

Congress of the United States
Washington, DC 20510

April 4, 2022

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

Dear Chief Justice Roberts:

As Chairmen of the Senate and House Judiciary Federal Courts Subcommittees, we write to emphasize the specter of partisanship raised by Justice Thomas's failure to recuse himself in cases involving the 2020 election or the January 6th attack on the Capitol. Because this episode threatens to tarnish the integrity of and public confidence in the Supreme Court, we urge you to take appropriate steps to ensure that Justice Thomas will recuse himself in all such future cases.

Following the 2020 election, Virginia "Ginni" Thomas communicated extensively with then-White House Chief of Staff Mark Meadows, encouraging the White House to challenge the election results and resist the peaceful transfer of power.¹ These and other communications trigger Justice Thomas's obligations under federal law. That statute provides that a judge must recuse from any case "in which his impartiality might reasonably be questioned," particularly when his spouse has "an interest that could be substantially affected by the outcome of the proceeding" or when he has "personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(a), (b)(5), (b)(1).

You have repeatedly resisted criticism that the Court is a political institution.² Now, you have a concrete opportunity to support that position. The widespread outcry against Justice Thomas's previous failure to recuse himself is proof enough that Justice Thomas's "impartiality might reasonably be questioned" in any future litigation involving the January 6th attack or the efforts to overturn the 2020 election results. These concerns are particularly acute given the partisan nature of the communications. As Chief Justice, your duty to safeguard public faith in the judiciary obligates you to prevent the further undermining of the Court's legitimacy by

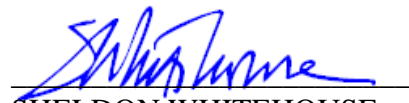
¹ *Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show*, WASH. POST (Mar. 24, 2022), <https://sen.gov/93J2>.

² Robert Barnes, *Rebuking Trump's criticism of 'Obama judge,' Chief Justice Roberts defends judiciary as 'independent'*, WASH. POST (Nov. 21, 2018), <https://sen.gov/0Q6J>; Andrew Chung, *U.S. Supreme Court not politicized, says Chief Justice Roberts*, REUTERS (Sept. 24, 2019), <https://sen.gov/J267>.

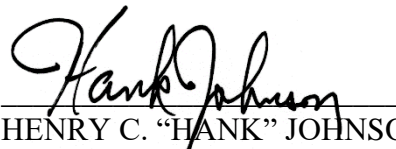
prevailing on Justice Thomas to heed his ethical and statutory requirements in future cases involving these issues.

You recently announced that the federal courts “expect judges to adhere to the highest standards” because “public trust is essential, not incidental, to our function.”³ You emphasized that “[t]he Judiciary’s power to manage its internal affairs insulates courts from inappropriate political influence and is crucial to preserving public trust in its work.”⁴ Now is the time to put these words into action.

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

³ 2021 Year-End Report on the Federal Judiciary, at 3 (Dec. 31, 2021), <https://sen.gov/K37W>.

⁴ *Id.* at 1.