

Calendar No. 199

118TH CONGRESS
1ST SESSION

S. 359

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, Mr. MERKLEY, Mr. BOOKER, Mrs. GILLIBRAND, Mr. REED, Mrs. FEINSTEIN, Mr. WARNER, Mr. SANDERS, Mr. MARKEY, Mr. DURBIN, Ms. HIRONO, Mr. VAN HOLLEN, Mr. WELCH, Mr. SCHATZ, Mr. PADILLA, Mr. WYDEN, Ms. BALDWIN, Ms. KLOBUCHAR, Mr. CARDIN, Ms. HASSAN, Mr. WARNOCK, Mr. COONS, Mr. FETTERMAN, Mr. OSSOFF, Mr. SCHUMER, Mr. CARPER, and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 5, 2023

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Supreme Court Ethics,
3 Recusal, and Transparency Act of 2023”.

4 **SEC. 2. CODE OF CONDUCT FOR THE SUPREME COURT OF**
5 **THE UNITED STATES.**

6 (a) **IN GENERAL.**—Chapter 16 of title 28, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 365. Codes of conduct**

10 **“(a) JUSTICES.**—Not later than 180 days after the
11 date of enactment of this section, the Supreme Court of
12 the United States shall, after appropriate public notice
13 and opportunity for comment in accordance with section
14 2071, issue a code of conduct for the justices of the Su-
15 preme Court.

16 **“(b) OTHER JUDGES.**—Not later than 180 days after
17 the date of enactment of this section, the Judicial Con-
18 ference of the United States shall, after appropriate public
19 notice and opportunity for comment in accordance with
20 section 2071, issue a code of conduct for the judges of
21 the courts of appeals, the district courts (including bank-
22 ruptcy judges and magistrate judges), and the Court of
23 International Trade.

24 **“(c) MODIFICATION.**—The Supreme Court of the
25 United States and the Judicial Conference may modify the
26 applicable codes of conduct under this section after giving

1 appropriate public notice and opportunity for comment in
 2 accordance with section 2071.

3 **“§ 366. Public access to ethics rules**

4 “The Supreme Court of the United States shall make
 5 available on its internet website, in a full-text, searchable,
 6 sortable, and downloadable format, copies of the code of
 7 conduct issued under section 365(a), any rules established
 8 by the Counselor to the Chief Justice under section 677
 9 and any other related rules or resolutions, as determined
 10 by the Chief Justice of the United States, issued by the
 11 Counselor to the Chief Justice of the United States or
 12 agreed to by the justices of the Supreme Court.

13 **“§ 367. Complaints against justices**

14 “(a) RECEIPT OF COMPLAINTS.—Not later than 180
 15 days after the date of enactment of this section, the Su-
 16 preme Court of the United States shall establish proce-
 17 dures, modeled after the procedures set forth in sections
 18 351 through 364, under which individuals may file with
 19 the Court, or the Court may identify, complaints alleging
 20 that a justice of the Supreme Court—

21 “(1) has violated—

22 “(A) the code of conduct issued pursuant
 23 to section 365(a);

24 “(B) section 455; or

1 “(C) any other applicable provision of Fed-
2 eral law; or

3 “(2) has otherwise engaged in conduct that un-
4 dermines the integrity of the Supreme Court of the
5 United States.

6 “(b) JUDICIAL INVESTIGATION PANEL.—

7 “(1) IN GENERAL.—Upon receipt or identifica-
8 tion of a complaint under subsection (a), the Su-
9 preme Court of the United States shall refer such
10 complaint to a judicial investigation panel, which
11 shall be composed of a panel of 5 judges selected
12 randomly from among the chief judge of each circuit
13 of the United States.

14 “(2) DUTIES.—The judicial investigation panel
15 shall—

16 “(A) review and, if appropriate as deter-
17 mined by the panel, investigate all complaints
18 submitted to the panel using procedures estab-
19 lished by the panel and modeled after the proce-
20 dures set forth in sections 351 through 364;

21 “(B) present to the Supreme Court of the
22 United States any findings and recommenda-
23 tions for necessary and appropriate action by
24 the Supreme Court, including dismissal of the

1 complaint, disciplinary actions, or changes to
2 Supreme Court rules or procedures;

3 “(C) if the panel does not recommend dis-
4 missal of the complaint, not later than 30 days
5 following the presentation of any findings and
6 recommendations under this paragraph, publish
7 a report containing such findings and rec-
8 ommendations; and

9 “(D) if the panel recommends dismissal of
10 the complaint, the panel may publish any find-
11 ings and recommendations if the panel deter-
12 mines that such publication would be in fur-
13 therance of the public interest.

14 “(3) POWERS.—In conducting any investigation
15 under this section, the judicial investigation panel
16 may hold hearings, take sworn testimony, issue sub-
17 poenas ad testificandum and subpoenas duces
18 tecum, and make necessary and appropriate orders
19 in the exercise of its authority.

20 “(4) ACCESS.—If the judicial investigation
21 panel determines that a substantially similar com-
22 plaint was previously submitted under section 351,
23 but that such substantially similar complaint was
24 dismissed for lack of authority to review or act upon
25 such complaint, the panel shall have access to any

1 information gathered pursuant to this chapter in re-
 2 lation to such substantially similar complaint.

3 ~~“(5) COMPENSATION.—The judicial investiga-~~
 4 ~~tion panel may appoint and fix the compensation of~~
 5 ~~such staff as it deems necessary.”.~~

6 ~~(b) TECHNICAL AND CONFORMING AMENDMENT.—~~
 7 ~~The table of sections for chapter 16 of title 28, United~~
 8 ~~States Code, is amended by adding at the end the fol-~~
 9 ~~lowing:~~

~~“365. Codes of conduct.~~

~~“366. Public access to ethics rules.~~

~~“367. Complaints against justices.”.~~

10 **SEC. 3. MINIMUM GIFT, TRAVEL, AND INCOME DISCLOSURE**
 11 **STANDARDS FOR JUSTICES OF THE SUPREME**
 12 **COURT.**

13 Section 677 of title 28, United States Code, is
 14 amended by adding at the end the following:

15 ~~“(d) The Counselor, with the approval of the Chief~~
 16 ~~Justice, shall establish rules governing the disclosure of~~
 17 ~~all gifts, income, or reimbursements, as those terms are~~
 18 ~~defined in section 13101 of title 5, received by any justice~~
 19 ~~and any law clerk to a justice. Such rules shall, at min-~~
 20 ~~imum, require disclosure of any information concerning~~
 21 ~~gifts, income, and reimbursements required to be disclosed~~
 22 ~~under the Standing Rules of the Senate and the Rules of~~
 23 ~~the House of Representatives.”.~~

1 **SEC. 4. CIRCUMSTANCES REQUIRING DISQUALIFICATION.**

2 (a) **ANTICORRUPTION PROTECTIONS.**—Subsection
3 (b) of section 455 of title 28, United States Code, is
4 amended by adding at the end the following:

5 “(6) Where the justice or judge knows that a
6 party to the proceeding or an affiliate of a party to
7 the proceeding made any lobbying contact, as de-
8 fined in section 3 of the Lobbying Disclosure Act of
9 1995 (2 U.S.C. 1602), or spent substantial funds in
10 support of the nomination, confirmation, or appoint-
11 ment of the justice or judge.

12 “(7) Where the justice or judge, their spouse,
13 minor child, or a privately held entity owned by any
14 such person received income, a gift, or reimburse-
15 ment, as those terms are defined in section 13101
16 of title 5—

17 “(A) from a party to the proceeding or an
18 affiliate of a party to the proceeding; and

19 “(B) during the period beginning on the
20 date that is 6 years before the date on which
21 the justice or judge was assigned to the pro-
22 ceeding and ending on the date of final disposi-
23 tion of the proceeding.”.

24 (b) **DUTY TO KNOW.**—Subsection (c) of section 455
25 of title 28, United States Code, is amended to read as
26 follows:

1 “(c) A justice, judge, magistrate judge, or bankruptcy
2 judge of the United States shall ascertain—

3 “(1) the personal and fiduciary financial inter-
4 ests of the justice or judge;

5 “(2) the personal financial interests of the
6 spouse and minor children residing in the household
7 of the justice or judge; and

8 “(3) any interest of the persons described in
9 paragraph (2) that could be substantially affected by
10 the outcome of the proceeding.”.

11 (e) DIVESTMENT.—Subsection (f) of section 455 of
12 title 28, United States Code, is amended by inserting
13 “under subsection (b)(4)” after “disqualified”.

14 (d) DUTY TO NOTIFY.—Section 455 of title 28,
15 United States Code, is amended by adding at the end the
16 following:

17 “(g) If at any time a justice, judge, magistrate judge,
18 or bankruptcy judge of the United States learns of a con-
19 dition that could reasonably require disqualification under
20 this section, the justice or judge shall immediately notify
21 all parties to the proceeding.”.

22 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
23 Section 455 of title 28, United States Code, as amended
24 by this section, is amended—

1 (1) in the section heading, by striking “**judge,**
 2 **or magistrate judge**” and inserting “**judge,**
 3 **magistrate judge, or bankruptcy judge**”;

4 (2) in subsection (a), by striking “judge, or
 5 magistrate judge” and inserting “judge, magistrate
 6 judge, or bankruptcy judge”;

7 (3) in subsection (b)—

8 (A) in paragraph (2), by striking “the
 9 judge or such lawyer” and inserting “the jus-
 10 tice, the judge, or such lawyer”;

11 (B) in paragraph (5)(iii), by inserting
 12 “justice or” before “judge”; and

13 (C) in paragraph (5)(iv), by inserting “jus-
 14 tice’s or” before “judge’s”;

15 (4) in subsection (e), by inserting “justice or”
 16 before “judge”;

17 (5) in subsection (d)(4)(i), by inserting “justice
 18 or” before “judge”; and

19 (6) in subsection (e), by striking “judge, or
 20 magistrate judge” and inserting “judge, magistrate
 21 judge, or bankruptcy judge of the United States”.

22 (f) PUBLIC NOTICE.—The rules of each court subject
 23 to section 455 of title 28, United States Code, as amended
 24 by this section, shall be amended to require that the clerk
 25 shall publish timely notice on the website of the court of—

1 (1) any matter in which a justice, judge, mag-
 2 istrate judge, or bankruptcy judge of the United
 3 States is disqualified under such section;

4 (2) any matter in which the reviewing panel
 5 under section 1660 of title 28, United States Code,
 6 rules on a motion to disqualify; and

7 (3) an explanation of each reason for the dis-
 8 qualification or ruling, which shall include a specific
 9 identification of each circumstance that resulted in
 10 such disqualification or ruling, but which shall not
 11 include any private or sensitive information deemed
 12 by a majority of the reviewing panel under section
 13 1660 of title 28, United States Code, as added by
 14 section 5 of this Act, to be appropriate for redaction
 15 and unnecessary in order to provide the litigants and
 16 public a full understanding of the reasons for the
 17 disqualification or ruling.

18 **SEC. 5. REVIEW OF CERTIFIED DISQUALIFICATION MO-**
 19 **TIONS.**

20 (a) **IN GENERAL.**—Chapter 111 of title 28, United
 21 States Code, is amended by adding at the end the fol-
 22 lowing:

23 **“§ 1660. Review of certified motions to disqualify**

24 “(a) **MOTION FOR DISQUALIFICATION.**—If a justice,
 25 judge, magistrate judge, or bankruptcy judge of the

1 United States is required to be disqualified from a pro-
 2 ceeding under any provision of Federal law, a party to
 3 the proceeding may file a timely motion for disqualifica-
 4 tion, accompanied by a certificate of good faith and an
 5 affidavit alleging facts sufficient to show that disqualifica-
 6 tion of the justice, judge, magistrate judge, or bankruptcy
 7 judge is so required.

8 “(b) CONSIDERATION OF MOTION.—A justice, judge,
 9 magistrate judge, or bankruptcy judge of the United
 10 States shall either grant or certify to a reviewing panel
 11 a timely motion filed pursuant to subsection (a) and stay
 12 the proceeding until a final determination is made with
 13 respect to the motion.

14 “(c) REVIEWING PANEL.—

15 “(1) IN GENERAL.—A reviewing panel to which
 16 a motion is certified under subsection (b) shall be
 17 composed of 3 judges selected at random from
 18 judges of the United States who do not sit on the
 19 same court—

20 “(A) as the judge, magistrate judge, or
 21 bankruptcy judge who is the subject of the mo-
 22 tion; or

23 “(B) as the other members of the review-
 24 ing panel.

1 ~~“(2) CIRCUIT LIMITATION.—Not more than 1~~
 2 ~~member of the reviewing panel may be a judge of~~
 3 ~~the same judicial circuit as the judge, magistrate~~
 4 ~~judge, or bankruptcy judge who is the subject of the~~
 5 ~~motion.~~

6 ~~“(3) PARTICIPATION.—The reviewing panel,~~
 7 ~~prior to its final determination with respect to a mo-~~
 8 ~~tion filed under subsection (a), shall provide the~~
 9 ~~judge, magistrate judge, or bankruptcy judge of the~~
 10 ~~United States who is the subject of such motion an~~
 11 ~~opportunity to provide in writing the views of the~~
 12 ~~judge on the motion, including the explanation of~~
 13 ~~the judge for not granting the motion.~~

14 ~~“(d) SUPREME COURT REVIEW.—The Supreme~~
 15 ~~Court of the United States, not including the justice who~~
 16 ~~is the subject of a motion seeking to disqualify a justice~~
 17 ~~under subsection (a), shall be the reviewing panel for such~~
 18 ~~motions.”.~~

19 ~~(b) TECHNICAL AND CONFORMING AMENDMENT.—~~
 20 ~~The table of sections for chapter 111 of title 28, United~~
 21 ~~States Code, is amended by adding at the end the fol-~~
 22 ~~lowing:~~

~~“1660. Review of certified motions to disqualify.”.~~

23 **SEC. 6. DISCLOSURE BY PARTIES AND AMICI.**

24 Not later than 1 year after the date of enactment
 25 of this Act, the Supreme Court of the United States shall

1 prescribe rules of procedure in accordance with sections
 2 2072 through 2074 of title 28, United States Code, requir-
 3 ing each party or amicus to list in the petition or brief
 4 of the party or amicus, as applicable, a description and
 5 value of—

6 (1) any gift, income, or reimbursement, as
 7 those terms are defined in section 13101 of title 5,
 8 United States Code, provided to any justice, during
 9 the period beginning 2 years prior to the commence-
 10 ment of the proceeding and ending on the date of
 11 final disposition of the proceeding, by—

12 (A) each such party, amicus, or affiliate of
 13 each such party or amicus;

14 (B) the lawyers or law firms in the pro-
 15 ceeding of each such party or amicus; and

16 (C) the officers, directors, or employees of
 17 each such party or amicus; and

18 (2) any lobbying contact or expenditure of sub-
 19 stantial funds by any person described in subpara-
 20 graphs (A), (B), and (C) of paragraph (1) in sup-
 21 port of the nomination, confirmation, or appoint-
 22 ment of a justice.

1 **SEC. 7. AMICUS DISCLOSURE.**

2 (a) IN GENERAL.—Chapter 111 of title 28, United
3 States Code, as amended by section 5, is amended by add-
4 ing at the end the following:

5 **“§ 1661. Disclosures related to amicus activities**

6 **“(a) DISCLOSURE.—**

7 **“(1) IN GENERAL.—**Any person that files an
8 amicus brief in a court of the United States shall
9 list in the amicus brief the name of any person
10 who—

11 **“(A)** contributed to the preparation or sub-
12 mission of the amicus brief;

13 **“(B)** contributed not less than 3 percent of
14 the gross annual revenue of the amicus, or an
15 affiliate of the amicus, for the previous calendar
16 year if the amicus is not an individual; or

17 **“(C)** contributed more than \$100,000 to
18 the amicus, or an affiliate of the amicus, in the
19 previous calendar year.

20 **“(2) EXCEPTIONS.—**The requirements of this
21 subsection shall not apply to amounts received in
22 commercial transactions in the ordinary course of
23 any trade or business by the amicus, or an affiliate
24 of the amicus, or in the form of investments (other
25 than investments by the principal shareholder in a
26 limited liability corporation) in an organization if the

1 amounts are unrelated to the amicus filing activities
2 of the amicus.

3 ~~“(b) AUDIT.—The Director of the Administrative Of-~~
4 ~~fice of the United States Courts shall conduct an annual~~
5 ~~audit to ensure compliance with this section.”.~~

6 ~~(b) TECHNICAL AND CONFORMING AMENDMENT.—~~
7 ~~The table of sections for chapter 111 of title 28, United~~
8 ~~States Code, as amended by section 5, is amended by add-~~
9 ~~ing at the end the following:~~

~~“1661. Disclosures related to amicus activities.”.~~

10 **SEC. 8. CONFLICTS RELATED TO AMICI CURIAE.**

11 ~~(a) IN GENERAL.—Except as provided in subsection~~
12 ~~(b), the Supreme Court of the United States and the Judi-~~
13 ~~cial Conference of the United States shall prescribe rules~~
14 ~~of procedure in accordance with sections 2072 through~~
15 ~~2074 of title 28, United States Code, for prohibiting the~~
16 ~~filing of or striking an amicus brief that would result in~~
17 ~~the disqualification of a justice, judge, or magistrate~~
18 ~~judge.~~

19 ~~(b) INITIAL TRANSMITTAL.—The Supreme Court of~~
20 ~~the United States shall transmit to Congress—~~

21 ~~(1) the proposed rules required under sub-~~
22 ~~section (a) not later than 180 days after the date of~~
23 ~~enactment of this Act; and~~

1 (2) any rules in addition to those transmitted
 2 under paragraph (1) pursuant to section 2074 of
 3 title 28, United States Code.

4 **SEC. 9. STUDIES AND REPORTS.**

5 (a) STUDIES.—

6 (1) IN GENERAL.—Beginning on the date that
 7 is 180 days after the date of enactment of this Act,
 8 and every other year thereafter, the Director of the
 9 Federal Judicial Center shall conduct a study on the
 10 extent of compliance or noncompliance with the re-
 11 quirements of sections 144 and 455 of title 28,
 12 United States Code.

13 (2) ADDITIONAL TIME.—With respect to the
 14 first such study required to be submitted under
 15 paragraph (1), the requirements of that paragraph
 16 may be implemented after the date described in that
 17 paragraph if the Director of the Federal Judicial
 18 Center identifies in writing to the relevant commit-
 19 tees of Congress the additional time needed for sub-
 20 mission of the study.

21 (3) FACILITATION OF STUDIES.—The Director
 22 of the Federal Judicial Center shall maintain a
 23 record of each instance in which—

24 (A) a justice, judge, magistrate judge, or
 25 bankruptcy judge of the United States was not

1 assigned to a case due to potential or actual
2 conflicts; and

3 (B) a justice, judge, magistrate judge, or
4 bankruptcy judge of the United States disquali-
5 fies themselves after a case assignment is made.

6 (b) **REPORTS TO CONGRESS.**—Not later than April
7 1 of each year following the completion of the study re-
8 quired under subsection (a), the Director of the Federal
9 Judicial Center shall submit to Congress a report con-
10 taining the findings of the study and any recommenda-
11 tions to improve compliance with sections 144 and 455
12 of title 28, United States Code.

13 (c) **GAO REVIEW.**—Not later than 1 year after the
14 date on which the report is submitted under subsection
15 (b), and every 5 years thereafter, the Comptroller General
16 of the United States shall submit to Congress a report
17 containing—

18 (1) an evaluation of the methodology and find-
19 ings of the study required under subsection (a); and

20 (2) the audit required under section 1661 of
21 title 28, United States Code, as added by section 7
22 of this Act.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Supreme Court Ethics,*
25 *Recusal, and Transparency Act of 2023”.*

1 **SEC. 2. CODE OF CONDUCT FOR THE SUPREME COURT OF**
 2 **THE UNITED STATES.**

3 (a) *IN GENERAL.*—Chapter 16 of title 28, United
 4 States Code, is amended by adding at the end the following:

5 **“§ 365. Codes of conduct**

6 “(a) *JUSTICES.*—Not later than 180 days after the
 7 date of enactment of this section, the Supreme Court of the
 8 United States shall, after appropriate public notice and op-
 9 portunity for comment in accordance with section 2071,
 10 issue a code of conduct for the justices of the Supreme Court.

11 “(b) *OTHER JUDGES.*—Not later than 180 days after
 12 the date of enactment of this section, the Judicial Conference
 13 of the United States shall, after appropriate public notice
 14 and opportunity for comment in accordance with section
 15 2071, issue a code of conduct for the judges of the courts
 16 of appeals, the district courts (including bankruptcy judges
 17 and magistrate judges), and the Court of International
 18 Trade.

19 “(c) *MODIFICATION.*—The Supreme Court of the
 20 United States and the Judicial Conference may modify the
 21 applicable codes of conduct under this section after giving
 22 appropriate public notice and opportunity for comment in
 23 accordance with section 2071.

24 **“§ 366. Public access to ethics rules**

25 “The Supreme Court of the United States shall make
 26 available on its internet website, in a full-text, searchable,

1 *sortable, and downloadable format, copies of the code of con-*
 2 *duct issued under section 365(a), any rules established by*
 3 *the Counselor to the Chief Justice of the United States under*
 4 *section 677 and any other related rules or resolutions, as*
 5 *determined by the Chief Justice of the United States, issued*
 6 *by the Counselor to the Chief Justice of the United States*
 7 *or agreed to by the justices of the Supreme Court.*

8 **“§ 367. Complaints against justices**

9 “(a) *RECEIPT OF COMPLAINTS.*—Not later than 180
 10 *days after the date of enactment of this section, the Supreme*
 11 *Court of the United States shall establish procedures, mod-*
 12 *eled after the procedures set forth in sections 351 through*
 13 *364, under which individuals may file with the Court, or*
 14 *the Court may identify, complaints alleging that a justice*
 15 *of the Supreme Court—*

16 “(1) *has violated—*

17 “(A) *the code of conduct issued pursuant to*
 18 *section 365(a);*

19 “(B) *section 455; or*

20 “(C) *any other applicable provision of Fed-*
 21 *eral law; or*

22 “(2) *has otherwise engaged in conduct that un-*
 23 *dermines the integrity of the Supreme Court.*

24 “(b) *JUDICIAL INVESTIGATION PANEL.*—

1 “(1) *IN GENERAL.*—Upon receipt or identifica-
 2 tion of a complaint under subsection (a), the Supreme
 3 Court of the United States shall refer such complaint
 4 to a judicial investigation panel, which shall be com-
 5 posed of a panel of 5 judges selected randomly from
 6 among the chief judge of each circuit of the United
 7 States.

8 “(2) *DUTIES.*—The judicial investigation
 9 panel—

10 “(A) shall review and, if appropriate as de-
 11 termined by the panel, investigate all complaints
 12 submitted to the panel using procedures estab-
 13 lished by the panel and modeled after the proce-
 14 dures set forth in sections 351 through 364;

15 “(B) shall present to the Supreme Court of
 16 the United States any findings and rec-
 17 ommendations for necessary and appropriate ac-
 18 tion by the Supreme Court, including dismissal
 19 of the complaint, disciplinary actions, or changes
 20 to Supreme Court rules or procedures;

21 “(C) if the panel does not recommend dis-
 22 missal of the complaint, not later than 30 days
 23 following the presentation of any findings and
 24 recommendations under this paragraph, shall

1 *publish a report containing such findings and*
2 *recommendations; and*

3 “(D) if the panel recommends dismissal of
4 the complaint, may publish any findings and
5 recommendations if the panel determines that
6 such publication would be in furtherance of the
7 public interest.

8 “(3) *POWERS.*—In conducting any investigation
9 under this section, the judicial investigation panel
10 may hold hearings, take sworn testimony, issue sub-
11 poenas ad testificandum and subpoenas duces tecum,
12 and make necessary and appropriate orders in the ex-
13 ercise of its authority.

14 “(4) *ACCESS.*—If the judicial investigation panel
15 determines that a substantially similar complaint
16 was previously submitted under section 351, but that
17 such substantially similar complaint was dismissed
18 for lack of authority to review or act upon such com-
19 plaint, the panel shall have access to any information
20 gathered pursuant to this chapter in relation to such
21 substantially similar complaint.

22 “(5) *COMPENSATION.*—The judicial investigation
23 panel may appoint and fix the compensation of such
24 staff as it deems necessary.”.

1 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 2 *table of sections for chapter 16 of title 28, United States*
 3 *Code, is amended by adding at the end the following:*

“365. *Codes of conduct.*

“366. *Public access to ethics rules.*

“367. *Complaints against justices.*”.

4 **SEC. 3. MINIMUM GIFT, TRAVEL, AND INCOME DISCLOSURE**
 5 **STANDARDS FOR JUSTICES OF THE SUPREME**
 6 **COURT.**

7 *Section 677 of title 28, United States Code, is amended*
 8 *by adding at the end the following:*

9 “(e) *The Counselor, with the approval of the Chief Jus-*
 10 *tice, shall establish rules governing the disclosure of all gifts,*
 11 *income, or reimbursements, as those terms are defined in*
 12 *section 13101 of title 5, received by any justice and any*
 13 *law clerk to a justice. Such rules shall, at minimum, require*
 14 *disclosure of any information concerning gifts, income, and*
 15 *reimbursements required to be disclosed under the Standing*
 16 *Rules of the Senate and the Rules of the House of Represent-*
 17 *atives.*”.

18 **SEC. 4. CIRCUMSTANCES REQUIRING DISQUALIFICATION.**

19 (a) *ANTICORRUPTION PROTECTIONS.*—*Subsection (b)*
 20 *of section 455 of title 28, United States Code, is amended*
 21 *by adding at the end the following:*

22 “(6) *Where the justice or judge knows that a*
 23 *party to the proceeding or an affiliate of a party to*
 24 *the proceeding made any lobbying contact, as defined*

1 *in section 3 of the Lobbying Disclosure Act of 1995*
 2 *(2 U.S.C. 1602), or spent substantial funds in sup-*
 3 *port of the nomination, confirmation, or appointment*
 4 *of the justice or judge.*

5 *“(7) Where the justice or judge, their spouse,*
 6 *their minor child, or a privately held entity owned by*
 7 *any such person received income, a gift, or reimburse-*
 8 *ment, as those terms are defined in section 13101 of*
 9 *title 5—*

10 *“(A) from a party to the proceeding or an*
 11 *affiliate of a party to the proceeding; and*

12 *“(B) during the period beginning on the*
 13 *date that is 6 years before the date on which the*
 14 *justice or judge was assigned to the proceeding*
 15 *and ending on the date of final disposition of the*
 16 *proceeding.”.*

17 *(b) DUTY TO KNOW.—Subsection (c) of section 455 of*
 18 *title 28, United States Code, is amended to read as follows:*

19 *“(c) A justice, judge, magistrate judge, or bankruptcy*
 20 *judge of the United States shall ascertain—*

21 *“(1) the personal and fiduciary financial inter-*
 22 *ests of the justice or judge;*

23 *“(2) the personal financial interests of the spouse*
 24 *and minor children residing in the household of the*
 25 *justice or judge; and*

1 “(3) any interest of the persons described in
2 paragraph (2) that could be substantially affected by
3 the outcome of the proceeding.”.

4 (c) *DIVESTMENT*.—Subsection (f) of section 455 of title
5 28, United States Code, is amended by inserting “under
6 subsection (b)(4)” after “disqualified”.

7 (d) *DUTY TO NOTIFY*.—Section 455 of title 28, United
8 States Code, is amended by adding at the end the following:
9 “(g) If at any time a justice, judge, magistrate judge,
10 or bankruptcy judge of the United States learns of a condi-
11 tion that could reasonably require disqualification under
12 this section, the justice or judge shall immediately notify
13 all parties to the proceeding.”.

14 (e) *TECHNICAL AND CONFORMING AMENDMENTS*.—
15 Section 455 of title 28, United States Code, as amended
16 by this section, is amended—

17 (1) in the section heading, by striking “**judge,**
18 **or magistrate judge**” and inserting “**judge,**
19 **magistrate judge, or bankruptcy judge**”;

20 (2) in subsection (a), by striking “judge, or mag-
21 istrate judge” and inserting “judge, magistrate judge,
22 or bankruptcy judge”;

23 (3) in subsection (b)—

1 (A) in paragraph (2), by striking “the judge
2 or such lawyer” and inserting “the justice, the
3 judge, or such lawyer”;

4 (B) in paragraph (5)(iii), by inserting “jus-
5 tice or” before “judge”; and

6 (C) in paragraph (5)(iv), by inserting “jus-
7 tice’s or” before “judge’s”;

8 (4) in subsection (d)(4)(i), by inserting “justice
9 or” before “judge”; and

10 (5) in subsection (e), by striking “judge, or mag-
11 istrate judge” and inserting “judge, magistrate judge,
12 or bankruptcy judge of the United States”.

13 (f) *PUBLIC NOTICE.*—The rules of each court subject
14 to section 455 of title 28, United States Code, as amended
15 by this section, shall be amended to require that the clerk
16 shall publish timely notice on the website of the court of—

17 (1) any matter in which a justice, judge, mag-
18 istrate judge, or bankruptcy judge of the United
19 States is disqualified under such section;

20 (2) any matter in which the reviewing panel
21 under section 1660 of title 28, United States Code, as
22 added by section 5 of this Act, rules on a motion to
23 disqualify; and

24 (3) an explanation of each reason for the dis-
25 qualification or ruling, which shall include a specific

1 *identification of each circumstance that resulted in*
 2 *such disqualification or ruling, but which shall not*
 3 *include any private or sensitive information deemed*
 4 *by a majority of the reviewing panel under section*
 5 *1660 of title 28, United States Code, as added by sec-*
 6 *tion 5 of this Act, to be appropriate for redaction and*
 7 *unnecessary in order to provide the litigants and pub-*
 8 *lic a full understanding of the reasons for the dis-*
 9 *qualification or ruling.*

10 **SEC. 5. REVIEW OF CERTIFIED DISQUALIFICATION MO-**
 11 **TIONS.**

12 *(a) IN GENERAL.—Chapter 111 of title 28, United*
 13 *States Code, is amended by adding at the end the following:*
 14 **“§ 1660. Review of certified motions to disqualify**

15 *“(a) MOTION FOR DISQUALIFICATION.—If a justice,*
 16 *judge, magistrate judge, or bankruptcy judge of the United*
 17 *States is required to be disqualified from a proceeding*
 18 *under any provision of Federal law, a party to the pro-*
 19 *ceeding may file a timely motion for disqualification, ac-*
 20 *companied by a certificate of good faith and an affidavit*
 21 *alleging facts sufficient to show that disqualification of the*
 22 *justice, judge, magistrate judge, or bankruptcy judge is so*
 23 *required.*

24 *“(b) CONSIDERATION OF MOTION.—A justice, judge,*
 25 *magistrate judge, or bankruptcy judge of the United States*

1 *shall either grant or certify to a reviewing panel a timely*
 2 *motion filed pursuant to subsection (a) and stay the pro-*
 3 *ceeding until a final determination is made with respect*
 4 *to the motion.*

5 “(c) *REVIEWING PANEL.*—

6 “(1) *IN GENERAL.*—*A reviewing panel to which*
 7 *a motion is certified under subsection (b) with respect*
 8 *to a judge, magistrate judge, or bankruptcy judge of*
 9 *the United States shall be composed of 3 judges se-*
 10 *lected at random from judges of the United States*
 11 *who do not sit on the same court—*

12 “(A) *as the judge, magistrate judge, or*
 13 *bankruptcy judge who is the subject of the mo-*
 14 *tion; or*

15 “(B) *as the other members of the reviewing*
 16 *panel.*

17 “(2) *CIRCUIT LIMITATION.*—*Not more than 1*
 18 *member of the reviewing panel may be a judge of the*
 19 *same judicial circuit as the judge, magistrate judge,*
 20 *or bankruptcy judge who is the subject of the motion.*

21 “(3) *PARTICIPATION.*—*The reviewing panel,*
 22 *prior to its final determination with respect to a mo-*
 23 *tion filed under subsection (a), shall provide the*
 24 *judge, magistrate judge, or bankruptcy judge of the*
 25 *United States who is the subject of such motion an*

1 *opportunity to provide in writing the views of the*
 2 *judge on the motion, including the explanation of the*
 3 *judge for not granting the motion.*

4 *“(d) SUPREME COURT REVIEW.—The Supreme Court*
 5 *of the United States, not including the justice who is the*
 6 *subject of a motion seeking to disqualify a justice under*
 7 *subsection (a), shall be the reviewing panel for such mo-*
 8 *tions.”.*

9 *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*
 10 *table of sections for chapter 111 of title 28, United States*
 11 *Code, is amended by adding at the end the following:*

“1660. Review of certified motions to disqualify.”.

12 **SEC. 6. DISCLOSURE BY PARTIES AND AMICI.**

13 *Not later than 1 year after the date of enactment of*
 14 *this Act, the Supreme Court of the United States shall pre-*
 15 *scribe rules of procedure in accordance with sections 2072*
 16 *through 2074 of title 28, United States Code, requiring each*
 17 *party or amicus to list in the petition or brief of the party*
 18 *or amicus, as applicable, a description and value of—*

19 *(1) any gift, income, or reimbursement, as those*
 20 *terms are defined in section 13101 of title 5, United*
 21 *States Code, provided to any justice, during the pe-*
 22 *riod beginning 2 years prior to the commencement of*
 23 *the proceeding and ending on the date of final dis-*
 24 *position of the proceeding, by—*

1 (A) each such party, amicus, or affiliate of
2 each such party or amicus;

3 (B) the lawyers or law firms in the pro-
4 ceeding of each such party or amicus; and

5 (C) the officers, directors, or employees of
6 each such party or amicus; and

7 (2) any lobbying contact or expenditure of sub-
8 stantial funds by any person described in subpara-
9 graphs (A), (B), and (C) of paragraph (1) in support
10 of the nomination, confirmation, or appointment of a
11 justice.

12 **SEC. 7. AMICUS DISCLOSURE.**

13 (a) *IN GENERAL.*—Chapter 111 of title 28, United
14 States Code, as amended by section 5, is amended by adding
15 at the end the following:

16 **“§ 1661. Disclosures related to amicus activities**

17 “(a) *DISCLOSURE.*—

18 “(1) *IN GENERAL.*—Any person that files an
19 amicus brief in a court of the United States shall list
20 in the amicus brief the name of any person who—

21 “(A) contributed to the preparation or sub-
22 mission of the amicus brief;

23 “(B) contributed not less than 3 percent of
24 the gross annual revenue of the amicus, or an af-

1 *filiate of the amicus, for the previous calendar*
 2 *year if the amicus is not an individual; or*

3 *“(C) contributed more than \$100,000 to the*
 4 *amicus, or an affiliate of the amicus, in the pre-*
 5 *vious calendar year.*

6 *“(2) EXCEPTIONS.—The requirements of this*
 7 *subsection shall not apply to amounts received in*
 8 *commercial transactions in the ordinary course of*
 9 *any trade or business by the amicus, or an affiliate*
 10 *of the amicus, or in the form of investments (other*
 11 *than investments by the principal shareholder in a*
 12 *limited liability corporation) in an organization if*
 13 *the amounts are unrelated to the amicus filing activi-*
 14 *ties of the amicus.*

15 *“(b) AUDIT.—The Director of the Administrative Of-*
 16 *fice of the United States Courts shall conduct an annual*
 17 *audit to ensure compliance with this section.”.*

18 *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*
 19 *table of sections for chapter 111 of title 28, United States*
 20 *Code, as amended by section 5, is amended by adding at*
 21 *the end the following:*

“1661. Disclosures related to amicus activities.”.

22 **SEC. 8. CONFLICTS RELATED TO AMICI CURIAE.**

23 *(a) IN GENERAL.—Except as provided in subsection*
 24 *(b), the Supreme Court of the United States and the Judi-*
 25 *cial Conference of the United States shall prescribe rules*

1 *of procedure in accordance with sections 2072 through 2074*
 2 *of title 28, United States Code, for prohibiting the filing*
 3 *of or striking an amicus brief that would result in the dis-*
 4 *qualification of a justice, judge, or magistrate judge.*

5 (b) *INITIAL TRANSMITTAL.*—*The Supreme Court of the*
 6 *United States shall transmit to Congress—*

7 (1) *the proposed rules required under subsection*
 8 *(a) not later than 180 days after the date of enact-*
 9 *ment of this Act; and*

10 (2) *any rules in addition to those transmitted*
 11 *under paragraph (1) pursuant to section 2074 of title*
 12 *28, United States Code.*

13 **SEC. 9. STUDIES AND REPORTS.**

14 (a) *STUDIES.*—

15 (1) *IN GENERAL.*—*Beginning on the date that is*
 16 *180 days after the date of enactment of this Act, and*
 17 *every other year thereafter, the Director of the Federal*
 18 *Judicial Center shall conduct a study on the extent*
 19 *of compliance or noncompliance with the require-*
 20 *ments of sections 144 and 455 of title 28, United*
 21 *States Code.*

22 (2) *ADDITIONAL TIME.*—*With respect to the first*
 23 *such study required to be submitted under paragraph*
 24 *(1), the requirements of that paragraph may be im-*
 25 *plemented after the date described in that paragraph*

1 *if the Director of the Federal Judicial Center identi-*
 2 *fies in writing to the relevant committees of Congress*
 3 *the additional time needed for submission of the*
 4 *study.*

5 (3) *FACILITATION OF STUDIES.*—*The Director of*
 6 *the Federal Judicial Center shall maintain a record*
 7 *of each instance in which—*

8 (A) *a justice, judge, magistrate judge, or*
 9 *bankruptcy judge of the United States was not*
 10 *assigned to a case due to potential or actual con-*
 11 *flicts; and*

12 (B) *a justice, judge, magistrate judge, or*
 13 *bankruptcy judge of the United States disquali-*
 14 *fies themselves after a case assignment is made.*

15 (b) *REPORTS TO CONGRESS.*—*Not later than April 1*
 16 *of each year following the completion of the study required*
 17 *under subsection (a), the Director of the Federal Judicial*
 18 *Center shall submit to Congress a report containing the*
 19 *findings of the study and any recommendations to improve*
 20 *compliance with sections 144 and 455 of title 28, United*
 21 *States Code.*

22 (c) *GAO REVIEW.*—*Not later than 1 year after the*
 23 *date on which the report is submitted under subsection (b),*
 24 *and every 5 years thereafter, the Comptroller General of the*

1 *United States shall submit to Congress a report con-*
 2 *taining—*

3 (1) *an evaluation of the methodology and find-*
 4 *ings of the study required under subsection (a); and*

5 (2) *the audit required under section 1661 of title*
 6 *28, United States Code, as added by section 7 of this*
 7 *Act.*

8 **SEC. 10. SENSE OF CONGRESS.**

9 (a) *FINDINGS.—Congress finds the following:*

10 (1) *Since Justice Clarence Thomas’s nomination*
 11 *to the Supreme Court on July 1, 1991, he has been*
 12 *wrongfully subject to multiple racially inflammatory*
 13 *insults.*

14 (2) *Racially charged and offensive remarks have*
 15 *been made by several public figures with little to no*
 16 *consequence or attention.*

17 (3) *Justice Thomas has been subject to multiple*
 18 *racial attacks merely for expressing a viewpoint that*
 19 *does not comport with offensive stereotypes about Af-*
 20 *rican Americans.*

21 (4) *On July 13, 2023, Minnesota Attorney Gen-*
 22 *eral Keith Ellison offensively likened Justice Thomas*
 23 *to a house slave from the film Django Unchained.*

24 (5) *On April 27, 2014, Representative Bennie*
 25 *Thompson of Mississippi, used racially charged lan-*

1 *guage to characterize Justice Thomas, including by*
 2 *calling him an “Uncle Tom” and refused to rescind*
 3 *his remarks or issue an apology during an interview*
 4 *on April 30, 2014.*

5 *(6) On February 14, 2023, Georgia State Sen-*
 6 *ator Emanuel Jones also used racially charged lan-*
 7 *guage to characterize Justice Thomas, including by*
 8 *calling him an “Uncle Tom” figure.*

9 *(7) MSNBC host Joy Reid has cast aspersions on*
 10 *Justice Thomas in a racially offensive manner for*
 11 *several years, in light of her disagreement with his ju-*
 12 *risprudence.*

13 *(8) Justice Thomas has been subject to numerous*
 14 *other racially charged comments and slurs from those*
 15 *who disagree with his jurisprudence.*

16 *(9) On July 13, 2022, more than 100 African*
 17 *American academics and community leaders signed*
 18 *an open letter condemning the “barrage of racist, vi-*
 19 *cious, and ugly personal attacks” on Justice Thomas.*

20 *(10) Racially charged insults and defamatory*
 21 *comments have surged in the wake of recent Supreme*
 22 *Court decisions, in an attempt to humiliate, punish,*
 23 *and demean Justice Thomas.*

24 *(b) SENSE OF CONGRESS.—It is the sense of Congress*
 25 *that Congress—*

1 (1) *condemns all racial attacks and comments*
2 *leveled against any current or former justice of the*
3 *Supreme Court of the United States, including Jus-*
4 *tice Thomas, including those likening him to an*
5 *“Uncle Tom” figure or any other repugnant stereo-*
6 *type;*

7 (2) *condemns racial attacks on any government*
8 *official or person merely for expressing a view that*
9 *some deem “conservative”;*

10 (3) *recognizes the importance of judging a person*
11 *on the basis of the merits of his ideas and the content*
12 *of his character, rather than on the basis of offensive*
13 *and derogatory racial stereotypes; and*

14 (4) *recognizes that Justice Thomas’s jurispru-*
15 *dence does not excuse racial aggression against him.*

Calendar No. 199

118TH CONGRESS
1ST Session

S. 359

A BILL

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

SEPTEMBER 5, 2023

Reported with an amendment