How to Buy a Democracy: Are the Supreme Court Ethics Scandals Undermining Election Integrity?

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INTRODUCTION

Over the past year, the Supreme Court has been rocked with allegations of improper conduct, partisan influence, and corruption. Justices Thomas and Alito have made headlines for taking massive gifts and trips worth millions of dollars from individuals with strong partisan views of how the country should look, without disclosing said gifts or recusing themselves from cases that may implicate the donors.[1] New information surfaced about the Justices' political beliefs, raising concerns that they may be unable to be impartial while hearing highly contentious cases involving political actors.[2]

Amidst this controversy, the Supreme Court has been deciding cases in which former and current President Donald Trump is embroiled. These cases had ramifications for the 2024 election, particularly an immunity decision delaying prosecution of Trump until after the election.[3] However, these cases are just the latest in a line of decisions over the past 20 years that have shaped the most recent presidential election and our democracy.

This note will argue that the juxtaposition of the Supreme Court scandals and the election could create the appearance of impropriety, violating Canon 2 of the code of conduct the justices imposed upon themselves. Part I will examine the recent history of Supreme Court election jurisprudence, noting the influence of partisanship and the consequences for the 2024 election. Part II will discuss the ethics violations of the current members of the Supreme Court and the impact of perceived improprieties on the Court's legitimacy following the election. Finally, Part III will analyze solutions that have been proposed to deal the ethics and legitimacy challenges facing the Supreme Court, with an eye to what will best protect U.S. democracy.

I. THE SUPREME COURT'S EFFECT ON PRESIDENTIAL ELECTIONS

Over the past eighty years, the country has seen two distinct eras of election jurisprudence, with *Bush v. Gore* decidedly marking the turning point. The twentieth century was marked by periods of expansion and reduction in voting rights,

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1. *See, e.g.*, James J. Sample, *The Supreme Court and the Limits of Human Impartiality*, 52 HOFSTRA L. REV. 579, 592 (2024); Veronica Root Martinez, *Supreme Impropriety? Assessing the Justices' Conduct*, 87 L. & CONTEMP. PROBS. 147, 147–48 (2024).

2. *See, e.g.*, Alison Durkee, *Supreme Court Ethics Controversies: All the Scandals that Led Biden to Endorse Code of Conduct*, FORBES (Jul. 29, 2024), https://www.forbes.com/sites/alisondurkee/2024/07/29/supreme-court-ethics-controversies-all-the-scandals-that-led-biden-to-endorse-code-of-conduct/ [https://perma.cc/8JZN-HBTN].

3. *See* Trump v. United States, 603 U.S. 593, 642 (2024).

but elections decisions during this period were nonpartisan with justices on both sides of the ideological divide joining together in the opinions and dissents.[4] This changed with *Bush v. Gore*, as the Court found Florida's scheme for counting ballots unconstitutional, which critics claim "delivered the election to Bush."[5] In the years that followed, election rulings would become increasingly split along ideological divides while the Court rolled back voting rights and allowed corporations to funnel money to their preferred candidates.[6] Most recently, the Court decided three major cases affecting the Republican nominee and his path to the presidency.[7] As a result, the Supreme Court set the stage for the 2024 election, determining and limiting the parameters by which our democracy functions.

A. TWENTIETH CENTURY VOTING RIGHTS DECISIONS

In the 1960s and 70s, the Supreme Court fashioned a powerful and expansive right to vote across the country.[8] Under the Fourteenth and Fifteenth Amendments, the Court struck down state and local laws that were aimed at preventing Black people from voting. Rulings such as *Gomillion v. Lightfoot* and *Baker v. Carr* held that racial gerrymandering was unconstitutional, giving voters the right for the first time to challenge the design of election districts and protect the strength of their vote.[9] The Equal Protection Clause was invoked by the Supreme Court to strike down laws requiring that candidates' race be included on ballots, denying members of the military from voting in the state they are stationed in, and mandating durational residence laws for voters.[10] During this time period, the Supreme Court also issued opinions strengthening the 1965 Voting Rights Act and the Twenty-Fourth Amendment's prohibition on poll taxes.[11]

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4. *See* Armand Derfner, *Can Our Democracy Survive This Supreme Court?*, SUP. CT. REV. 345, 347–48, 351 (2023); *see also* Anthony J. Gaughan, *The Influence of Partisanship on Supreme Court Election Law Rulings*, 36 NOTRE DAME J.L., ETHICS & PUB. POL. 553, 557–561 (2022).

5. Gaughan, *supra* note 4, at 564, 566.

6. *See id.* at 557–560, 564; *e.g.*, Shelby Cnty. v. Holder, 570 U.S. 529, 550 (2013) (striking down the coverage formula in the Voting Rights Act of 1965); Citizens United v. FEC, 558 U.S. 310, 341 (2010) (holding that corporate spending in elections is political speech that cannot be suppressed under the First Amendment).

7. *See* Trump v. Anderson, 601 U.S. 100, 106 (2024); Fischer v. United States, 603 U.S. 480, 498 (2024); Trump v. United States, 603 U.S. 593, 642 (2024).

8. Derfner, *supra* note 4, at 347–48 (2023).

9. *See* Gomillion v. Lightfoot, 364 U.S. 339, 341 (1960) (holding a local law gerrymandering the town's boundaries into a shape excluding almost all Black people from the town's limits, thereby eliminating their right to vote in local elections, unconstitutional under the Fifteenth Amendment); Baker v. Carr, 369 U.S. 186, 230 (1962) (holding that voters could challenge malapportioned election districts under the Equal Protection Clause of the Fourteenth Amendment).

10. *See* Anderson v. Martin, 375 U.S. 399, 404 (1964); Carrington v. Rash, 380 U.S. 89, 96 (1965); Dunn v. Blumstein, 405 U.S. 330, 352 (1972) (striking down a Tennessee law requiring voters to reside in the state for one year and three months before becoming eligible to vote).

11. *See* Derfner, *supra* note 4, at 350; *see also* South Carolina v. Katzenbach, 383 U.S. 301, 327 (1966) (finding that the Voting Rights act was a valid exercise of Congress's authority under the Fifteenth Amendment); Harman v. Forssenius, 380 U.S. 528, 538 (1965) (holding a Virginia law requiring voters to either pay a poll tax or file a certificate of residence is violative of the Twenty-fourth Amendment).

However, this expansion of voting rights was short-lived. Under the Burger and Rehnquist Courts, election law decisions rolled back the "federal right to vote" that the Warren Court had worked to define.[12] In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, the Court held that "[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."[13] Simultaneously, the Supreme Court applied First Amendment jurisprudence to elections through *Buckley v. Valeo*.[14] The Court found that spending money on political campaigns is a protected form of freedom of political expression and free speech, implicating "fundamental First Amendment interests," and therefore, restrictions on campaign expenditures made by individuals and organizations are unconstitutional.[15] This decision has caused an "explosion of political expenditures," while enabling "candidates with wealth or access to wealth to drown out the voices of lesser-funded candidates and their supporters."[16]

Even though there were both significant expansions and reductions in federal voting rights over only a few decades, all the decisions during this time period were remarkably non-partisan. A study conducted by Professor Anthony J. Gaughan found that "partisan influences played no discernible role in the vast majority of election law cases in the 20th century."[17] In the major election decisions during this time period, there were "almost always" coalitions of Democratic- and Republican-appointed justices in both the majority and dissenting opinions.[18] Just "two of the 120 surveyed cases saw complete polarization with all Republican appointees on the opposite side of all Democratic appointees."[19] Moreover, justices frequently voted against the interests of the party who appointed them.[20] Even though the Supreme Court was changing the face of U.S. democracy, these decisions were strikingly non-political and bipartisan.

B. *BUSH V. GORE*: THE TURNING POINT

In the twentieth century, the Supreme Court's jurisprudence was focused on the procedures dictating elections, but in 2000, the justices decided the substantive outcome of a U.S. presidential outcome for the first time. This election prompted a wave of concerns and discussion from scholars on both sides of the

12. Derfner, *supra* note 4, at 351.

13. Vill. of Arlington Heights v. Metro. Hous. Corp., 429 U.S. 252, 264–65 (1977).

14. *See* Derfner, *supra* note 4, at 351.

15. Buckley v. Valeo, 424 U.S. 1, 23, 39 (1976).

16. John C. Bonifaz, et al., *Challenging Buckley v. Valeo: A Legal Strategy*, 33 AKRON L. REV. 39, 39 (2000).

17. Gaughan, *supra* note 4, at 557.

18. *Id.*

19. *Id.* at 561; *see generally* O'Brien v. Brown, 409 U.S. 1 (1972); FEC v. Nat'l Conservative Pol. Action Comm., 470 U.S. 480 (1985).

20. *Id.* at 557.

political divide about the legitimacy of the Court deciding an election and using judicial review to "promote the interests of a particular political party."[21]

Underlying the controversy of *Bush v. Gore* and its downstream effects on election law jurisprudence are the concerns of bias and impartiality. Justice Sandra Day O'Connor made comments revealing her preferred candidate in the days leading up to the election, while other justices had reported interests in the outcome of the election.[22] Regardless of whether their preferences influenced their decision-making while hearing the case, Professor Sherrilyn Ifill suggests that these instances created the "appearance of bias" that could lead a "reasonable person" to question the impartiality of the members of the Supreme Court.[23] The questions of bias in this case and their effects will be discussed in greater depth in Section II.B.2.

Amplifying the concerns of *Bush v. Gore* was the 5-4 split along ideological lines between the majority and dissenting opinions. The fact that only Republican appointees ruled in favor of Bush "[fanned] the flames of the controversy."[24] This began a new wave in election law jurisprudence, one substantially more polarized ideologically. In the decade that followed *Bush v. Gore*, there were six more major election law cases in which the majority was only joined by Republican appointees.[25] This trend of polarization "accelerated in the 2010s and early 2020s," with the eight "most important election law cases of the decade," including *Shelby County v. Holder* and *Rucho v. Common Cause*, "completely polarized along partisan lines."[26] In these rulings "with the greatest potential to affect the parties' competitive standing on Election Day," the justices are now almost exclusively voting in ways that mirror the interests of the party that appointed them.[27]

C. MAJOR ELECTION LAW CASES SINCE *BUSH V. GORE*

Since *Bush v. Gore*, the newly polarized Supreme Court has shaped the way that the nation's elections are conducted and the effect on the representation of voters in their government. Four of these decisions are particularly emblematic of the trends in election jurisprudence: *Citizens United v. Federal Election Commission*,

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21. *See* Jack M. Balkin, *Bush v. Gore and the Boundary between Law and Politics*, 110 YALE L.J. 1407, 1409 (2001); Louise Weinberg, *When Courts Decide Elections: The Constitutionality of Bush v. Gore*, B.U. L. Rev. 609, 618 (2002).

22. *See* Sherrilyn A. Ifill, *Do Appearances Matter?: Judicial Impartiality and the Supreme Court in* Bush v. Gore, 61 MD. L. REV. 606, 608 (2002). These reported interests included then-candidate Bush announcing he would appoint conservative judges, Justice Scalia's son working for the law firm representing Bush, and Justice Thomas's wife headhunting for the Bush administration. *See id.* at 629–36.

23. Sherrilyn A. Ifill, *supra* note 22, at 633.

24. Gaughan, *supra* note 4, at 566.

25. *See id.*; *see generally* Republican Party of Minn. v. White, 536 U.S. 765 (2002); Vieth v. Jubelirer, 541 U.S. 267 (2004); FEC v. Wis. Right to Life, 551 U.S. 449 (2007); Crawford v. Marion Cnty. Election Bd., 553 U.S. 181 (2008); Davis v. FEC, 554 U.S. 724 (2008); Citizens United v. FEC, 558 U.S. 310 (2010).

26. *Id.* at 570–71.

27. *Id.* at 569.

Shelby County v. Holder, *Crawford v. Marion County Election Board*, and *Rucho v. Common Cause*.

Through *Citizens United*, the Court determined that corporations are the same as individuals when it comes to First Amendment speech, so restrictions on corporate expenditures in elections are unconstitutional.[28] This opened the door even wider for dark money following *Buckley v. Valeo*. Dark money "refers to spending meant to influence political outcomes where the source of the money is not disclosed," which can be done through shell companies giving unlimited amounts of money to super PACs or through 501(c)(4)s that have no legal obligation to disclose their donors.[29] The influx of dark money further dilutes the voice of individuals in elections, particularly those who are not wealthy.

Shelby County declared that, because barriers to voting had dissipated, the preclearance provisions of the Voting Rights Act were no longer necessary.[30] Thus, the preclearance provisions were struck down, making states free to introduce laws that restrict access to voting.[31] One such voting restriction instituted by several states is photo identification requirements, which was upheld in *Crawford*.[32]

Finally, in *Rucho*, the Court determined that partisan gerrymandering claims are political questions and therefore non-justiciable.[33] Despite the strides that had been made by the Warren Court to strike down redistricting and gerrymandering, the *Rucho* Court decided to renounce their role in protecting the strength of every citizen's vote.

D. THE TRUMP CASES

In addition to deciding cases that regulated the processes by which the country's population voted, the Supreme Court issued several rulings that determined whether President Donald Trump could be on the ballot as the Republican presidential nominee in the 2024 election. Several states had tried removing Trump from their ballots, alleging that by engaging in the insurrection on January 6, 2021, he was ineligible for office under Section Three of the Fourteenth Amendment.[34] Nevertheless, the Supreme Court unanimously rejected this argument, holding that states do not have the power to disqualify presidential candidates.[35]

Trump also faced several criminal charges that, if he were sentenced prior to the election, could have complicated his ability to hold office and thus may have discouraged some people from voting for him. However, *Fischer v. United States*

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28. Citizens United v. FEC, 558 U.S. 310, 341 (2010).

29. *Dark Money Basics*, OPENSECRETS (last visited Jan. 8, 2023), https://www.opensecrets.org/dark-money/basics [https://perma.cc/23P9-WE2Z].

30. *See* Shelby Cnty. v. Holder, 570 U.S. 529, 550 (2013).

31. *See id.*

32. *See* Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 202 (2008).

33. *See* Rucho v. Common Cause, 588 U.S. 684, 718 (2019).

34. *See* Trump v. Anderson, 601 U.S. 100, 106 (2024).

35. *E.g.*, *id.* at 112.

removed several of these charges against him by holding that January 6th defendants could not be charged for obstruction of justice under the Sarbanes-Oxley Act, and then the Court's decision in *Trump v. United States* broadly expanded presidential immunity.[36] The latter case caused any trial to be pushed off until after the election due to the prosecution having to restructure their case under this new understanding of immunity.

Between this long line of election jurisprudence that has become increasingly partisan and the cases involving the Republican presidential nominee, the Supreme Court directly crafted the parameters of the 2024 election. Nine unelected justices determined who can vote, who they can vote for, and what influence money is allowed to have on our political processes. To maintain legitimacy of both the Court as an institution and our elections as a measure of democracy, it is imperative that the justices ensure that there is no appearance of bias or impropriety.

II. PARTISAN INFLUENCE ON SUPREME COURT CREATING APPEARANCE OF IMPROPRIETY

In the year leading up to the 2024 presidential election, news stories broke detailing the possible ethics violations of several of the current Supreme Court justices, particularly Justices Clarence Thomas and Samuel Alito. Not only were these justices receiving undisclosed, expensive gifts, the donors were notably conservative or intertwined with the Republican Party. The appearance of bias raised questions before in *Bush v. Gore*, but unlike in 2000, these violations concern millions of dollars at a time when the partisanship has only gotten worse in election rulings.[37] Regardless of whether these gifts have influenced the members of the Supreme Court, perceived improprieties themselves are violations of the Court's own code of conduct and threaten the legitimacy of the Court's role in elections.

A. ETHICS VIOLATIONS OF CURRENT JUSTICES

Justice Clarence Thomas has come under fire for his friendship with billionaire real estate developer Harlan Crow. Crow is long-time donor to the Republican party, with his disclosed spending on federal politics adding up to more than $16 million.[38] However, the total amount that he has spent in politics is unknown,

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36. *See* Fischer v. United States, 603 U.S. 480, 498 (2024); Trump v. United States, 603 U.S. 593, 642 (2024).

37. *See A Staggering Tally: Supreme Court Justices Accepted Hundreds of Gifts Worth Millions of Dollars*, FIX THE COURT (June 6, 2024), https://fixthecourt.com/2024/06/a-staggering-tally-supreme-court-justices-accepted-hundreds-of-gifts-worth-millions-of-dollars/ [https://perma.cc/SM62-9KED] [hereinafter *A Staggering Tally*].

38. Adam Rappaport & Meghan Faulkner, *Harlan Crow's Deep Dark Money Connections*, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON (June 15, 2023), https://www.citizensforethics.org/news/analysis/harlan-crows-deep-dark-money-connections/ [https://perma.cc/RK6W-EELQ].

as he has given to several dark money groups post-*Citizens United*, including the conservative Liberty Central founded by Justice Thomas' wife, Ginni Thomas.[39]

Crow paid for at least thirty-eight lavish trips for Justice Thomas, including flights on Crow's private jet, an eight-day yacht excursion, and lodging at private clubs.[40] The estimate by ProPublica of the cost of one of these trips to Indonesia arranged by Crow for Justice Thomas and his wife was approximately $500,000.[41] Many of these trips were undisclosed and only came to light following an investigation by the Senate Judiciary Committee.[42]

Thomas has long maintained that he is not required to report these trips, because Crow and his wife are "among our dearest friends."[43] In his view, the trips are just "personal hospitality" from friends who do not have any business before the Supreme Court, rather than reportable gifts.[44] Moreover, the new rule requiring that justices report the private plane travel given to them went into effect after these trips took place.[45]

However, the luxury travel is not the extent of the potentially unethical relationship between Crow and Justice Thomas. In 2014, Crow purchased a property from Thomas and allowed Thomas's mother to continue residing in the house while also making improvements to the home.[46] Crow also paid for the tuition for a private boarding school—totaling more than $6,000 a month —for Thomas's grandnephew who Thomas said he was "raising . . . as a son."[47]

Crow is not the only conservative billionaire with ties to Justice Thomas; the Federalist Society's Leonard Leo has also developed potentially concerning ties with the Supreme Court justice. Leo is a prolific fundraiser for the Republican party, with tax records showing that he has helped raise more than "$600 million."[48] He played a significant role in building the current conservative Supreme Court supermajority as an adviser to President Trump on his nominations and by helping pick or confirm every conservative justice on the Court.[49]

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39. *Id.*

40. *See* Mary Clare Jalonick, *Justice Clarence Thomas Took More Trips Paid for by Donor Harlan Crow, Senate Panel Reveals*, AP NEWS (last modified June 13, 2024, 5:55 PM), https://apnews.com/article/clarence-thomas-supreme-court-senate-harlan-crow-f538d244f148065de8c52fb13e2f9853 [https://perma.cc/Z9F8-MQ5H]; *see also* Sample, *supra* note 1, at 600.

41. Jalonick, *supra* note 40.

42. *See id.*

43. *Id.*

44. *Id.*

45. *See id.*

46. *See* Justin Elliott, et al., *Billionaire Harlan Crow Bought Property from Clarence Thomas. The Justice Didn't Disclose the Deal.*, PROPUBLICA (Apr. 13, 2023, 2:20 PM), https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus [https://perma.cc/NT5P-HC2S].

47. Joshua Kaplan, et al., *Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition.*, PROPUBLICA (May 4, 2023, 6:00 AM), https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus [https://perma.cc/LY96-LJBL].

48. *See* Andy Kroll, et al., *We Don't Talk about Leonard Leo: The Man Behind the Right's Supreme Court Supermajority*, PROPUBLICA (Oct. 11, 2023, 5:00 AM), https://www.propublica.org/article/we-dont-talk-about-leonard-leo-supreme-court-supermajority [https://perma.cc/F47X-UYPP].

49. *See id.*

Leo arranged for Justices Thomas and Antonin Scalia "to attend private donor retreats hosted by the Koch brothers dating as far back as 2007."[50] He also helped Thomas's wife with the launch of her consulting firm by directing Kellyanne Conway to pay her "at least $25,000 as a subcontractor" in 2012.[51] Thomas is even the godfather of Leo's daughter.[52]

While Justice Thomas's entanglements with Republican donors have been highly publicized, justices on both sides of the aisle have made headlines for accepting gifts. The gifts identified by the Federal Trade Commission to the current justices in the last two decades is valued at nearly three million dollars.[53] Justice Ketanji Brown Jackson, for example, accepted four concert tickets from Beyoncé, totaling nearly $4,000.[54] Beyoncé has publicly donated to and endorsed multiple Democratic presidential candidates, including most recently Vice President Kamala Harris, allowing Harris to use her song "Freedom" as Harris's 2024 presidential campaign song.[55]

On the other side of ideological spectrum, it was revealed in 2023 that Justice Alito was taken on a luxury fishing trip to Alaska in billionaire Paul Singer's private jet in 2008 but never disclosed the trip.[56] The plane travel alone is estimated to have cost approximately $100,000 if the justice had chartered the jet himself.[57] Singer's businesses were "parties to a number of Supreme Court cases in which Justice Alito participated" in the years following this trip.[58] Moreover, Singer is often described as a Republican "megadonor," giving millions of dollars to the party and conservative PACs over the years.[59] He is the Chairman of the Manhattan Institute, a conservative public policy think tank who proclaims that they are fighting against the "woke takeover of American institutions."[60]

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50. *Id.*

51. *Id.*

52. *Id.*

53. *See A Staggering Tally*, *supra* note 37.

54. *See* Molly Bohannon, *Justice Ketanji Brown Jackson Was Gifted Tickets to Beyoncé*, FORBES (June 7, 2024, 2:00 PM), https://www.forbes.com/sites/mollybohannon/2024/06/07/justice-ketanji-brown-jackson-was-gifted-tickets-to-beyonc/ [https://perma.cc/W6NX-5D6K].

55. *See* Elizabeth Wagmeister, *Exclusive: Beyoncé Gives Kamala Harris Permission to Use Her Song 'Freedom' for Her Presidential Campaign*, CNN (July 22, 2024, 11:54 PM), https://www.cnn.com/2024/07/22/entertainment/beyonce-freedom-harris-campaign/index.html [https://perma.cc/S3D9-Q6HH].

56. Adam Liptak, *Justice Alito Defends Private Jet Travel to Luxury Fishing Trip*, N.Y. TIMES (June 21, 2023), https://www.nytimes.com/2023/06/21/us/politics/justice-alito-luxury-travel-fishing-trip.html [https://perma.cc/LWE5-PJ5S].

57. *See id.*

58. *Id.*

59. Brian Schwartz, *GOP Megadonor Paul Singer Rallies Conservatives: 'Socialism is on the March Again,'* CNBC (May 3, 2019, 11:39 AM), https://www.cnbc.com/2019/05/03/paul-singer-goes-on-offense-against-democrats-ahead-of-2020-election.html [https://perma.cc/T3K7-S6ZE]; *see also* Michael Warren, *AT&T's Latest Shareholder is a Big GOP Donor. Just Not to Trump.*, CNN (Sept. 9, 2019, 9:35 PM), https://edition.cnn.com/2019/09/09/politics/att-paul-singer-trump-gop-donor/index.html [https://perma.cc/A8G5-NPMR].

60. Reihan Salam, *Letter from the President*, MANHATTAN INST. (2022), https://manhattan.institute/presidents-update/index.html#letter-from-the-president [https://perma.cc/8YPD-9PAR].

Justice Alito's lodging during the fishing trip was allegedly paid for by Robin Arkley II, according to the report by ProPublica.[61] Arkley is a prominent Republican donor who was a "financial backer" of the Federalist Society and helped to found the Judicial Crisis Network ("JCN"), an organization "dedicated to ensuring the confirmation of conservative judges" and advancing the "legal agendas aligned with its donors' leanings."[62] Also present on the fishing trip was Leonard Leo.[63]

In an opinion piece in the *Wall Street Journal*, Alito vehemently defended himself against these allegations, not denying that they were true but rather arguing that he was not required to disclose the trip. He said that he had only met Singer a "handful of times" and did not realize that he was connected to cases before the Court, despite the wide reporting on it.[64] He added that the seat on the jet would have "otherwise been vacant," so it did not qualify as a gift.[65] In defense of this stance, he pointed to the federal law that requires disclosure of gifts over a certain value but includes an exception for "personal hospitality of any individual" on "facilities" owned by that person.[66] Alito interprets a private jet as a "facility" under the dictionary definition.[67] However, before Alito published this opinion, the Judicial Conference of the United States issued guidelines—binding on the Supreme Court justices—requiring disclosure of travel by private jet.[68] These new guidelines suggested to the judiciary, including the Supreme Court, that private jets do not constitute "facilities" under the ethics rules.

Justice Alito separately reported receiving $900 concert tickets from German Princess Gloria von Thurn und Taxis.[69] The princess is known for her conservative political views and her far-right connections, including former advisor to President Trump, Steve Bannon.[70]

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61. *See* Justin Elliot, et al., *Justice Samuel Alito Took Luxury Fishing Vacation with GOP Billionaire who Later Had Cases Before the Court*, PROPUBLICA (June 20, 2023, 11:49 PM), https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court [https://perma.cc/8PHD-E8RL].

62. Viveca Novak & Peter Stone, *The JCN Story: Building a Secretive GOP Judicial Machine*, OPENSECRETS (Mar. 23, 2015, 4:09 PM), https://www.opensecrets.org/news/2015/03/the-jcn-story-building-a-secretive-gop-judicial-machine/ [https://perma.cc/8WZG-89HF]; Tamar Ziff, *Judicial Crisis Network: The Conservative Organization Shaping SCOTUS*, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON (last updated Sept. 21, 2020), https://www.citizensforethics.org/reports-investigations/crew-investigations/judicial-crisis-network-conservative-organization-shaping-supreme-court/ [https://perma.cc/L74U-VEN4].

63. *See* Liptak, *supra* note 56.

64. *See id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *See* Abbie VanSickle, *Justices Must Disclose Travel and Gifts under New Rules*, N.Y. TIMES (Mar. 29, 2023), https://www.nytimes.com/2023/03/29/us/politics/supreme-court-trips-gifts-disclosures.html [https://perma.cc/5CV9-35AJ].

69. *See* Abbie VanSickle, *Justice Alito Reported $900 Concert Tickets from a German Princess*, N.Y. TIMES (Sept. 8, 2024), https://www.nytimes.com/2024/09/08/us/politics/justice-alito-reported-900-concert-tickets-from-a-german-princess.html [https://perma.cc/7QA3-V5XP].

70. *See id.*

B. PERCEIVED IMPROPRIETIES THREATEN THE LEGITIMACY OF THE SUPREME COURT'S ROLE IN ELECTIONS

In 2024, Donald Trump won the presidential election. This was, to some degree, a result of the rulings made by the Supreme Court affecting the way U.S. presidential elections are administered, as well as the specific rulings that allowed President Trump to continue to be a viable candidate. Because the conservative justices, in particular, were accepting large gifts from donors who would have favored President Trump in the election while issuing these rulings, the public may perceive there to be improprieties around the Supreme Court's role in the 2024 election. Whether the gifts actually influenced the justices' decisions is immaterial. As Justice John Paul Stevens said, "The relevant inquiry . . . is not whether the judge was actually biased but whether he or she *appeared* biased."[71]

1. THREATS TO THE SUPREME COURT'S LEGITIMACY

The source of the Supreme Court's "institutional legitimacy" is the support of the public.[72] Justice Elena Kagan described the importance of legitimacy by saying, "The only way we can get people to do what we think they should do is because people respect us."[73] However, relying on the public as the source of legitimacy presents a conundrum that Professor James J. Sample traces back to *Marbury v. Madison*: "The Justices themselves have the final word in evaluating their own cases, without any oversight or consequence."[74] As a result, recent studies have suggested that legitimacy is directly affected by judicial decisions and "powerfully influence[d]" by politics and policy preferences.[75]

Many Supreme Court scholars have pointed out that the Court is currently in the middle of a legitimacy crisis.[76] According to a 2024 Gallup poll, only thirty percent of Americans have a "great deal" or "quite a lot" of confidence in the Supreme Court.[77] This is a substantial decrease from forty-six percent two decades ago.[78]

Professors Logan Strother and Colin Glennon suggest that "increasing partisan polarization, along with the growing perception that the Court behaves in a partisan manner" is the cause of this loss of legitimacy and trust.[79] In particular, they

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71. *See* Sample, *supra* note 1, at 597.

72. *See* Logan Strother & Colin Glennon, *An Experimental Investigation of the Effect of Supreme Court Justices' Public Rhetoric on Perceptions of Judicial Legitimacy*, 46 LAW & SOC. INQUIRY 435, 437 (2021).

73. *Id.* at 436.

74. Sample, *supra* note 1, at 591.

75. Strother & Glennon, *supra* note 72, at 436, 438.

76. *See, e.g.*, Louis J. Virelli, *Freedom of the Press and Supreme Court Ethics*, 55 UNIV. PAC. L. REV. 209, 209 (2024); Benjamin J. Priester, *Rebooting the Supreme Court*, 59 TULSA L. REV. 253, 254 (2023).

77. *Confidence in Institutions*, GALLUP (last visited Jan. 8, 2025), https://news.gallup.com/poll/1597/confidence-institutions.aspx [https://perma.cc/DP33-NR79].

78. *See id.*

79. Strother & Glennon, *supra* note 72, at 435; *see also* Marissa Parisek, *Judicial Ethics: The Rise of Politics and Misconduct in the Supreme Court*, 48 J. LEGAL PROF. 217, 222 (2024) ("If the public believes the

point out three election law cases as severely undermining the public's confidence in the Court: *Bush v. Gore, Citizens United v. FEC,* and *Shelby County v. Holder*.[80] This suggests that when the Supreme Court issues rulings that have a significant outcome on the election, which are inherently political and partisan, it affects the legitimacy of the Court as an institution.

The appearance of political bias in controversial election decisions further compounds that detrimental effect.[81] Even "in the absence of direct evidence of quid pro quo corruption," the allegations of gifts from politically-interested individuals create the perception that the Court is "compromised and illegitimate."[82] The mere impression that the Supreme Court could be corruptly interfering with democratic elections could drive approval ratings even lower, causing the American public to question both the authority of the Court in this area of law and the fairness of elections themselves.

2. APPEARANCE OF BIAS HAS RAISED QUESTIONS BEFORE IN *BUSH V. GORE*

In the weeks following *Bush v. Gore*, allegations arose that suggested the justices on the Court had an interest in the outcome of the election, which may have influenced their ultimate decision.[83]

For example, Justice Sandra Day O'Connor was alleged to have made several disparaging comments about the Al Gore presidential campaign, including telling people, "This is terrible," when the news declared Gore the likely winner, as well as accusing "those Gore people" of going "into a nursing home and register[ing] people that they shouldn't have."[84] Her husband allegedly told friends that O'Connor was hoping a Republican would win, so that she could retire and have a conservative successor appointed.[85]

Similarly, it was reported the Justices Antonin Scalia and Thomas had an interest in the outcome, because President Bush had promised to appoint judges that agreed with their ideological beliefs.[86] Moreover, Justice Scalia's son worked for the law firm representing President Bush in *Bush v. Gore*, while Justice Thomas invited "arch-conservative" columnist George Will as his "personal guest" to hear the oral arguments in *Bush v. Gore*.[87] Ginni Thomas had also been working for the Heritage Foundation to head-hunt for key positions in a potential Bush administration.[88]

Court is manipulated by partisan conflicts, and consequently not held accountable by Congress, the credibility of the system is destined to fail.").

80. *See* Strother & Glennon, *supra* note 72, at 435.

81. *See* Ifill, *supra* note 22, at 611 ("Because public confidence is so essential to maintaining the integrity of the bench, even the appearance of bias, parochialism, or favoritism can threaten judicial function.").

82. *See* Priester, *supra* note 76, at 289–90.

83. *See* Ifill, *supra* note 22, at 608.

84. *See id.* at 634–35.

85. *See id.* at 634.

86. *See id.* at 632–33.

87. *See id.* at 629, 637.

88. *See id.* at 635–36. The Heritage Foundation is a conservative, policy think tank.

While critics of the decision were already decrying the Supreme Court even weighing in on the issue, these allegations "may have given a reasonable person cause to question [the Justices'] impartiality" in a case where they would "help determine the outcome of the presidential election."[89]

Two decades later, the allegations of bias and the partisanship in decisions affecting the presidential election are even more egregious. The allegations present during *Bush v. Gore* were mostly of comments and actions that revealed the justices' political leanings and which presidential candidate they privately supported. However, in 2024 the allegations discussed above involve millions of dollars' worth of gifts from people with a stated and active interest in the outcome of the election, beyond just the known political leanings of the justices. Meanwhile, the "partisan divide on the Court has never been wider than it is now."[90] In fact, since 2011 with few exceptions, in election cases, the "votes of each Republican-appointed justice . . . mirror the position of the Republican Party and the votes of each Democratic-appointed justice . . . mirror the position of the Democratic Party."[91] When members of the Supreme Court are consistently voting in favor of a particular political party to positively affect their chances of winning elections while taking massive gifts from individuals within that party, they have opened the institution of the Court up to accusations of impropriety and the appearance of bias, potentially to an even greater degree than in *Bush v. Gore*.

Another factor differentiates the allegations around the 2000 election from 2024: after *Bush v. Gore*, there was no consensus regarding whether the allegations against the justices warranted recusal or even presented conflicts of interest.[92] However, in 2024, there is no such ambiguity. In December of 2024 after a months-long investigation into the recent allegations of ethical misconduct by members of the Supreme Court, the United States Senate Committee on the Judiciary released a report finding that both Justices Thomas and Alito failed to disclose gifts in violation of federal law and that all of the Supreme Court justices use their "duty to sit" as a license to refuse to recuse themselves from cases where they have a conflict of interest or the appearance of impropriety.[93] Importantly, the report also found that private individuals "seeking to influence the Court have used gifts to gain access to the justices," creating the "appearance of impropriety"

89. *See id.* at 633.

90. Gaughan, *supra* note 4, at 572.

91. *Id.* at 569.

92. *See, e.g.*, Richard K. Neumann, Jr., *Conflicts of Interest in Bush v. Gore: Did Some Justices Vote Illegally*, 16 GEO. J. LEGAL ETHICS 375, 442 (2003) (finding that while some Justices had conflicts of interest warranting recusal, others did not); Jason C. Glahn, *Bush v. Gore from behind a Veil of Ignorance: Why the Result of Election 2000 Was Ethical (and Legal)*, 2 GEO. J.L. & PUB. POL'Y 615, 615 (2004) (saying that the reception to *Bush v. Gore* is determined by each person's partisan leanings); *see also* Dmitry Bam, *Partisan Judicial Speech and Recusal Procedure*, 20 LEGAL ETHICS 131, 133 (2017) (suggesting that justices revealing their political biases may be preferable to keeping them secret from the public).

93. STAFF OF S. COMM. ON THE JUDICIARY, 118TH CONG., AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT 5-6 (Comm. Print 2024).

even when they do not change justices' conduct.[94] Even though Congress is a political branch, and this was released by the majority party, the report provides a more concrete affirmation of ethical violations and impropriety to the public.

3. VIOLATIONS OF ETHICS RULES

The Supreme Court did not have their own binding code of ethics when many of these allegations occurred or when they issued their rulings on these significant cases affecting the 2024 election. However, as attorneys, all the justices should abide by the Rules of Professional Conduct. Furthermore, even though the Supreme Court is not explicitly bound by the Judges' *Code of Conduct*, Chief Justice John Roberts has said that the Justices "abide by the code of conduct followed by the lower courts."[95] Under both the *Rules of Professional Conduct* and the Judges' *Code of Conduct*, the Supreme Court Justices have violated the ethics rules by engaging in misrepresentation and conduct that created the appearance of impropriety. These types of violations by the country's highest court continue to damage the Supreme Court's legitimacy, particularly concerning their election law jurisprudence.

a. Violations of the ABA's Rules of Professional Conduct

The *Rules of Professional Conduct* apply to all members of the legal profession. The American Bar Association ("ABA") has stated that the Supreme Court justices are not "bound by any rules that include 'the full sweep of basic ethical principles' that apply to other judges."[96] Still, as members of the legal profession sitting on the highest court in the United States, the justices should strive to follow some of the fundamental ethical constraints followed by all lower court judges and every attorney, even if they are not obligated to do so.

Under the ABA's *Model Rules of Professional Conduct*, the bar for misconduct is relatively low, even for well-meaning justices. Rule 8.4(c) defines "misconduct" as engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation."[97] The failure to disclose large gifts from certain individuals, especially when the justices are voluntarily disclosing the other gifts they receive, could be considered both dishonesty and misrepresentation. Justice Alito defended his refusal to disclose the fishing trip with Singer, Arkley, and Leo by saying that he did not understand it to be required under the Ethics in Government Act (EIGA) because it fell under the "personal hospitality exemption." Nevertheless, the Senate Judiciary Committee

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94. STAFF OF S. COMM. ON THE JUDICIARY, 118TH CONG., AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT 5 (Comm. Print 2024).

95. Parisek, *supra* note 79, at 224.

96. *Supreme Court Justices Should Follow Binding Code of Ethics, ABA House Says,* A.B.A. (Feb. 27, 2023), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/feb-23-wl/scotus-ethics-0223wl/#:~:text=While%20Supreme%20Court%20justices%20must,report%20accompanying%20the%20resolution%20says [https://perma.cc/J6F5-4QK2].

97. MODEL RULES OF PROF'L CONDUCT R. 8.4(c) (2021).

rejected that argument in their report, saying that Justice Alito "relied on flawed reasoning" and misinterpreted the federal law.[98]

However, it could also be considered misrepresentation to not acknowledge the outside influence being exerted on the justices, particularly when the influence is being exerted through monetary means. Some of the justices have hidden the depth of their relationship with individuals who have an interest in the outcome of cases and how they affect American democracy. In his law review article, Professor James J. Sample contends that the current legitimacy crisis is a function of the institution of the Supreme Court itself, rather than the failing of the current nine people on the bench, pointing to the lack of transparency as the source of the perceived faults.[99] The secrecy of this private access to the justices is part of what creates the appearance of impropriety, because the public cannot know to what degree they have already influenced the justices' thinking. Moreover, since it has been established that the public is more sensitive to the Supreme Court appearing political, any misrepresentation of events that could indicate outside influence during cases that will blatantly affect the election could increase the perception of impropriety.

b. Volations of the Code of Conduct for U.S. Judges

Like the *Rules of Professional Conduct*, the Supreme Court is not bound by the *Code of Conduct* for United States Judges. However, the Court noted in 2023 that they "take[] guidance from the Code," and when they released their own version of the *Code of Conduct*, the Court stated that it was "substantially derived" from it.[100] Therefore, the Code can be used as guidelines for the ethical principles the justices should have been following, especially since the public would not expect the Supreme Court to flout the ethics rules by which all other judges are bound.

Canon 2 of the *Code* states that judges "should avoid impropriety and the appearance of impropriety in all activities."[101] It provides further that judges "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[102] Section (b) of Canon 2 states that judges should not allow "social, political, financial, or other relationships to influence judicial conduct or judgment" or "convey or permit others to convey the impression that they are in a special position to influence the judge."[103] The justices on the Supreme Court have fallen woefully beneath this standard. As confirmed in the Senate Judiciary Report, the justices have been unable to avoid the appearance of

98. STAFF OF S. COMM. ON THE JUDICIARY, 118TH CONG., AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT 5 (Comm. Print 2024).

99. *See* Sample, *supra* note 1, at 588.

100. *See* STAFF OF S. COMM. ON THE JUDICIARY, 118TH CONG., AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT 20 (Comm. Print 2024).

101. MODEL CODE OF JUD'L CONDUCT CANON 2 (2019).

102. MODEL CODE OF JUD'L CONDUCT CANON 2(A) (2019).

103. MODEL CODE OF JUD'L CONDUCT CANON 2(B) (2019).

impropriety in contravention of Canon 2 by engaging "in conduct that ranges from questionable to clearly violative of federal ethics laws."[104] By accepting multiple lavish gifts over several years from people who are highly partisan and have a vested interest in the outcome of U.S. elections, the justices have implicitly conveyed the impression that they can be influenced in their judgment.

Rolland Giberson argues that the decisions issued by the Supreme Court to erode voting rights—namely *Shelby County*, *Crawford v. Marion County*, and *Rucho v. Common Cause*—pose a threat to the independence and impartiality of the judiciary by giving politicians the ability to gain influence over the judiciary.[105] Specifically, he argues that these decisions allow politicians to suppress the votes of the opposition party, thereby giving them outsized power in judicial appointments.[106] By continuing to diminish voting rights and give power to the Republican party, which has advocated for or passed substantially more voter suppression laws than the Democratic party in the last few years, the Supreme Court has failed to maintain the impartiality of the judiciary, as required in Canon 2(a).[107]

Furthermore, Canon 5 of the *Code* instructs judges to refrain from "political activity."[108] Issuing a decision from the bench has never been considered a "political activity." However, the recent election law decisions and the cases involving President Trump have had a greater impact on the outcome of the election than most other political activities. With the permission of *Shelby County* and *Rucho*, Republican-led states have implemented voting rights restrictions that have disproportionately harmed voters of color, particularly Black and Latino voters who have historically and overwhelmingly voted for Democrats.[109] By granting broad presidential immunity to Donald Trump and ensuring that all states would keep him on the ballot, the Supreme Court stemmed the controversies surrounding his candidacy and gave his campaign several legal "wins" going into the election. These decisions helped form the outcome of the 2024 elections significantly

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104. STAFF OF S. COMM. ON THE JUDICIARY, 118TH CONG., AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT 4 (Comm. Print 2024).

105. *See* Rolland Giberson, Note, *Eroding Voting Rights as a Threat to Judicial Independence and Impartiality*, 34 GEO. J. LEGAL ETHICS 977, 980 (2021).

106. *Id.*

107. *See* Nick Corasaniti and Alexandra Berzon, *Under the Radar, Right-Wing Push to Tighten Voting Laws Persists*, N.Y. TIMES (May 8, 2023), https://www.nytimes.com/2023/05/08/us/politics/voting-laws-restrictions-republicans.html [https://perma.cc/CB2V-EC3H] (finding that Republicans have passed eighteen voting restriction bills in ten states, while Democrats have been pushing to expand ballot access).

108. MODEL CODE OF JUD'L CONDUCT CANON 5 (2019).

109. *See The Impact of Voter Suppression on Communities of Color*, BRENNAN CTR. FOR JUSTICE (Jan. 10, 2022), https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color [https://perma.cc/G6UL-DG2S]. *But see* Jason Lange, Bo Erickson, & Brad Heath, *Trump's Return to Power Fueled by Hispanic, Working-Class Voter Support*, REUTERS (Nov. 7, 2024), https://www.reuters.com/world/us/trumps-return-power-fueled-by-hispanic-working-class-voter-support-2024-11-06/ [https://perma.cc/NLX8-6QRE] (finding that support for President Trump from Hispanic voters was up fourteen percent in 2024 compared to 2020, even though Kamala Harris still won the majority of the Hispanic vote).

more than if the justices had simply donated to his campaign, which would have been unethical under the *Code*.

III. SOLUTIONS

The Supreme Court attempted to implement their own solution to the legitimacy crisis by creating their own *Code of Conduct*. However, this Code has faced a considerable amount of criticism, primarily pointing to it being unenforceable. Lawmakers in Congress have put forth several propositions for legislative solutions, although they have implicated separation of powers issues. Ultimately, the most effective solution will be the one that the Supreme Court cannot ignore or deem unconstitutional.

A. CODE OF CONDUCT FOR JUSTICES OF THE SUPREME COURT

In November of 2023, after calls for the Supreme Court to codify its own ethical standards, the Court issued the *Code of Conduct for Justices of the Supreme Court of the United States*.[110] The Code has the same five basic canons as the *Code of Conduct* for U.S. Judges, with the main difference being in the explanatory notes that "alter the practical applications of the Justices' Code."[111]

The most controversial portion of the Code is the codification of the "duty to sit" doctrine, which provides for the presumption that the justices are "impartial" and should "sit unless disqualified."[112] This is in "blatant contrast with the longstanding principles to err on the side of caution if a Justice's impartiality is even a remote concern."[113]

The Code also provides exceptions to recusals that do not apply to lower court judges, including that justices do not have to recuse themselves if a relative files an *amicus curiae* brief.[114] Furthermore, critics have pointed out that the Justices' code uses the word "should" significantly more than the word "must," leading to the impression that the Code is more of a "suggestion" than a compilation of enforceable rules.[115] Senator Sheldon Whitehouse argues that "a code of ethics is not binding unless there is a mechanism to investigate possible violations and enforce the rules," which is not present currently.[116] He and other senators welcome this as a first step, but say there needs to be additional action to restore the Court's legitimacy.[117]

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110. *See* Sample, *supra* note 1, at 584.
111. *See id*. at 586.
112. CODE OF CONDUCT FOR JUSTICES OF THE SUPREME COURT OF THE U.S. CANON 3(B); *see also* Parisek, *supra* note 79, at 230.
113. Parisek, *supra* note 79, at 230.
114. *Id*. at 231.
115. *Id*.
116. *Id*. at 230.
117. *Id*. at 231.

Additionally, the only solution provided by the Code is recusal. However, Supreme Court justices have historically been "reluctant" to recuse themselves.[118] This is in part because justices have come to view themselves as indispensable since, unlike lower court judges, there is no mechanism for replacing them.[119] Therefore, recusal would "deprive litigants and the American people" of a "full complement of Justices."[120]

Moreover, when it comes to election decisions, when justices must recuse themselves is a hard line to draw. All justices are "political beings," so "attempts to separate law from politics at the Supreme Court are futile."[121] Thus, if justices were required to recuse themselves on the basis of political bias in all election decisions, it would be "largely unworkable."[122] Under the "duty to sit" doctrine, the current Code supplies no workable resolution for bias in decisions affecting presidential elections.

B. LEGISLATIVE PROPOSALS

Two of the major bills proposed to constrain future ethics violations from occurring are the Supreme Court Ethics, Recusal, and Transparency ("SCERT") Act and the High Court Gift Ban Act. The SCERT Act, introduced by Senator Whitehouse, would require the Supreme Court to make their Code of Conduct binding, "create a mechanism to investigate alleged violations," increase transparency, and "require justices to explain their recusal decisions to the public."[123] Meanwhile, the High Court Gift Ban Act is narrower in its aim. Introduced in the House of Representatives by Representatives Jamie Raskin and Alexandria-Ocasio Cortez, the Act would prohibit members of the Supreme Court from receiving gifts valued at more than fifty dollars.[124] This bill more directly addresses the ethical issues at play with election decisions, as its specific goal is to safeguard "the strength and integrity of our democracy" by addressing the "unethical influence dark money is having on our nation's highest judicial body."[125]

However, any legislative solution will face the separation of powers concern of whether Congress has the authority to regulate the Supreme Court in this manner at all. One argument against the "overextension of power within the Legislative

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118. Carmen Abella, *"Bias is Easy to Attribute to Others and Difficult to Discern in Oneself": The Problem of Recusal at the Supreme Court*, 33 GEO J. LEGAL ETHICS 339, 340 (2020).

119. PRESIDENTIAL COMMISSION ON THE SUPREME COURT OF THE UNITED STATES, FINAL REPORT 220 (2021).

120. *Id.*

121. Bam, *supra* note 92, at 132.

122. *Id.*

123. STAFF OF S. COMM. ON THE JUDICIARY, 118TH CONG., AN INVESTIGATION OF THE ETHICS CHALLENGE AT THE SUPREME COURT 90 (Comm. Print 2024).

124. *See* Jamie Raskin, *Raskin, Ocasio-Cortez Introduce Legislation Imposing Gift Ban on Supreme Court Justices*, RASKIN.HOUSE.GOV (June 25, 2024), https://raskin.house.gov/2024/6/raskin-ocasio-cortez-introduce-legislation-imposing-gift-ban-on-supreme-court-justices [https://perma.cc/T7BS-F2T4].

125. *Id.*

Branch" is that "assigning the Court's fate to the political fissure of Congress would utterly neglect to address" the concern about "political infiltration" within the Court.[126]

Nevertheless, other analyses of the text of the Constitution, history, case law, and the Framers' purpose argue that Congress does have this authority.[127] One such focus is on the system of checks and balances. The Framers acknowledged that humans are "imperfect" even when working with their best intentions, so good government requires a system of checks and balances to achieve true justice.[128] Providing a legislative check on the power of the judiciary fits within this constitutional frame of good governance.

At the same time, were Congress to pass one of these bills, or a similar measure, the Supreme Court would have the authority of judicial review to determine its constitutionality, giving the justices the ability to choose whether to have any check on their power at all.

CONCLUSION

In 2024, Donald Trump won the presidential election, after the Supreme Court delivered him and the Republican party a series of wins over the past two decades. Combined with reports of undisclosed lavish gifts from billionaires who were highly influential patrons of their political party, the Supreme Court has created an appearance of impropriety in clear violation of the codes of conduct followed by all other judges in this nation. This could not only harm the legitimacy of the Supreme Court as an institution, but it could also undermine faith in our elections and our democracy as free and fair if the public believes that the Court is interfering on behalf of their donors. The Supreme Court must take steps to create enforceable protections against unethical influence. If the Court is unwilling to do so, then Congress must step in with oversight legislation to act as a check on the Supreme Court and preserve the integrity of our democracy.

126. Parisek, *supra* note 79, at 231–32.

127. *See, e.g.*, Sample, *supra* note 1, at 610–15.

128. *Id.* at 614-15; *see also* THE FEDERALIST NO. 85, at 523 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wisdom, of the individuals of whom they are composed.").