gifts, as required by these laws. "The Justices' Financial Disclosure Omissions," Fix the Court, available at <https://fixthecourt.com/2023/04/justices-financial-disclosure-omissions-this-will-be-updated-as-additional-info-becomes-available/>. In particular, the Statement does not reference Justice Clarence Thomas' frequent errors over many years, including the recent *ProPublica* articles revealing that he failed to report tens of thousands of dollars of gifts in the form of travel on a private jet and a yacht, as well as real estate transactions. Finally, the Statement is also silent about how to ensure Justices comply with the law in the future, and the consequences for failures to follow these laws.

Justice Thomas' response to the *ProPublica* article illustrates the failure of the Court's current policies. In his response, Justice Thomas declared:

Early in my tenure at the Court, I sought guidance from my colleagues and others in the judiciary, and was advised that this sort of personal hospitality from close personal friends, who did not have business before the Court, was not reportable.

Justice Thomas was either misadvised, or misunderstood the advice given. The Ethics in Government Act of 1978 requires reporting all gifts over a few hundred dollars. Although the law makes an exception for "food, lodging, or entertainment received as personal hospitality of an individual," that exception

does not include transportation to social events or vacations. 5 U.S.C. 13103(a)(2)(A). That law also contains no exception for transportation to professional events, or for transactions involving real estate.

Justice Thomas did not identify which of his colleagues may have misadvised him, nor did he acknowledge that he was obligated to consult the *text* of the Ethics in Government Act rather than rely on word-of-mouth. These errors are part of a pattern of violations by Justice Thomas, including a multi-year failure to report income received by his wife from the Heritage Foundation and Hillsdale College, among other sources. (In 2011, Justice Thomas filed an amended financial disclosure report, with an attached note stating: “It has come to my attention that information regarding my spouse’s employment required in Part III.B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions.”). Neither Justice Thomas, nor any other Justice, has ever faced any legal consequence for violations of these laws.

Accordingly, the Court’s current policies and practices have failed to ensure compliance with ethics rules. Yet the Court’s Ethics Statement neither acknowledges the unfortunate history of Justices’ failure to comply with their legal obligations, nor suggests methods for ensuring compliance in the future.

3) Insufficient Standards for Determining Whether Conduct “Creates an Appearance of Impropriety”

The Court’s Ethics Statement declares:

[I]n deciding whether to speak before any group, a Justice should consider whether doing so would create an appearance of impropriety in the minds of reasonable members of the public. There is an appearance of impropriety when an unbiased and reasonable person who is aware of all relevant facts would doubt that the Justice could fairly discharge his or her duties.

These two sentences are confusing because they state two different standards. The first sentence quoted above relies on the “reasonable minds” standard. That is the same standard referred to in the Commentary to Canon 2 of the Code of Conduct for United States Judges, which instructs judges to avoid

activities creating the “appearance of impropriety.”² However, the second sentence adds that this “reasonable” person must be both “unbiased” and “aware of all relevant facts,” which creates confusion and undermines the purpose of the “appearance of impropriety” standard used in Canon 2 of the Code of Conduct.

The addition of the term “unbiased” requires clarification. Who decides whether a person is biased? What is the standard for determining bias? And how does being “unbiased” differ from being reasonable? This new term raises the concern that a Justice may conclude her conduct is permitted if, in the Justice’s opinion, all those who view that conduct as improper are biased against her.

In addition, the requirement that the observer be “aware of all relevant facts” directly undermines the goal of the Code of Conduct’s objective standard. The objective standard protects the reputation of the judiciary by prohibiting conduct that *appears* to be improper to the reasonable person based on facts that person could ascertain, regardless of whether it actually *is* improper. For that reason, the Commentary to Canon 2 of the Code of Conduct states: “An appearance of impropriety occurs when reasonable minds, *with knowledge of all the relevant circumstances disclosed by a reasonable inquiry*, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.” (Emphasis added). Yet under the Court’s Ethics Statement, a Justice need not share “all relevant facts” with the public—even if those facts are known only to the Justice.

The end result is that the Court’s Ethics Statement leaves to each Justice to determine whether his or her conduct would appear improper to someone who is not only “reasonable,” but also “unbiased” (in the Justice’s view) as well as aware of all the relevant facts—facts that only the Justice may know, and which he or she is not obligated to share with anyone else. This is not the standard that lower court judges follow under the Code of Conduct, and it leaves the Justices leeway to engage in conduct that, to a reasonable person, creates the appearance of impropriety.

² Although the Code of Conduct does not apply to the Justices, Chief Justice Roberts has stated that “[a]ll Members of the Court do in fact consult the Code of Conduct in assessing their ethical obligations.” *See 2011 Year-End Report on the Federal Judiciary*, at 4.

4) The Unfounded Modification of the Recusal Statute by the Addition of a “Duty to Sit”

The Court’s Ethics Statement declares that the Justices’ “application” of the recusal standards under 28 U.S.C. § 455 “can differ” from lower-court judges “due to the unique institutional setting of the Court.” The Statement explains that lower courts can substitute a different judge for the recused judge, then states that the “Supreme Court consists of nine members who always sit together.” Accordingly, the Statement declares that Justices have a “duty to sit” that must be taken into “consideration” when making a recusal determination to avoid “impairment of a full court.”

The “duty to sit” violates the plain language of the statutory standard for recusal. Nothing in 28 U.S.C. § 455 references a “duty to sit” or states that the standards for disqualification of a Justice should differ from the standards that apply to lower court judges. To the contrary, Section 455’s disqualification standards are mandatory and apply identically to all federal judges, stating: “Any justice, judge or magistrate judge of the United States shall disqualify himself” under a set of specific circumstances. 28 U.S.C. § 455(a).

Furthermore, the manufactured “duty to sit” requirement is based on the Statement’s erroneous assertion that the “Supreme Court consists of nine Members who always sit together.” Congress has the sole constitutional authority to establish the size of the Supreme Court, as well as to establish the number needed for a quorum. Today, the quorum is set at six Justices, permitting the Court to decide cases for the nation when three members are absent for any reason, including because they were required to recuse themselves under Section 455. *See* 28 U.S.C. § 1. In nearly every Term throughout its history, including this Term, the Supreme Court has decided cases with fewer than nine Justices.

Congress has the authority to incorporate a “duty to sit” into the recusal statute, but it has chosen not to do so. Instead, it enacted a mandatory recusal standard that does not change depending on its impact on the number of Justices who are available to decide a specific case. By adding the “duty to sit” requirement to the statutory recusal standard, the Supreme Court has arrogated to itself both the power to determine when to recuse and the size of the Court—matters that the Constitution assigns to Congress.

The result of the Court’s fabricated “duty to sit” requirement will be to taint decisions by enabling Justices to sit on cases in which their partiality might

reasonably be questioned. This problem is particularly acute if the vote is 5-4 and a Justice in the majority has a recusal-worthy conflict. Although 4-4 ties are not ideal, they are preferable to a 5-4 decision establishing binding precedent for the nation based on the vote of a Justice who has a financial or other conflict of interest. Indeed, that is the very result that Congress intended to prevent when enacting the federal recusal statute.

5) The Flawed Practice of Allowing the Justice with an Alleged Conflict to be the Sole Decisionmaker Regarding Recusal

The Court's Ethics Statement declares:

Individual Justices, rather than the Court, decide recusal issues. If the full Court or any subset of the Court were to review the recusal decisions of individual Justices, it would create an undesirable situation in which the Court could affect the outcome of a case by selecting who among its Members may participate.

The Statement does not acknowledge that the practice of allowing each Justice to decide for him or herself whether to recuse has failed. As has been well documented, Justices repeatedly hear and decide cases in which they or their spouse have a financial or other interest in the matter, in violation of 28 U.S.C. § 455. *See* “Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interest,” Fix the Court, available at <https://fixthecourt.com/2023/03/recent-times-justice-failed-recuse-despite-clear-conflict-interest/>.

Finally, even if Justices never erred when applying recusal standards to themselves, the current practice leaves the recusal decision in the hands of the decisionmaker whose partiality is questioned—the very result the recusal statute was designed to prevent. *See* Russell Wheeler & Malia Reddick, *Judicial Recusal Procedures* p. 5 (June 2017) (“Allowing the judge who is the subject of the recusal motion to make a dispositive decision denying that motion flies in the face of the oft-invoked, age-old proposition that no person should be a judge in his own case.”)

The Court's Ethics Statement declares that it would be “undesirable” to allow the full Court to “affect the outcome of a case by selecting who among its Members may participate.” But the full Court would not be “selecting” which Justices may participate at its unbridled discretion; rather, the Justices would be applying the recusal standards under 28 U.S.C. § 455 to determine whether a

Justice has a conflict that requires disqualification. Recusal decisions are made by state supreme court justices for their colleagues, as well as by federal circuit judges reviewing district court decisions not to recuse. *See, e.g., State v. Allen*, 322 Wis.2d 372, 453-458 (2010) (describing state supreme court practices); CHARLES GARDNER GEYH, *JUDICIAL DISQUALIFICATION: AN ANALYSIS OF FEDERAL LAW* (3d ed. 2010) 99-109 (describing the procedure for reviewing recusal decisions under federal law). Presumably, the Justices would carefully apply the legal standards to the facts when making a recusal determination, just as these other courts do, without regard to how that decision might affect the result of the case. Indeed, that is their constitutionally-assigned task when deciding the *merits* of every case. The Statement's implication that the Justices would apply the law in an outcome-oriented manner when deciding recusal questions is troubling, and hopefully unwarranted.

Admittedly, voting to disqualify a fellow Justice from hearing a case is a sensitive matter. But the Justices are regularly required to make decisions on sensitive matters for the nation, ranging from the death penalty to same sex marriage to abortion. They frequently disagree with each other when doing so, sometimes in strident terms, without damaging their ability to work with each other on future cases. The same professionalism can and should govern their determination of recusal questions.³

As explained above, the Court's Ethics Statement raises a number of questions and concerns. The Statement fails to address prior violations of federal ethics laws, and does not propose methods for preventing future violations. At times, it misstates legal standards, adding leeway and discretion that does not exist in the text of the ethics laws. For all these reasons, Congress should move forward with legislation on these matters. As explained below, the Constitution gives

³ In addition, the current practice regarding recusal decisions lacks transparency and consistency. A Justice often chooses to recuse (or not) without revealing relevant facts or explaining the basis for that decision, undermining public faith in the Court and preventing the development of a body of precedent to guide future recusal decisions. The predictable result is that some Justices regularly recuse themselves under circumstances in which others do not. The Court's Ethics Statement notes that "a Justice may provide a summary explanation of a recusal decision," but does not require that Justices do so, and so fails to address this problem.

Congress the authority to enact such legislation to protect the integrity of the Supreme Court.

II. Congressional Authority to Regulate Judicial Ethics

The Court's Ethics Statement suggests that the Justices' compliance with federal ethics laws is voluntary. The Statement refers to the Court's decision to "voluntarily adopt[] a resolution" to follow various ethics laws. The Statement also partially repeats Chief Justice Roberts' declaration in his *2011 Year-End Report on the Federal Judiciary* that: "As in the case of financial reporting and gift requirements, the limits of Congress's power to require recusal have never been tested." Accordingly, at least some Members of the Supreme Court appear to question whether Congress has the constitutional authority to regulate the Justices' ethical obligations.

The Justices' claim to be above the laws that govern all federal judges, as well as officials in the other two branches of the federal government, has no basis in constitutional text or history. Congress's power to regulate the ethical obligations of all federal judges is evident from the text and structure of the U.S. Constitution, and has been confirmed by centuries of historical practice. *See NLRB v. Noel Canning*, 573 U.S. 513 (2014) (noting the significance of historical practice in constitutional interpretation).

Article III of the Constitution states that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." But the Constitution left it to Congress, acting pursuant to the Necessary and Proper Clause under Article I, to enact legislation establishing the Supreme Court and the lower federal courts. As legal scholar James Pfander has explained, Article III "leaves Congress in charge of many of the details" necessary to implement federal judicial power, and "Article I confirms this perception of congressional primacy by empowering Congress to make laws necessary and proper for carrying into execution the powers vested in the judicial branch." JAMES E. PFANDER, *ONE SUPREME COURT: SUPREMACY, INFERIORITY, AND THE JUDICIAL DEPARTMENT OF THE UNITED STATES*, 2 (Oxford University Press, 2009). *See also* RICHARD H. FALLON, JR., ET AL., *HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 20 (6th ed. 2009) ("The judiciary article of the Constitution was not self-executing, and the first Congress therefore faced the task of structuring a court system.").

The first Congress quickly fulfilled its constitutional obligation to establish the federal judiciary by enacting the Judiciary Act of 1789, which controlled significant aspects of judicial administration, including judicial ethics. That law

has special constitutional significance because it was enacted by a Congress composed of the Framers' contemporaries, including a number of the Framers themselves. Accordingly, the Judiciary Act of 1789 is "widely viewed as an indicator of the original understanding of Article III." *See* FALLON, JR., ET AL., *supra*, at 21.

The Judiciary Act of 1789 not only created the lower federal courts, it also controlled the operations of the U.S. Supreme Court. That law set the size of the Supreme Court at six Justices, established a quorum requirement of four, and provided that the Supreme Court would meet at the "seat of government" twice a year. The first Congress also authorized funds to support the federal judiciary and granted the Supreme Court authority to hire personnel, including a clerk of the Court, to assist in its administration. Finally, that same legislation mandated that the Justices do double duty as judges on the lower circuit courts. In addition to meeting in the nation's capital as the Supreme Court, each Justice was required to travel the country to hear cases in his dual capacity as circuit court judge—a dual role that the Justices served for more than a century. *See generally* An Act to Establish the Judicial Courts of the United States, ch. 20, 1 Stat. 73 (1789); *Stuart v. Laird*, 5 U.S. (1 Cranch) 299, 309 (1804) (rejecting a constitutional challenge to the law requiring the Justices to sit as judges on circuit courts).

Consistent with its constitutionally-assigned obligation to establish the federal judiciary, the first Congress enacted laws regulating the ethical conduct of all federal judges, including the Supreme Court Justices. Starting with the Judiciary Act of 1789, Congress has required every judge and justice to "solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me." An Act to Establish the Judicial Courts of the United States, ch. 20, 1 Stat. 73 (1789); *see also* 28 U.S.C. § 453 (establishing the nearly identical oath used today). Congress chose these words to ensure that federal judges adjudicate cases fairly and impartially—the same goals that underlie the current ethics legislation.

Congress's long tradition of regulating the ethics of all federal judges, including the Supreme Court Justices, continues to this day. The recusal statute, 28 U.S.C. § 455, has applied to Supreme Court Justices as well as lower federal court judges for 75 years. The Ethics Reform Act of 1989 places strict limits on outside earned income and gifts for all federal officials, including all federal judges. The Ethics in Government Act of 1978 requires high-level federal officials in all three branches of the federal government to file annual reports disclosing financial information, including their outside income, the employment of their spouses and dependent children, investments, gifts, and household liabilities. All federal

judges, including Supreme Court Justices, file these annual reports, and the Judicial Conference of the United States is empowered by that Act to refer to the Attorney General any judge or Justice who fails to file that report or files a false report. *See* 5 U.S.C. app. 4, 104(b). The Supreme Court Justices must abide by all of these laws, just like officials in the other two branches of government.

Despite this long history of regulating the ethical obligations of *all* federal judges, some have argued that Congress lacks authority to mandate ethical standards for Supreme Court Justices. These critics contend that Congress is empowered to regulate the ethical conduct of the lower-court judges as part of its constitutional authority to “ordain and establish” the lower federal courts, but lacks that same authority over the U.S. Supreme Court because that Court is constitutionally mandated.

Although that distinction is important when it comes to Congress’s power to establish (or abolish) the lower courts, it is irrelevant when it comes to Congress’s role in regulating the ethical conduct of the federal judiciary. The Constitution *requires* Congress to enact laws that establish the U.S. Supreme Court as an institution and ensure that it operates effectively. The Court could not exist without legislation from Congress establishing it in the first instance, and thus the Constitution implicitly mandates that Congress do so. Federal laws fund the Supreme Court, set its size at nine members, establish the quorum requirement, and permit the hiring of law clerks and staff—all of which support the sound operation of the Court. *See* FALLON, JR., ET AL., *supra*, at 21. Ethics legislation serves the same vital purpose.

To be clear, Congress has no power to control federal judges’ decisions or penalize them for results it dislikes. The Constitution intends the judiciary to be a co-equal branch of government that decides cases independent from the influence of the other branches. For that reason, it provides all Article III judges with life tenure and protection against diminution of their salary to ensure that judicial decision-making is insulated from political influence. *See* THE FEDERALIST NO. 79, at 109 (Alexander Hamilton) (Alexander Bourne ed., 1901).

Regulating judges’ and justices’ ethical conduct does not pose a risk to the federal courts’ decisional independence, however. To the contrary, such legislation bolsters the power and prestige of the third branch of government, enabling it to fulfill its role under the U.S. Constitution as a check on the political branches. Because the Court has proven incapable of policing the ethics of its own Members, Congress should exercise its constitutional authority to ensure the sound operation of the Court.

Conclusion

The Supreme Court's Statement on Ethics Principles and Practices raises more questions than it answers. Recurring ethics violations by some Justices, combined with the Court's failure to address these problems in its Statement or elsewhere, demand a congressional response. The Constitution grants Congress the authority to legislate on matters of judicial administration and ethics, and such legislation will strengthen the judicial branch. In light of the Supreme Court's failure to take action, Congress must step in to protect the Justices from themselves.