

117TH CONGRESS
2D SESSION

S. 4188

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

MAY 11 (legislative day, MAY 10), 2022

Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, Mr. BOOKER, Mrs. FEINSTEIN, Ms. HIRONO, Mr. LEAHY, and Mr. SCHATZ) 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Supreme Court Ethics,
5 Recusal, and Transparency 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 enact-
8 ment of this section, the Supreme Court of the United
9 States shall, after appropriate public notice and oppor-
10 tunity for comment in accordance with section 2071, issue
11 a code of conduct for the justices and employees of the
12 Supreme Court.

13 “(b) Not later than 180 days after the date of enact-
14 ment of this section, the Judicial Conference of the United
15 States shall, after appropriate public notice and oppor-
16 tunity for comment in accordance with section 2071, issue
17 a code of conduct for the judges and employees of the
18 courts of appeals, the district courts (including bankruptcy
19 judges and magistrate judges), and the Court of Inter-
20 national Trade.

21 “(c) The Supreme Court of the United States and
22 the Judicial Conference may modify the applicable codes
23 of conduct under this section after giving appropriate pub-
24 lic notice and opportunity for comment in accordance with
25 section 2071.”.

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. MINIMUM GIFT, TRAVEL, AND INCOME DISCLOSURE**
 6 **STANDARDS FOR JUSTICES OF THE SUPREME**
 7 **COURT.**

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

10 “(d) The Counselor, with the approval of the Chief
 11 Justice, shall establish rules governing the disclosure of
 12 all gifts, travel, and income received by any justice and
 13 any law clerk to a justice. Such rules shall at minimum
 14 require disclosure of any information concerning gifts,
 15 travel, and income required to be disclosed under the
 16 Standing Rules of the Senate and the Rules of the House
 17 of Representatives.”.

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

19 (a) ANTICORRUPTION PROTECTIONS.—Subsection
 20 (b) of section 455 of title 28, United States Code, is
 21 amended 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 or spent

1 substantial funds in support of the nomination, con-
2 firmation, or appointment of the justice or judge.

3 “(7) Where the justice or judge, their spouse,
4 minor child, or a privately held entity owned by any
5 such person—

6 “(A) received income, a gift, or reimburse-
7 ment (as such terms are defined in the section
8 109 of the Ethics in Government Act of 1978
9 (5 U.S.C. App.)) from a party to the proceeding
10 or an affiliate of a party to the proceeding; and

11 “(B) such receipt occurred during the pe-
12 riod beginning 6 years prior to the date on
13 which the justice or judge was assigned to the
14 proceeding and ending on the date of final dis-
15 position of the proceeding.”.

16 (b) DUTY TO KNOW.—Subsection (c) of section 455
17 of title 28, United States Code, is amended to read as
18 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
24 spouse and minor children residing in the household
25 of the justice or judge; and

1 “(3) any interest of such persons that could be
2 substantially affected by the outcome of the pro-
3 ceeding.”.

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

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

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

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

18 (1) in the section heading, by striking “judge,
19 or magistrate judge” and inserting “judge, mag-
20 istrate judge, or bankruptcy judge”;

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

24 (3) in subsection (b)—

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

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

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

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

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

12 (6) in subsection (e), by striking “judge, or
13 magistrate judge” and inserting “judge, magistrate
14 judge, or bankruptcy judge of the United States”.

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

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

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

1 (3) an explanation of each reason for the dis-
 2 qualification or ruling, which shall include a specific
 3 identification of each circumstance that resulted in
 4 such disqualification or ruling.

5 **SEC. 5. REVIEW OF CERTIFIED DISQUALIFICATION MO-**
 6 **TIONS.**

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

10 **“§ 1660. Review of certified motions to disqualify**

11 “(a) MOTION FOR DISQUALIFICATION.—If a justice,
 12 judge, magistrate judge, or bankruptcy judge of the
 13 United States is required to be disqualified from a pro-
 14 ceeding under any provision of Federal law, a party to
 15 the proceeding may file a timely motion for disqualifica-
 16 tion, accompanied by a certificate of good faith and an
 17 affidavit alleging facts sufficient to show that disqualifica-
 18 tion of the justice, judge, magistrate judge, or bankruptcy
 19 judge is so required.

20 “(b) CONSIDERATION OF MOTION.—A justice, judge,
 21 magistrate judge, or bankruptcy judge of the United
 22 States shall either grant or certify to a reviewing panel
 23 a timely motion filed pursuant to subsection (a) and stay
 24 the proceeding until a final determination is made with
 25 respect to the motion.

1 “(c) REVIEWING PANEL.—

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

6 “(A) as the judge, magistrate judge, or
7 bankruptcy judge who is the subject of the mo-
8 tion; or

9 “(B) as the other members of the review-
10 ing panel.

11 “(2) CIRCUIT LIMITATION.—Not more than 1
12 member of the reviewing panel may be a judge of
13 the same judicial circuit as the judge, magistrate
14 judge, or bankruptcy judge who is the subject of the
15 motion.

16 “(d) SUPREME COURT REVIEW.—The Supreme
17 Court of the United States shall be the reviewing panel
18 for a motion seeking to disqualify a justice.”.

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 their petition or brief
4 a description and value of—

5 (1) any gift, income, or reimbursement (as such
6 terms are defined in section 109 of the Ethics in
7 Government Act of 1978 (5 U.S.C. App.)) provided
8 to any justice during the period beginning 2 years
9 prior to the commencement of the proceeding and
10 ending on the date of final disposition of the pro-
11 ceeding by—

12 (A) each such party or amicus, or their af-
13 filiates;

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 further amended
4 by adding 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 further amended
 9 by adding 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 EVALUATIONS.**

5 (a) IN GENERAL.—Not later than December 31,
6 2022, and every other year thereafter, the Director of the
7 Federal Judicial Center shall conduct a study on the ex-
8 tent of compliance or noncompliance with the require-
9 ments of sections 144 and 455 of title 28, United States
10 Code.

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

18 (c) FACILITATION OF STUDIES.—The Director of the
19 Federal Judicial Center shall maintain a record of each
20 instance in which—

21 (1) a justice, judge, magistrate judge, or bank-
22 ruptcy judge of the United States was not assigned
23 to a case due to potential or actual conflicts; and

1 (2) a justice, judge, magistrate judge, or bank-
2 ruptcy judge of the United States disqualifies after
3 a case assignment is made.

4 (d) GAO REVIEW.—Not later than 1 year after the
5 date of enactment of this Act, and every 5 years there-
6 after, the Comptroller General of the United States shall
7 submit to Congress a report containing an evaluation of
8 the methodology and findings of the study required under
9 subsection (a) and the audit required under section 1661
10 of title 28, United States Code, as added by section 7 of
11 this Act.

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