

**Congress of the United States**  
**Washington, DC 20510**

January 10, 2025

The Honorable John G. Roberts, Jr.  
Chairman, Judicial Conference of the United States  
Supreme Court of the United States  
One First St. NE  
Washington, D.C. 20543

Dear Chairman Roberts and Members of the Conference:

Earlier this week, Justice Alito and President-elect Trump spoke on a private call by phone, while the President-elect was involved in several high-profile cases pending or likely to come before the Supreme Court, including *Donald J. Trump v. New York* and *TikTok, Inc. v. Garland*.<sup>1</sup> This contact could potentially implicate provisions of the Supreme Court's new code of conduct and of federal law.<sup>2</sup> Justice Alito has asserted that President-elect Trump called him to discuss a former law clerk's qualifications for a position in the upcoming presidential administration and denied discussing any matters related to the President-elect's interest in matters before the Supreme Court.<sup>3</sup> We humbly suggest that this incident provides yet another reason for the Judicial Conference and the Court to agree on some sort of neutral fact-finding when a justice's conduct is questioned.

Justice Alito has already shown that he is willing to discuss matters that may come before the Supreme Court with people who are personally involved in such matters. In 2023, Justice Alito opined in the editorial pages of the Wall Street Journal that it was unconstitutional for Congress to regulate the Supreme Court at a time when we had introduced Supreme Court ethics legislation, and when the Senate was investigating undisclosed gifts by billionaires to Supreme Court justices.<sup>4</sup> Moreover, this Alito interview was conducted by the lawyer for someone connected to the billionaires and who was refusing to comply with Senate information requests, arguing constitutional concerns.<sup>5</sup>

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<sup>1</sup> Katherine Faulders et al., *Trump speaks with Justice Alito amid push to halt criminal sentencing*, ABC NEWS (Jan. 8, 2025), <https://abcnews.go.com/US/trump-speaks-justice-alito-amid-push-halt-criminal/story?id=117386419>.

<sup>2</sup> See CODE OF CONDUCT FOR JUSTICES OF THE SUP. CT. OF THE U.S., Canons 1, 2, 3(A), 4; 28 U.S.C. § 455(a).

<sup>3</sup> Faulders et al., *supra* note 1.

<sup>4</sup> David B. Rivkin, Jr. & James Taranto, Opinion, *Samuel Alito, the Supreme Court's Plain-Spoken Defender*, WALL ST. J. (July 28, 2023), <https://www.wsj.com/articles/samuel-alito-the-supreme-courts-plain-spoken-defender-precedent-ethics-originalism-5e3e9a7>.

<sup>5</sup> Letter from Sen. Sheldon Whitehouse to Hon. John G. Roberts, Jr. 6-7 (Sept. 4, 2023), [https://www.whitehouse.senate.gov/wp-content/uploads/imo/media/doc/2023-09-04\\_complaint\\_from\\_senwhitehouseenclosure.pdf](https://www.whitehouse.senate.gov/wp-content/uploads/imo/media/doc/2023-09-04_complaint_from_senwhitehouseenclosure.pdf).

In 2022, the former leader of a right-wing judicial lobbying group alleged that two of the group's donors learned the Supreme Court's decision in a pending case while dining at Justice Alito's home, an allegation which the Justice has denied.<sup>6</sup>

In both of these incidents, the Justice's description was provided in public statements through intermediaries. Even where an investigation is cursory, it is ordinary practice to require some formal statement. A formal statement provides added assurance of the truthfulness of the statement's content, because there are legal consequences to being untruthful in a formal statement.

In cases where the truthfulness of a statement is subject to doubt or dispute, a neutral party (for instance, for a member of Congress, the appropriate ethics committee) would ordinarily take an independent look and evaluate any countervailing evidence. For instance, this would have been useful in the case of the upside-down flag, to reconcile the conflict between Justice Alito's public statements through intermediaries with conflicting police reports, news stories, school schedules and calendars chronicling the incident.<sup>7</sup>

This is not a difficult problem to solve. Every one of our 50 states and the District of Columbia have a process for investigating and resolving questions of potential judicial misconduct by members of the highest court within their sovereign domain, including provisions for the taking of formal statements.<sup>8</sup> The Supreme Court still has no such process. As a result, when ethical questions arise at the highest Court in the country, the public must rely solely on justices' informal statements made through intermediaries to the press. In no other branch, office or court would such a method be adequate. Even President Biden sat for a formal statement about his Delaware presidential records.

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<sup>6</sup> 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>.

<sup>7</sup> See Jodi Kantor, *The Alitos, the Neighborhood Clash and the Upside-Down Flag*, N.Y. TIMES (May 28, 2024), <https://www.nytimes.com/2024/05/28/us/justice-alito-neighbors-stop-steal-flag.html>.

<sup>8</sup> Letter from Sen. Sheldon Whitehouse to Hon. John G. Roberts, Jr. & Hon. Robert Conrad (Nov. 26, 2024), <https://www.whitehouse.senate.gov/wp-content/uploads/2024/12/2024-11-26-Letter-to-CJ-Roberts-Judicial-Conference-State-Ethics-Enclosure.pdf>.

No convincing reason exists for the Supreme Court of the United States to remain the only court in the country without an enforceable process for policing misconduct. We submit that this latest incident provides an additional reminder of the need for the Court and Conference to adopt some basic elements of legal process: a place to file complaints, a fact-finding process for credible complaints, and a neutral determination of ethical compliance.

Sincerely,



SHELDON WHITEHOUSE  
United States Senator



HENRY C. "HANK" JOHNSON, JR.  
United States Congressman

cc: The Honorable Robert Conrad, Director, Administrative Office of the United States  
Courts