

117TH CONGRESS
2D SESSION

S. 4010

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

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2022

Mr. WHITEHOUSE (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide for the establishment of a code of conduct for the 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “21st Century Courts
5 Act of 2022”.

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 fol-
5 lowing:

6 **“§ 365. Codes of conduct**

7 “(a) Not later than 180 days after the date of the
8 enactment of this section—

9 “(1) the Supreme Court of the United States
10 shall, after appropriate public notice and opportunity
11 for comment, issue a code of conduct for the justices
12 of the Supreme Court; and

13 “(2) the Judicial Conference of the United
14 States shall issue a code of conduct for the judges
15 of the courts of appeals, the district courts (includ-
16 ing bankruptcy judges and magistrate judges), and
17 the Court of International Trade.

18 “(b) If the Supreme Court of the United States fails
19 to comply with subsection (a), the code of conduct for jus-
20 tices of the Supreme Court shall consist of the Code of
21 Conduct for United States Judges, as in effect on the date
22 of enactment of this section.

23 “(c) The Supreme Court of the United States and
24 the Judicial Conference may modify the applicable codes
25 of conduct under this section after giving appropriate pub-
26 lic notice and opportunity for comment.”.

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

“365. Codes of conduct.”.

5 **SEC. 3. DISQUALIFICATION OF FEDERAL JUDGES.**

6 Section 455 of title 28, United States Code, is
 7 amended—

8 (1) in subsection (a), by inserting “bankruptcy
 9 judge,” after “judge,”;

10 (2) in subsection (b), by adding at the end the
 11 following:

12 “(6) Where the justice, judge bankruptcy judge,
 13 or magistrate judge of the United States received,
 14 during the 6-year period ending on the date on
 15 which the judge was assigned to the proceeding, in-
 16 come, a gift, or reimbursement required to be re-
 17 ported under section 102 of the Ethics in Govern-
 18 ment Act of 1978 (5 U.S.C. App.) from a party to
 19 the proceeding, a lawyer in the proceeding, an indi-
 20 vidual employed in a supervisory capacity by a party
 21 or law firm in the proceeding, or an affiliate of a
 22 party or law firm in the proceeding.

23 “(7) Where a party to the proceeding, a lawyer
 24 in the proceeding, an individual employed in a super-
 25 visory capacity by a party or law firm in the pro-

1 ceeding, or an affiliate of a party or law firm in the
2 proceeding made any lobbying contact or spent sub-
3 stantial funds in support of the nomination, con-
4 firmation, or appointment of the justice, judge,
5 bankruptcy judge, or magistrate judge of the United
6 States.

7 “(8) Where the justice, judge, bankruptcy
8 judge, or magistrate judge of the United States,
9 their spouse, child, or spouse of their child has, dur-
10 ing the 6-year period ending on the date on which
11 the justice, judge, bankruptcy judge, or magistrate
12 judge of the United States was assigned to the pro-
13 ceeding—

14 “(A) received income, a gift, or reimburse-
15 ment required to be reported under section 102
16 of the Ethics in Government Act of 1978 (5
17 U.S.C. App.) from, or been employed or volun-
18 teered for more than 6 consecutive months in
19 an official supervisory or advisory capacity for
20 a party to the proceeding, a lawyer in the pro-
21 ceeding, or an affiliate of a party or law firm
22 in the proceeding; or

23 “(B) been employed or volunteered for
24 more than 6 consecutive months in an official

1 supervisory or advisory capacity alongside a
 2 lawyer in the proceeding.”;

3 (3) by striking subsection (c) and inserting the
 4 following:

5 “(c) A justice, judge, bankruptcy judge, or magistrate
 6 judge of the United States shall be informed about—

7 “(1) the personal and fiduciary financial inter-
 8 ests of the justice, judge, bankruptcy judge, or mag-
 9 istrate judge of the United States;

10 “(2) the personal financial interests of the
 11 spouse and minor children residing in the household
 12 of the justice, judge, bankruptcy judge, or mag-
 13 istrate judge of the United States; and

14 “(3) any interest that could be substantially af-
 15 fected by the outcome of the proceeding.”;

16 (4) in subsection (d)—

17 (A) in paragraph (4)—

18 (i) in clause (iii), by inserting “and”
 19 at the end; and

20 (ii) in clause (iv), by striking the pe-
 21 riod at the end and inserting a semicolon;
 22 and

23 (B) by adding at the end the following:

1 “(5) ‘official supervisory or advisory capacity’
2 includes acting as a director, officer, trustee, or any
3 other equivalent position;

4 “(6) ‘affiliate’ means an entity that effectively
5 controls or is controlled by another entity or is asso-
6 ciated with another entity under common ownership
7 or control, regardless of tax status or corporate
8 form. Whether an entity is an affiliate of another
9 shall be determined under the totality of the cir-
10 cumstances, including—

11 “(A) whether the entities share employees,
12 board members, or officers;

13 “(B) whether the entities share facilities or
14 mailing addresses;

15 “(C) whether the entities are related orga-
16 nizations, as defined by the Internal Revenue
17 Service; and

18 “(D) any indicia that the 2 entities are
19 alter egos or otherwise effectively the same or-
20 ganization regardless of tax status or corporate
21 form;

22 “(7) ‘substantial funds’ means an amount of
23 money that a reasonable person would consider to be
24 significant based on the totality of circumstances, in-
25 cluding—

1 “(A) the proportion of funds spent relative
 2 to the revenues or expenditures of the indi-
 3 vidual or entity;

4 “(B) the proportion of funds spent relative
 5 to other known spending in support of the nom-
 6 ination, confirmation, or appointment of the
 7 justice, judge, bankruptcy judge, or magistrate
 8 judge of the United States; and

9 “(C) any other objective indicia of the sig-
 10 nificance of the financial support of the indi-
 11 vidual or entity for the nomination, confirma-
 12 tion, or appointment of the justice, judge, bank-
 13 ruptcy judge, or magistrate judge of the United
 14 States.”;

15 (5) in subsection (e)—

16 (A) by adding “bankruptcy judge,” after
 17 “judge,”;

18 (B) in the first sentence, by inserting “,
 19 unless the ground for disqualification arises
 20 under paragraph (7) of that subsection” before
 21 the period at the end; and

22 (C) after the second sentence, by adding
 23 “Where the ground for disqualification arises
 24 only under subsection (b)(7), waiver may be ac-

1 cepted only if offered by all parties to the pro-
2 ceeding.”;

3 (6) in subsection (f), by inserting “under sub-
4 section (b)(4)” after “disqualified”; and

5 (7) by adding at the end the following:

6 “(g) If a justice, judge, bankruptcy judge, or mag-
7 istrate judge learns that a condition requiring disqualifica-
8 tion under this section is present, the justice, judge, bank-
9 ruptcy judge, or magistrate judge shall—

10 “(1) immediately notify all parties to the pro-
11 ceeding; and

12 “(2) include the notification required under
13 paragraph (1) in the official record of the pro-
14 ceeding.

15 “(h)(1) A justice, judge, bankruptcy judge, or mag-
16 istrate judge shall grant or certify to a reviewing panel
17 a timely motion filed by a party to the proceeding that
18 is accompanied by a certificate of good faith and an affi-
19 davit alleging facts sufficient to show that disqualification
20 of the justice, judge, bankruptcy judge, or magistrate
21 judge is required under this section or any other Federal
22 law.

23 “(2) A reviewing panel described in paragraph (1)
24 shall be selected at random from judges of the United
25 States who do not sit on the same court as the judge,

1 bankruptcy judge, or magistrate judge who is the subject
 2 of the motion or as the other members of the reviewing
 3 panel. No more than 1 member of the reviewing panel may
 4 be a judge of the same judicial circuit as the judge, bank-
 5 ruptcy judge, or magistrate judge who is the subject of
 6 the motion.

7 “(3) The Supreme Court of the United States shall
 8 be the reviewing panel for a motion seeking to disqualify
 9 a justice.

10 “(i) The clerk of the applicable court shall publish
 11 timely notice on the website of the court of—

12 “(1) any matter in which a justice, judge, bank-
 13 ruptcy judge, or magistrate judge of the United
 14 States disqualifies is disqualified under this section;

15 “(2) in the case of any matter in which the re-
 16 viewing panel under subsection (h) rules on a motion
 17 to disqualify; and

18 “(3) an explanation of each reason for the dis-
 19 qualification or ruling, which shall include a specific
 20 identification of each circumstance that resulted in
 21 disqualification.”.

22 **SEC. 4. CONFLICTS RELATED TO AMICI CURIAE.**

23 (a) IN GENERAL.—Exception as provided in sub-
 24 section (b), the Supreme Court of the United States and
 25 the Judicial Conference of the United States shall pre-

1 scribe rules of procedure in accordance with sections 2072
 2 through 2074 of title 28, United States Code, for prohib-
 3 iting the filing of or striking an amicus brief that would
 4 result in the disqualification of a justice, judge, or mag-
 5 istrate judge.

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

8 (1) the proposed rules required under sub-
 9 section (a) not later than 180 days after the date of
 10 enactment of this Act; and

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

14 **SEC. 5. AMICUS DISCLOSURE.**

15 (a) IN GENERAL.—Chapter 111 of title 28, United
 16 States Code, is amended by adding at the end the fol-
 17 lowing:

18 **“§ 1660. Disclosures related to amicus activities**

19 “(a) DEFINITION.—In this section, the term ‘covered
 20 amicus’ means any person, including any affiliate of the
 21 person, that files an amicus brief in a calendar year in
 22 the Supreme Court of the United States or a court of ap-
 23 peals of the United States.

24 “(b) DISCLOSURE.—

1 “(1) IN GENERAL.—Any covered amicus that
2 files an amicus brief in the Supreme Court of the
3 United States or a court of appeals of the United
4 States shall list in the amicus brief the name of any
5 person who—

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

8 “(B) contributed not less than 3 percent of
9 the gross annual revenue of the covered amicus
10 for the previous calendar year if the covered
11 amicus is not an individual; or

12 “(C) contributed more than \$100,000 to
13 the covered amicus in the previous calendar
14 year.

15 “(2) EXCEPTIONS.—The requirements of this
16 subsection shall not apply to amounts received by a
17 covered amicus described in paragraph (1) in com-
18 mercial transactions in the ordinary course of any
19 trade or business conducted by the covered amicus
20 or in the form of investments (other than invest-
21 ments by the principal shareholder in a limited li-
22 ability corporation) in an organization if the
23 amounts are unrelated to the amicus filing activities
24 of the covered amicus.

1 “(c) AUDIT.—The Comptroller General of the United
 2 States shall conduct an annual audit to ensure compliance
 3 with this section.

4 “(d) PROHIBITION ON PROVISION OF GIFTS OR
 5 TRAVEL BY COVERED AMICI TO JUDGES AND JUS-
 6 TICES.—

7 “(1) IN GENERAL.—Except as provided in para-
 8 graph (2), no covered amicus may make a gift or
 9 provide travel to a judge of a court of appeals of the
 10 United States, the Chief Justice of the United
 11 States, or an associate justice of the Supreme Court
 12 of the United States.

13 “(2) REIMBURSEMENT FOR TRAVEL FOR AP-
 14 PEARANCES AT ACCREDITED LAW SCHOOLS.—Para-
 15 graph (1) shall not apply to reimbursement for trav-
 16 el for an appearance at an accredited law school.

17 “(e) CIVIL FINES.—Whoever knowingly fails to com-
 18 ply with any provision of this section shall, upon proof of
 19 such knowing violation by a preponderance of the evi-
 20 dence, be subject to a civil fine of not more than \$200,000,
 21 depending on the extent and gravity of the violation.

22 “(f) RULES OF CONSTRUCTION.—

23 “(1) CONSTITUTIONAL RIGHTS.—Nothing in
 24 this section shall be construed to prohibit or inter-
 25 fere with—

1 “(A) the right to petition the Government
2 for the redress of grievances;

3 “(B) the right to express a personal opin-
4 ion; or

5 “(C) the right of association, protected by
6 the First Amendment to the Constitution of the
7 United States.

8 “(2) PROHIBITION OF ACTIVITIES.—Nothing in
9 this section shall be construed to prohibit, or to au-
10 thorize any court to prohibit, amicus activities by
11 any person or entity, regardless of whether such per-
12 son or entity is in compliance with the requirements
13 of this section.

14 “(g) SEVERABILITY.—If any provision of this section,
15 or the application thereof, is held invalid, the validity of
16 the remainder of this section and the application of such
17 provision to other persons and circumstances shall not be
18 affected thereby.”.

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. Disclosures related to amicus activities.”.

23 **SEC. 6. JUDICIAL TRAVEL.**

24 (a) DISCLOSURES REGARDING TRAVEL-RELATED
25 REIMBURSEMENTS.—

1 (1) IN GENERAL.—Section 102(a)(2)(B) of the
2 Ethics in Government Act of 1978 (5 U.S.C. App.)
3 is amended—

4 (A) by striking “source and a brief” and
5 inserting “source, and a brief”;

6 (B) by inserting “, including the value,”
7 before “of reimbursements”; and

8 (C) by striking “greater and received” and
9 inserting “greater, received”.

10 (2) PERIODIC REPORTS.—Section 103 of the
11 Ethics in Government Act of 1978 (5 U.S.C. App.)
12 is amended by adding at the end the following:

13 “(m)(1) Not later than 30 days after completing trav-
14 el in connection with which a judicial officer receives, or
15 will receive, a reimbursement required to be reported
16 under section 102(a)(2)(B), the judicial officer shall file
17 a report regarding the reimbursement.

18 “(2) The Administrative Office of the United States
19 Courts shall publish on a website of the Federal judiciary
20 each report filed under paragraph (1).”.

21 (b) DEFINITION OF PERSONAL HOSPITALITY OF AN
22 INDIVIDUAL.—

23 (1) IN GENERAL.—Section 109(14) of the Eth-
24 ics in Government Act of 1978 (5 U.S.C. App.) is
25 amended—

1 (A) by striking “any individual’ means”
2 and inserting the following: “an individual’—

3 “(A) means”;

4 (B) in subparagraph (A) (as so des-
5 ignated)—

6 (i) by striking “his family” each place
7 it appears and inserting “the family of the
8 individual”; and

9 (ii) by adding “and” after the semi-
10 colon; and

11 (C) by adding at the end the following:

12 “(B) with respect to a judicial officer, does
13 not include—

14 “(i) private travel on a boat or air-
15 plane owned by an individual if that travel
16 is substituting for commercial transpor-
17 tation;

18 “(ii) any food, lodging, or entertain-
19 ment provided by an individual who has
20 (or owns or controls an entity that has) a
21 matter pending before the court on which
22 the judicial officer serves or before a court
23 the decisions of which may be appealed to
24 the court on which the judicial officer
25 serves;

1 “(iii) lodging at a residence or other
2 property that is rented to others by the in-
3 dividual providing the hospitality;

4 “(iv) hospitality provided by an indi-
5 vidual at—

6 “(I) a restaurant, nightclub, re-
7 sort, hotel, or other commercial estab-
8 lishment; or

9 “(II) a private club of which the
10 individual is a paying member;

11 “(v) hospitality extended by an indi-
12 vidual, the cost of which is paid for by a
13 corporation or organization, including a
14 corporation or organization that is not less
15 than 10-percent owned by the individual;
16 or

17 “(vi) hospitality extended by an indi-
18 vidual, the cost of which is reimbursed to
19 the individual by any third party.”.

20 (2) CERTIFICATION REGARDING LACK OF REIM-
21 BURSEMENT.—Section 102(a)(2) of the Ethics in
22 Government Act of 1978 (5 U.S.C. App.) is amend-
23 ed—

(A) in subparagraph (A), by striking “The identity” and inserting “Subject to subparagraphs (C) and (D), the identity”; and

(B) by adding at the end the following:

“(D) A judicial officer who receives food, lodging, or entertainment that is exempted under subparagraph (A) from being reported as being food, lodging, or entertainment received as personal hospitality of an individual shall include in the report covering the period during which the food, lodging, or entertainment was received a certification that the cost of the food, lodging, or entertainment was not reimbursed by any third party.”.

SEC. 7. FINANCIAL CONFLICTS OF INTEREST.

Section 208 of title 18, United States Code, is amended by inserting after “Government employee,” “or an officer or employee of the judicial branch of the United States Government,”.

SEC. 8. VIDEO RECORDING OF COURT PROCEEDINGS.

(a) COURTS OF APPEALS.—

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

1 **“§ 50. Internet publication of certain video record-**
 2 **ings**

3 “(a) IN GENERAL.—The open proceedings of each
 4 hearing of a court of appeals shall be made available by
 5 video for public transmission over the internet—

6 “(1) to the extent practicable, in real time dur-
 7 ing such hearing; and

8 “(2) for not fewer than 5 years after the date
 9 on which the hearing concludes.

10 “(b) COPYRIGHT PROTECTION NOT AVAILABLE.—An
 11 audio or video recording created pursuant to the require-
 12 ment under this section shall be considered a work of the
 13 United States Government for purposes of section 105 of
 14 title 17.”.

15 (2) TECHNICAL AND CONFORMING AMEND-
 16 MENT.—The table of sections for chapter 3 of title
 17 28, United States Code, is amended by adding at
 18 the end the following:

“50. Internet publication of certain video recordings.”.

19 (b) SUPREME COURT OF THE UNITED STATES.—

20 (1) IN GENERAL.—Chapter 1 of title 28, United
 21 States Code, is amended by adding at the end the
 22 following:

23 **“§ 7. Internet publication of certain video recordings**

24 “(a) IN GENERAL.—Each oral argument and reading
 25 of an opinion before the Supreme Court of the United

1 States shall be made available by video for public trans-
 2 mission over the internet—

3 “(1) on the day of such oral argument and
 4 reading; and

5 “(2) in real time during such oral argument
 6 and opinion reading.

7 “(b) COPYRIGHT PROTECTION NOT AVAILABLE.—An
 8 recording created pursuant to the requirement under this
 9 section shall be considered a work of the United States
 10 Government for purposes of section 105 of title 17.”.

11 (2) TECHNICAL AND CONFORMING AMEND-
 12 MENT.—The table of sections for chapter 1 of title
 13 28, United States Code, is amended by adding at
 14 the end the following:

“7. Internet publication of certain video recordings.”.

15 **SEC. 9. RESTRICTIONS ON SEALED COURT FILINGS.**

16 (a) IN GENERAL.—Chapter 111 of title 28, United
 17 States Code, as amended by section 5 of this Act, is
 18 amended by adding at the end the following:

19 **“§ 1661. Restrictions on sealing judicial records**

20 “(a) IN GENERAL.—Unless otherwise provided by
 21 law, no court may seal any judicial record or any part of
 22 a judicial record unless—

23 “(1) the court finds that a compelling interest
 24 justifies abridging the right of public access to the
 25 judicial record or the part of the judicial record;

1 “(2) the findings and conclusions of the court
2 are specific to each judicial record or each part of
3 a judicial record;

4 “(3) the seal is narrowly tailored and lasts no
5 longer than necessary; and

6 “(4) the public has been given notice and op-
7 portunity to challenge the seal.

8 “(b) RULES.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), the Supreme Court of the United States
11 and the Judicial Conference of the United States
12 shall prescribe rules of procedure in accordance with
13 sections 2072 through 2074 to ensure that disin-
14 terested members of the public have a simplified and
15 inexpensive process to contest a motion to seal a ju-
16 dicial record, to appeal an order sealing a judicial
17 record, and to request that a judicial record be un-
18 sealed. No local rule of procedure may be less pro-
19 tective of the right of public access to judicial
20 records than the rules prescribed under this sub-
21 section. Such rules shall be prescribed and submitted
22 to the Congress pursuant to sections.

23 “(2) INITIAL TRANSMITTAL.—The Supreme
24 Court of the United States shall transmit to Con-
25 gress—

1 “(A) the proposed rules required under
 2 paragraph (1) not later than 1 year after the
 3 date of enactment of this section; and

4 “(B) any rules in addition to those trans-
 5 mitted under paragraph (1) pursuant to section
 6 2074 of title 28, United States Code.

7 “(c) RULES OF CONSTRUCTION.—Nothing in this
 8 section may be construed to—

9 “(1) abolish, diminish, or infringe upon any
 10 right, responsibility, or remedy provided by the Con-
 11 stitution of the United States or any other law;

12 “(2) relieve a court of any part of the inde-
 13 pendent duty of the court to enforce the right of
 14 public access to judicial records; or

15 “(3) abrogate any rule of law that is more or
 16 additionally protective of the right of public access
 17 to judicial records.”.

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

“1661. Restrictions on sealing judicial records.”.

22 **SEC. 10. STUDIES BY THE FEDERAL JUDICIAL CENTER.**

23 (a) IN GENERAL.—Not later than December 31,
 24 2022, and every other year thereafter, the Federal Judi-
 25 cial Center shall conduct a study of the extent of compli-

1 ance or noncompliance with the requirements of sections
2 144 and 455 of title 28, United States Code, as amended
3 by section 3 of this Act.

4 (b) REPORTS TO CONGRESS.—Not later than April
5 1 of each year following the completion of the study re-
6 quired under subsection (a)—

7 (1) the Federal Judicial Center—

8 (A) shall submit to Congress a report con-
9 taining the findings of the study; and

10 (B) may submit to Congress recommenda-
11 tions to improve the compliance by the Federal
12 judiciary with the requirements of sections 144
13 and 455 of title 28, United States Code, as
14 amended by section 3 of this Act; and

15 (2) the Comptroller General of the United
16 States shall submit to Congress a report containing
17 an evaluation of the methodology and findings of the
18 study.

19 (c) FACILITATION OF STUDIES.—In order to facili-
20 tate the studies required under subsection (a)—

21 (1) the Judicial Conference of the United
22 States shall maintain a record of each instance in
23 which a justice, judge, bankruptcy judge, or mag-
24 istrate judge was not assigned to a case due to po-

1 tential or actual conflicts indicated on a conflicts
2 sheet; and

3 (2) the clerk of each court shall maintain and
4 include in the relevant case docket a record of each
5 instance in which a justice, judge, bankruptcy judge,
6 or magistrate judge disqualifies after a case assign-
7 ment is made.

○