

Congress of the United States
Washington, DC 20510

February 23, 2023

Michael Chertoff
Executive Chairman
The Chertoff Group
1399 New York Avenue NW, Ste. 1100
Washington, D.C. 20005

Dear Mr. Chertoff:

On January 19, 2023, the Supreme Court published the Marshal of the Court's report of her investigation into the May 2022 leak of Justice Samuel Alito's draft opinion in *Dobbs v. Jackson Women's Health Organization*.¹ In addition to that report, the Supreme Court published a "Statement of the Court Concerning the Leak Investigation," in which the Court states that it "invited [you] to assess the Marshal's investigation."² The Court also published your statement explaining that you were "asked by the Chief Justice to independently review and assess the thoroughness of the investigation into the *Dobbs* draft opinion leak and to identify any additional useful investigative measures as well as actions that would improve the handling of sensitive documents in the future."³ You concluded that the Marshal "undertook a thorough investigation" and that you "cannot identify any additional investigative measures" that the Marshal could have taken.⁴

The following week, CNN reported that the Supreme Court's statement failed to disclose "longstanding financial ties" to you and The Chertoff Group.⁵ According to CNN, the Court "has privately contracted with The Chertoff Group for security assessments, some broadly covering justices' safety and some specifically related to Covid-19 protocols" at the Court.⁶ Although CNN could not determine precisely how much the Court has paid your group for these services, it reported that payments "for consultations that extended over several months and

¹ Office of the Marshal, Supreme Court of the United States, *Marshal's Report of Findings & Recommendations*, Jan. 19, 2023.

² Supreme Court of the United States, *Statement of the Court Concerning the Leak Investigation 2*, Jan. 19, 2023.

³ Michael Chertoff, *Statement from Michael Chertoff*, Jan. 19, 2023.

⁴ *Id.*

⁵ Joan Biskupic, *Exclusive: Supreme Court did not disclose financial relationship with expert brought in to review leak probe*, CNN (Jan. 27, 2023), <https://www.cnn.com/2023/01/27/politics/supreme-court-chertoff-leak-investigation/index.html>.

⁶ *Id.*

involved a review of the justices' homes, reached at least \$1 million."⁷ CNN also reported on your personal connections to some of the justices, including serving for almost two years on the Third Circuit Court of Appeals alongside then-Judge Samuel Alito, whose opinion was leaked.⁸

In this Court matter, peculiarities abound, including the different treatment given to the justices, the Court's suggestion that the motive may have been a "misguided attempt at protest,"⁹ and the use of a third party to review the Marshal's investigation. The Court's failure to explain adequately why it felt a third-party review was necessary, how it chose that reviewer, and its preexisting relationship with the reviewer all warrant additional clarity.

In this purely administrative matter, our committees have an appropriate oversight interest, and we would be grateful for more clarity about your role in this matter and relationship with the Court. To that end, I respectfully request the following information.

1. Who at the Supreme Court contacted you, and when, to ask whether you would "consult" on the Court's investigation into the *Dobbs* leak? Please describe precisely the service you were asked to provide as part of this consultation, and provide any contract or written terms of the agreement.
2. Your statement states that "Court officials provided a detailed account of their investigative process and all documents associated with the investigation, including the interview transcripts and notes of the investigators."¹⁰ When and how was that account provided, and did it include the "call and text detail records and billing statements for . . . personal devices" provided by Court personnel to the Marshal?¹¹
3. As part of your consultation, did you have the opportunity to conduct additional interviews with any Court employees, or have the ability to take additional investigative measures if you deemed them necessary?
4. Please describe the extent of your or The Chertoff Group's work conducted on behalf of the Supreme Court prior to consultation on the *Dobbs* leak, and any information you have regarding the process by which you or The Chertoff Group applied for or were selected to perform those services.
5. Do you maintain personal relationships with any of the justices of the Supreme Court? If so, with whom and of what nature?

⁷ *Id.*

⁸ *Id.*

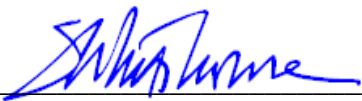
⁹ *Statement of the Court, supra* note 2, at 1.

¹⁰ *Statement from Michael Chertoff, supra* note 3.

¹¹ *Marshal's Report, supra* note 1, at 13.

As you may know, we are working on legislation regarding the internal investigative capabilities at the Court. Your responses to these questions will help inform any steps that Congress may take to ensure that future investigative matters are properly handled. Thank you for your assistance.

Sincerely,



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



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