

Congress of the United States

Washington, DC 20510

November 20, 2022

The Honorable John G. Roberts
Chief Justice
Supreme Court of the United States
One First St. NE
Washington, D.C. 20543

Ethan V. Torrey
Legal Counsel
Supreme Court of the United States
One First St. NE
Washington, D.C. 20543

Dear Chief Justice Roberts and Mr. Torrey:

We write to continue the inquiry initiated in our September 7, 2022, letter regarding the religious group Faith and Action’s decades-long, private judicial lobbying campaign known as “Operation Higher Court.” Your reply letter, dated November 7, 2022, states that you “understand the policy questions raised by your letter to be whether the [Supreme] Court should adopt a separate code of conduct and whether the financial disclosure requirements in place for the federal judiciary are adequate.” While these are indeed important questions in our inquiry, they are separate from our specific questions regarding factual inquiry into the justices’ conduct and whether that factual inquiry would show that the conduct violates ethical and financial disclosure rules. A response pointing out the existence of rules is not responsive to questions about whether those rules were broken.

It seems that the underlying issue is the absence of a formal facility for complaint or investigation into possible ethics or reporting violations. Congressional oversight and internal investigations initiated by the Court itself are, as a general matter, the only two avenues of investigating unethical conduct at the Court. If the Court, as your letter suggests, is not willing to undertake fact-finding inquiries into possible ethics violations that leaves Congress as the only forum.

Our previous letter identified reports of conduct by justices that increasingly appear out of line with the conduct permissible for other federal judges and, in some cases, may be inconsistent with federal law. Recent reporting by the *New York Times* that the orchestrators of this judicial lobbying campaign may have used their access to certain justices to secure confidential

information about pending cases only deepens our concerns about the lack of adequate ethical and legal guardrails at the Court.¹ Moreover, it appears that the Court was alerted to these allegations as early as July 2022, when Chief Justice Roberts received a letter from the former leader of this lobbying operation.² The Court was thus already aware of this information when it received our September 7, 2022, letter.

Given the seriousness of these issues, we request that you provide responses to the specific questions included in our September 7, 2022, letter. Furthermore, to assist our investigation into the new allegations reported by the *Times*, we ask that you please provide the following additional information:

1. Has the Supreme Court opened an investigation into any of the allegations set forth in our September 7, 2022, letter, the July 2022 letter from Reverend Robert Schenck to Chief Justice Roberts, or any other allegations contained in the relevant reporting from *Rolling Stone*, *Politico*, or the *New York Times*? If so, please provide relevant details regarding the management of that investigation, including which individual and/or office is leading the investigation and how and on what date the investigation was launched.
2. Has the Court reevaluated any of its practices, procedures, or rules related to judicial ethics, or the justices' receipt and reporting of gifts and travel, in light of the July 2022 letter from Reverend Robert Schenck to Chief Justice Roberts?
3. Who is responsible for policing the relationship between the Supreme Court and the Supreme Court Historical Society to ensure that paid membership in the Society is not used as a means of gaining undue influence?

It may assist the resolution of these issues if the Court were to designate an individual knowledgeable about them to provide testimony to us about the existence or not, and the nature if they exist, of any procedures that guide inquiry, investigation and determination of factual issues related to ethics or reporting questions raised about justices' conduct.

Sincerely,



SHELDON WHITEHOUSE
Chairman, Senate Judiciary Subcommittee on
Federal Courts, Oversight, Agency Action,
and Federal Rights



HENRY C. "HANK" JOHNSON, JR.
Chairman, House Judiciary Subcommittee
on Courts, Intellectual Property, and the
Internet

¹ Jodi Kantor & Jo Becker, *Former Anti-Abortion Leader Alleges Another Supreme Court Breach*, N.Y. Times (Nov. 19, 2022), <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

² Letter from Rev. Robert L. Schenck to Hon. John Roberts (June 7, 2022), available at <https://int.nyt.com/data/documenttools/roberts-letter-redacted-annotated/fb6e34bb904bfafa/full.pdf>.