The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Madam President, I am really very pleased to be on the floor with colleagues on both sides of the aisle to talk about this.

As my colleague from North Carolina has pointed out, it was pretty clear—it was more than pretty clear; it was crystal clear—what the intent of this provision was. The intent was really designed to prevent gun violence. What this administration is doing with this interpretation is so far afield of where we were with the Bipartisan Safer Communities Act that it is almost breathtaking.

I had an opportunity less than a week ago to be back home in Fairbanks, and I went to the Tanana Valley shooting range. I was greeted by about probably 25, maybe even 30 high school students from Hutchison, from West Valley, and from Lathrop who were all part of the rifle team. They were there, pretty proud of what they were doing and how they were doing it; but they wanted to know, they wanted to understand how we could possibly—we here in Washington, DC, we in the Congress could possibly be doing something that was going to be limiting or restricting opportunities to understand more about firearms and firearm safety and hunting safety.

This is hunting season in Alaska. It is moose season. It is duck season. We all have our firearms out as we are providing for our families. In my family, one of the first things that you learn in a household that has firearms is about gun safety, firearm safety. Those schools that have those programs that provide for hunters' safety, those are the ones we all want our kids to be part of. It is not just the hunters' safety, it is the archery programs.

Again, when you are thinking about programs that help build young people in strong ways—in leadership skills, in safety, in discipline—that is what these kids from the Fairbanks area schools were telling me.

I said: What else do you learn other than, really, being a sharpshooter?

They said: A sense of discipline—discipline and respect. They said: Every single one of us—there is not one of us in this room here who has been subject to any kind of discipline from within the school. We kind of look out for one another. There is a respect that comes when you are operating around a rifle.

The other issue that they raised was, they said: We understand that the way the Department of Education is interpreting this is not only hunters' safety programs would be at risk, not only archery programs would be at risk, but culinary programs where you have to use a knife with a blade that is in excess of 2½ inches, I believe it is.

So how do you work with a student when you are trying to chop celery in a classroom if you can't use a chopping knife? What do you do in a rural school where all aspects, practically, of your curriculum surround those matters that are relevant to you, subsistence? So as part of your science class, you are cleaning or preparing a skin from a seal or a walrus, and you are using an ulu. Believe it or not, the Department of Education would say that that ulu that, basically, is preparing your food for your family, would be a dangerous instrument and you can't teach that in the classroom.

Trying to explain what the Department of Education has interpreted this to mean as separate from what we, as the lawmakers who help put this into law—trying to explain to them made no sense.

Do you know what their message was? Can you just fix it? That is what we are here on the floor to do today.

It has not only been the work that Senator TESTER has done with his bill, the work that Senator CORNYN has done with his bill, the work that Senator BARRASSO has done with his bill, the letters that have gone out—we have given the Department the ample opportunity to fix it on their own. But if they don't, we have got to do the legislative fix, and I am standing with my colleagues to do just that.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5110, the Protecting Hunting Heritage and Education Act, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5110) to amend the Elementary and Secondary Education Act of 1965 to clarify that the prohibition on the use of Federal education funds for certain weapons does not apply to the use of such weapons for training in archery, hunting, or other shooting sports.

There being no objection, the Senate proceeded to consider the bill.

Mr. CORNYN. I further ask that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, so ordered.

The bill (H.R. 5110) was ordered to a third reading, was read the third time, and passed.

SECURING GROWTH AND ROBUST LEADERSHIP IN AMERICAN AVIATION ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Delaware.

NOMINATIONS OF ROBERT G. TAUB AND THOMAS G. DAY

Mr. CARPER. Good afternoon, Madam President. I am here today to urge my Senate colleagues to join me in considering the confirmation of two excellent people to serve on the Postal Regulatory Commission, which is the governing body for the U.S. Postal Service: Robert Taub, who is currently a commissioner and we are seeking to reconfirm him; and also Thomas Day, who has come through our Homeland Security and Governmental Affairs Committee and, I think, unanimously recommended for a position on the Postal Regulatory Commission.

Both of these public servants have spent literally decades bettering our country.

Mr. Taub has served on the Commission since 2011, and he actually served as its chairman for, I think, more than 6 years.

Mr. Day has spent—listen to this—over 35 years at the Postal Service—35 years at the Postal Service—and another service, as I recall, in uniform for our country.

I would like to add that we have unanimously confirmed Mr. Taub not once but twice previously, and there is no doubt that he has served our country well.

I want to share three stories with you, if I could: a little bit about the history and the importance of the Postal Service; another about Mr. Taub's role in making the Agency what it is today; and a third about Mr. Day's influence on the function of our postal system across this country.

In 1787, the Founding Fathers of our country gathered in Philadelphia literally to draft a constitution to be able to outline how a new country might be formed and actually operate and work for the betterment of people who lived here then and in the future. They drafted the Constitution, and they sent that Constitution out across the 13 colonies and asked the colonies to look at it, kick the tires, find out what they liked and what they thought ought to be changed.

The first State to actually take it up and affirm—ratify, if you will—that Constitution was the colony that is now Delaware, the State of Delaware.

On December 7, 1787, after a week or so of debate at the Golden Fleece Tavern, the Founding Fathers of Delaware said: We like this Constitution. They maybe tweaked it a little bit and sent it on down to the other colonies, who followed suit. Delaware was, for one whole week, the entire United States of America. Then we opened it up. We let in Pennsylvania and Maryland. And the rest, I think, has turned out pretty well, for the most part, until now. Hopefully, we will continue to exist for many, many years, decades, centuries into the future.

One key element of the Constitution was the creation of the Postal Service. Our first Postmaster General was actually, believe it or not, Ben Franklin. Ben Franklin.

The establishment of the Postal Service represented an important early effort to bind us together as a nation—to bind us together as a nation—to unite us in communication with one another. That work continues today as postal workers cover all 50 States. They did it today; they will do it at

least 6 days this week—and to also make sure that we have the ability to provide the Postal Service to the folks who live in the U.S. territories, deliver the mail that helps unite our families and helps to grow our businesses and helps, really, to enable our democracy to function and thrive.

More than two centuries later, we continue to live up to that promise. In 2006, one of our colleagues, Senator SUSAN COLLINS and I led the passage of the Postal Accountability and Enhancement Act literally on this floor where we are gathered today. That legislation modernized the Postal Service for the first time, I think, since 1970.

Just last year, we went on to pass, on top of that, the Postal Service Reform Act to shore up the Agency's financial foundation, including a requirement for all Postal Service retirees to enroll in Medicare when they became eligible for those benefits.

Over the past couple of years, I have had the opportunity to work with Postmaster General Louis DeJoy and the Postal Commission to make the Agency even more energy efficient.

Together, we successfully secured billions of dollars to expand the number of electrical vehicles in the Postal Service's delivery fleet. The Postal Service has one of the biggest delivery fleets in the country. They also have one of the oldest and one of the most polluted. What we have done is worked with the leadership of the Postal Service to make sure that those old vehicles time out. They really, for the most part, have timed out. They need to be replaced. They are going to be replaced with vehicles that will not only help us deliver the mail—and do an even better job of that—but to make sure the delivery vehicles that are out there aren't making worse the climate crisis that we are going through as a nation, as a planet.

I want to tell you a little bit more about Mr. Taub, if I could, and how he has been integral to the changes that we have seen in the Postal Service, especially as it has become more modern and more efficient.

After spending years as a staff member to Members of Congress and Ambassadors and working for the Government Accountability Office, Mr. Taub, native New Yorker, became chief of staff to then Congressman John McHugh—an old friend and a very good Member of the House; a Republican, as I recall.

Under Representative McHugh's leadership, Mr. Taub helped to craft the Postal Accountability and Enhancement Act in the House of Representatives. That is the same legislation that I mentioned earlier that I worked on with Senator COLLINS. Together with Representative McHugh and his team, we ushered the bill to the President's desk, where it was signed into law, again, in 2006.

This transformation of the Postal Service was just the beginning of Mr. Taub's involvement with the Postal Service. After establishing his expertise in the public sector, he continued on beyond this work when Representative McHugh was appointed Secretary of the Army.

As Secretary McHugh's principal civilian advisor, Mr. Taub helped lead a workforce of more than—get this—1.2 million people and managed an annual budget exceeding $200 billion—no small feat. For his exemplary work, Mr. Taub was awarded the Army's Decoration for Distinguished Civilian Service.

All this led to Mr. Taub serving on the Postal Regulatory Commission on not one, not two, but three Presidents, including both Democrats and Republicans.

He was first nominated to the Commission in 2011, and his strong leadership led to his appointment as chairman of the Commission in 2014.

As I like to say: In adversity lies opportunity.

And despite the troubles left over from a previous chairman, Mr. Taub took adversity in stride. He embraced the role of chairman with diligence and grace. He led a massive undertaking to study and to revise a postal rate system. As a result was the Postal Accountability Enhancement Act he helped to pass.

In 2016, his work paid off when he was once again confirmed to be chairman to the Commission and continued to serve as chairman.

Mr. Day has had an incredible record with the Postal Service as well. Let me just take a minute to talk about him.

In his 35 years at the Agency, he has held almost every role imaginable, including that of vice president of the engineering department and the government affairs department, as well as the chief sustainability officer.

In his role on the sustainability team, Mr. Day helped lead the Postal Service into the environmentally conscious practices of the 21st century.

As chairman of the Environment and Public Works Committee, I know the importance—that is my role—but I know the importance of our Agencies carrying out practices that protect our planet. Mr. Day shares this belief and understands it firsthand.

For example, he has been working to reduce the fuel emissions of the aging postal fleet I talked about and has done that over the past decade.

Let me be clear, if I could. The kind of institutional knowledge and expertise that Mr. Day holds is unique, and it would make him an extremely valuable asset on the Commission.

Mr. Day also has experience working with the exchange of mail on an international scale, serving in senior positions at the Universal Postal Union, the United Nations agency, and at the International Post Corporation.

On top of that, he is a graduate of the U.S. Military Academy at West Point and has bravely served in the U.S. Army. Besides being a captain and a Vietnam veteran serving in the U.S. Senate, when I learned about his service in the Army—I am a Navy guy—I said: Different uniforms, same team, and thanked him for all of his service in uniform as well.

There is no doubt that someone with his commitment to our Nation would make a terrific addition to the Postal Regulatory Commission.

Together, Mr. Taub and Mr. Day will continue revising the postal rate system and modernizing the Agency for the betterment of our country. For this reason, among many others, we think it is imperative that we confirm both of them—not one of them but both of them—and make sure the Commission is fully, fully staffed.

Congressional and Postal Service customers rely on the Commission to hold the Agency accountable for its service performance and to ensure its prices follow the law and its practices follow the law, and it is our duty to make sure the Agency can perform at the highest level, including for the good of our planet.

I like to say service to others is the rent we pay for the space we take up on this Earth. I think Mr. Taub and Mr. Day's decades of service to this country is more rent than most of us will ever be asked to pay.

I urge our colleagues to confirm both Mr. Taub and Mr. Day to ensure that the Postal Regulatory Commission can continue to do its important work on behalf of all of us, who are the fortunate beneficiaries of the Constitution that was written all those years ago and the promise it provided for our country.

With that, Madam President, I would note the absence of a quorum, and I thank the Presiding Officer and I thank my colleagues and ask for their support of the nomination of these two excellent, excellent candidates.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO TERRY ''TITO'' FRANCONA

Mr. BROWN. Madam President, sometimes we come to the floor in maybe a less serious vein. We are all incredulous that while we do our work here and keep the government open, the people down the hall there are playing political games and threatening a shutdown. And when 55,000 people in my State and probably 10,000 people in the Presiding Officer's State will lose their jobs temporarily, will be furloughed, will be laid off, all because they are trying to play political games, we talk about that a lot. We need to fix that.

But, today, I want to rise for a moment on something more lighthearted than that, and that is to honor the retiring manager of the Cleveland Guardians, Terry Francona, called in Cleveland—referred to as ''Tito'' Francona.

Cleveland will play their last home game with Tito as their manager starting in maybe 20 minutes from now, something like that. Tito has been a part of the team since 2013.

I call him by his first name. I don't know the Cleveland manager. I have never met the Cleveland manager. But I have watched him. I watch a lot of games on television. But we all refer to him by his first name, ''Tito.''

I was at a game earlier this summer, and we were pulling out in a traffic jam, and Tito does what I have read in the Plain Dealer that he does. All of a sudden, he passed us. The game was about an hour over, and he rode by on his little scooter to his little Cleveland condominium downtown, just the manager by himself.

(Mr. OSSOFF assumed the Chair.)

He didn't have airs about him. He is a normal guy, and we will really, really miss him.

In his baseball career, he left Cleveland. He was the manager in the 2016 World Series, where my daughters and my wife and I—they broke our hearts in game 7 to a team like the Chicago Cubs. And it was really amazing that there was a rain delay in the ninth inning, and then they came back and Cleveland lost in extra innings.

A week later, Donald Trump was elected. So I don't think it was a good week for the country. But that is just my biased opinion, perhaps.

But in Ohio, in Cleveland, if you are a Cleveland Guardians fan, you know about perseverance. His baseball career extends back to when he joined Major League Baseball as a player. Spending 9 years in the field, he played a year for Cleveland, but he is a baseball lifer. But his life is very inextricably linked to Cleveland, as a baseball player and manager.

I am not sure he was born in Cleveland. He lived in Cleveland when his dad played for the Cleveland Indians in the old Municipal Stadium. Notably, his dad twice was traded for Larry Doby, the first African-American player in the American League and one of the Hall of Fame members because of his baseball play, his courage, his guts, and his note of being so important to history and breaking the color line.

I grew up watching his father play. I saw his father, once in a double-header, get seven hits. And the eighth time he came to the plate, Brooks Robinson—the third base player from the Orioles who just passed away—Brooks Robinson threw him out. He would have been 8 for 8 in a double-header.

As I said, his dad was traded twice for Larry Doby. His dad, one year, should have led the league at hitting, at .363 but was disqualified because he had one too few plate appearances. He batted 399 times instead of 400, even though he walked a number of times—too much inside baseball, maybe, for the Senate floor and for my colleagues to care about.

But his dad played for years and was an All-Star in 1961. He hit .363 in 1959 and was a fan favorite.

So the Francona family was formed in Cleveland and grew up in Cleveland in that sense. It reminds me of how baseball is a game that spans generations and brings people together.

I grew up 2 hours south of Cleveland. My dad used to take us to Major League Baseball games, to five or six games a year—five or six times a year, often double-headers. And my dad hated the New York Yankees so much that he would never take us to a Yankees game because he didn't want Mickey Mantle, the star of the Yankees, to get 10 cents of his ticket. So I never saw the Yankees play until I could drive myself to New York.

When Tito Francona joined the Montreal Expos in 1981, he succeeded his father as a baseball player. He played in Cleveland for a year. In 1990, he retired from the game and not a particularly stellar baseball career, not as good as his father's.

But then he became a manager. He managed the Phillies. He managed the Red Sox in two world championships. He then came home to us in Cleveland in 2013. In 2016, Cleveland won the American League Championship with the Indians—now, of course, the Guardians. He led the team to the World Series.

As I said, game 7 was quite an experience that I could take my daughters to, then in their thirties. And we had gone to baseball games. And my dad took me for years, and we got to see this team we loved and this team we followed so closely go to the World Series—a team that wasn't considered at the beginning of the season World Series caliber. And it was quite a season.

And the next year, Cleveland came back. They, at one point, won 22 games in a row. Only once in Major League Baseball did a team win more than that, when the Giants, in 1926, won 26 in a row. So it was an incredible streak.

But more important, his players reached a level of excellence that was beyond what most people think was their skill level. Cleveland, to owners that have never spent the money—owners in the Presiding Officer's home State, in Atlanta, they try to buy pennants like the Yankees do and the Mets do and the Dodgers do and the Red Sox do. They spend so much money to try to buy the best players. Cleveland has never had owners that were either that rich or that generous. So Tito had to figure out how to win without that kind of money.

But what he has done, which I so much like, is he gets out of his players a skill and a drive that most managers are not able to achieve. You can tell he loves America's game. I mean, he shared that with all of us.

He loves the city where his team plays and where he manages. He has been there for 10 years, in Cleveland. I guess 11 years.

His players could have gone somewhere else and made more money. The star player for Cleveland, a young man named Jose Ramirez, signed a long-term contract, made a whole lot of money, but everybody said he could have made so much more money if he had gone to New York or Atlanta or L.A. or Boston and signed huge contracts with really rich, generous owners. I think his players want to play for him, and he helped put our team on the map again.

I just wanted to say to Tito Francona, thank you for everything you have done for Cleveland. Thank you for the memories and the joy you have brought so many of us as fans.

We celebrate his contributions to baseball, his commitment to Cleveland, and his extraordinary career.

REMEMBERING TOM CONWAY

Mr. President, on a much more serious note, I want to honor a friend of mine who passed away this week, a national leader of stature who made such a difference in working people's lives.

I come to this floor to talk about the dignity of work, to talk about people who put their lives on the line and put their careers front and center about workers. Tom Conway did that.

Tom Conway passed away in the last few days, the president of the United Steelworkers. He joined the labor movement in 1978. He worked as a millwright. ''Millwright'' means those workers who essentially fix and make equipment work inside plants. He worked at the Burns Harbor Works of Bethlehem Steel in northwest Indiana.

Forty years ago, 45 years ago, he joined Local 6787. He dedicated his life to expanding opportunity and economic security for workers. Whether on a picket line or sitting across from the steel executives, his values were on his sleeve. His commitment to workers never wavered.

On trade issues and worker safety, always one of the first calls I made was to talk to Tom Conway, to get wisdom from Tom Conway, to get perspective from Tom Conway, because I knew always he was looking out for the workers whom he represented.

Steelworkers in Ohio knew what those bad trade deals—from NAFTA to PNTR with China, to TPP, to CAFTA—all the issues that, frankly, are a big part of the reasons my State has struggled with so many lost jobs.

Given this devastation, Tom saw across the industry. You might understand if he became a pessimist, threw up his hands, and gave up. He was never that—far from that. He drew his energy from the resilience of American steelworkers and steel communities across the Midwest.

He knew what we know in Ohio, that American workers can compete with anyone. They just need a level playing field. He never stopped fighting for that level playing field, for fair trade, for real investment in American industry, for strong enforcement of our trade laws.

Because of his advocacy and the advocacy of so many Ohio steelworkers, we made real progress. We passed the

original Level the Playing Field Act, the landmark overall of our trade remedy laws, to allow steelworkers to fight back against cheating by China, against dumping steel from China, against other unfair foreign competition. We passed the strongest ever ''Buy America'' rules to ensure that American tax dollars support American workers.

He never gave up on American steel. He never gave up on American workers. He saw the potential in this union to grow. He knew that, if more people carried a union card, their lives would be better. It would mean higher wages and better benefits. It would mean a more secure retirement. It would mean a safer workplace. It would mean more control over your schedule. That is what carrying a union card means.

My wife will say that her dad's union card saved her life. She grew up and at 16 had an asthma attack. She lived almost 2 hours from Cleveland Clinic. She got an ambulance to take her to the clinic. She was there for a week. It saved her life. Her dad could afford that care, that ambulance, that time in Cleveland Clinic because he carried a union card, and they negotiated for healthcare benefits. That is what Tom Conway did his whole life.

I wear on my lapel a pin depicting a canary in a birdcage. The mineworkers used to take the canary down in the mines a hundred years ago. If the canary died, the mineworker was on his own. He knew that he didn't have a union strong enough or a government that cared enough to protect him. That is why he carried the canary down into the mines.

This was given to me by a steelworker some 20 years ago in Lorain, OH. I have worn it on my lapel ever since. And that is what Tom Conway is about.

John Shinn, the secretary-treasurer of USW said: Solidarity wasn't just a word to Tom. It was a way of life. He understood that, by working together, we balance the scales against greedy corporations.

We see it now. Chrysler, now called Stellantis, has made $12 billion just in calendar year 2023. Stellantis' CEO makes 800 times what the entry-level worker at Stellantis makes.

Tom Conway understood that we fight against that kind of worker greed, and we help lift up workers so they can share in the wealth created by their work. Balancing those scales is what unions are all about. It is why autoworkers are in that picket line. That is what they are doing. It is what Tom Conway led the steelworkers to do.

We honor his memory, his legacy best by carrying on his life's work. His successor at USW is Dave McCall, fellow Ohioan. Dave McCall worked with and has known Tom Conway for over 40 years. He will serve out the remainder of his term. I can't think of anyone better to carry on Tom's legacy than Dave McCall.

Dave and I have been in the trenches together for the better part of our entire careers, walking picket lines, talking to Ohio workers at union halls and fighting against bad trade policy that this body far too often falls for because corporate lobbyists swarm this place and push these bad trade agreements, always, always, always at the expense of workers.

Dave McCall understands the dignity of work, as Tom did. He spent his whole life fighting for it. He would have made Tom Conway proud.

I ask my colleagues to join me in honoring Tom Conway today. Our thoughts are with his family, his longtime partner Carol, his three sons and six grandchildren, and with steelworker sisters and brothers in Ohio and around the country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

U.S. SUPREME COURT

Mr. WHITEHOUSE. Mr. President, last week, I spoke about the scheme of corruption by rightwing billionaires out to capture the Supreme Court. I mentioned their lawyers' blockade of our investigation into this corruption and described how little sense their lawyers' arguments made.

That brings us to this speech today. The connection is that those, in my view, nonsense lawyers' arguments badly needed propping up. And who should come to the rescue but U.S. Supreme Court Justice Sam Alito. Alito's actions propping up that argument caused me to write this ethics complaint against him.

I ask unanimous consent to have printed in the RECORD my full letter to Chief Justice Roberts and a portion of the letter from Mr. Rivkin at the end of my remarks.

Mr. President, this complaint highlights some of the Supreme Court's current legitimacy problems, which are legion. One is that the Court has no procedure for an ethics complaint. I had to write to Chief Justice Roberts, both in his capacity as Chief Justice and in his capacity as Chair of the Judicial Conference, because, unlike in every other Federal court, there is no clarity about process.

The Supreme Court has no formal process for receiving or investigating such complaints, so they go there to die. Complaints about Supreme Court Justices have sometimes been referred to the Judicial Conference, and there, they have mostly disappeared. So it is a mess.

The Supreme Court—the body with the highest responsibility to police proper procedure and fair factfinding throughout the rest of government—has no clear and proper procedure for itself. That is weird, and that is wrong.

Nothing prohibits the Court or the Judicial Conference from adopting procedures to address complaints of misconduct by the Justices. They just haven't bothered to. The most basic modicum of any due process is fair factfinding, but they have no process at all to find out even what the facts are. That is simply not defensible. That has to change, and my complaint presents the Court and the conference that opportunity.

Now let's move from procedure to the substance of my complaint about Justice Alito. At one level, it is an obvious slam-dunk ethics violation. At another, it will take a lot more digging. Let me explain.

My complaint relates to a so-called ''interview'' published on the Wall Street Journal's editorial page July 28 of this year. How it is both an interview and on the Wall Street Journal's editorial page, I am not going to explore.

Justice Alito was the person ''interviewed.'' His ''interviewers'' were David Rivkin and James Taranto. In this interview, Justice Alito offered his legal opinion that ''[n]o provision in the Constitution gives [Congress] the authority to regulate the Supreme Court—period.'' That is the end of his quote.

That comment wasn't just floating in the ether; it was related to my Supreme Court ethics bill, the Supreme Court Ethics, Recusal, and Transparency Act, which the Senate Judiciary Committee had advanced just 1 week before, and it also related to an array of congressional oversight information requests from the Senate Judiciary Committee and from the Senate Finance Committee.

More on that later. Back to the slam-dunk part. I sit on the Senate Judiciary Committee, where we hear in every Supreme Court confirmation hearing that it would be improper, that it would be wrong even in a confirmation hearing to express opinions on matters that might come before the Court. Well, obviously, Alito's interview comments—his Wall Street Journal editorial page ''opining''—touched on a matter that might come before the Court. That is the slam dunk.

Look at what other Justices have testified about this opining problem, but let's start with Alito himself, who testified in his confirmation hearing that it would be ''improper'' and a ''disservice to the judicial process'' for a Supreme Court nominee to comment on issues that might come before the Court. His words.

Consider also Justice Thomas, who testified that such opining would ''leave the impression that I prejudged this issue,'' which would be, he said, ''inappropriate for any judge who is worth his or her salt.''

Justice Kagan told the committee it would be ''inappropriate'' for her to ''give any indication of how she would rule in a case'' even ''in a somewhat veiled manner.''

Justice Kavanaugh testified that nominees ''cannot discuss cases or issues that might come before them.'' He went on that prejudging an issue in this manner is ''inconsistent with judicial independence, rooted in Article

III.'' He continued that ''litigants who come before [the Court] have to know we have an open mind, that we do not have a closed mind.'' He quoted Justice Ginsburg: ''No hints, no forecasts, no previews.''

Justice Gorsuch went one better in his confirmation hearing. He actually testified that this ''no opining'' rule applies to discussions about Supreme Court ethics—the exact topic of Justice Alito's Wall Street Journal opining.

Senator BLUMENTHAL on the committee had asked Judge Gorsuch about proposed ethics rules for the Supreme Court and whether they would violate separation of powers. Gorsuch answered:

> Senator, I am afraid I just have to respectfully decline to comment on that because I am afraid that could be a case or controversy, and you can see how it might be. I can understand Congress' concern and interest in this area. I understand that. But I think the proper way to test that question is the prescribed process of legislation and litigation.

In sum, the Court itself is plainly on record that this sort of opining is wrong. So that is broken rule one, just offering the opinion, but it gets worse. This was not just general opining out into the general ether. Alito's comments referred to a specific, ongoing legal dispute. Let me explain.

There are ongoing Senate investigations into the scandal of secret billionaire gifts to certain Justices. The Senate Judiciary Committee is investigating reports that Supreme Court Justices accepted and improperly failed to disclose, in violation of Congress's disclosure laws, lavish gifts from billionaire benefactors seeking to influence the Court. The Senate Finance Committee is investigating Federal tax compliance regarding those undisclosed gifts. Were tax laws broken? Were proper declarations made?

In those congressional investigations, requests for information have been sent out. In response to those requests, objections have been raised. Here is where Alito comes in. The objections by the billionaires' lawyers assert that Congress has no constitutional authority to legislate in this area—hence, no authority to investigate. They assert—in my view, plainly wrongly—that our constitutional separation of powers blocks any congressional action in this area, which in turn, they assert—also plainly wrongly, in my view—blocks any congressional investigation.

Set aside the demerits of that argument—for which I refer you to the lawyers' letters I added to the record in my previous speech and my own takedown of that argument—sound or unsound, the point is, it is their argument in that ongoing dispute.

In that ongoing dispute, Justice Alito's Wall Street Journal comments prop up that argument. The language is nearly identical. You can compare it for yourself. In fact, lawyers for some of the billionaires to whom we have sent information requests have actually quoted Justice Alito's comment in declining to respond.

So this is not just some improper general opining; it is a Supreme Court Justice leaning in to one side of a specific ongoing dispute and being used and quoted by one side of a specific ongoing dispute. That is pretty bad. It gets worse.

One of the interviewers in that Wall Street Journal interview, Attorney David Rivkin, wasn't just some interviewer; he is the attorney for a party in that specific ongoing dispute. Rivkin is the attorney making the precise legal argument that Alito echoed, and he is making it in that ongoing dispute. None of this, of course, was disclosed in the so-called ''interview.''

A logical mind would rightfully ask whether Justice Alito opined on this matter at the behest of his interviewer, Attorney Rivkin. A suspicious mind would even wonder whether Attorney Rivkin prepped his witness, as lawyers are wont to do. With no means of fact-finding, all this remains unknown.

Bad enough to opine on some general matter that may come before the Court; worse when the opining brings a Supreme Court Justice's influence to bear in a specific ongoing legal dispute; and worse yet when the influence of the Justice might have been summoned by counsel to a party in that dispute.

The timeline is suspicious. Mr. Rivkin's interview with Justice Alito was reportedly conducted in early July 2023. Well, on July 11, Chairman DURBIN and I had sent a letter to Rivkin's client in that dispute inquiring about undisclosed gifts and travel provided to Justices. On July 20, the Senate Judiciary Committee voted to advance my judicial ethics bill.

By the way, the Rivkin-Alito Congress-has-no-authority argument fared very poorly that day in the committee.

On July 25, Mr. Rivkin, by letter, refused to answer our information requests on the purported ground that ''any attempt by Congress to enact ethics standards for the Supreme Court would falter on constitutional objections.'' Three days later, on July 28, comes the supportive opining from Justice Alito about those constitutional objections.

There are a lot of questions that need answering under oath about how this mess played out.

But wait, there is more. Attorney Rivkin's client in that dispute has a relationship with Justice Alito. He is a friend and ally of Justice Alito's. Rivkin's client is Leonard Leo. Leo is not just a friend and ally of Alito's. Our oversight questions that Attorney Rivkin is blocking relate to Mr. Leo's actions to facilitate gifts for Supreme Court Justices from rightwing billionaires of free and undisclosed transportation and lodging. Mr. Leo didn't just facilitate; he was Justice Alito's companion on the luxurious Alaskan fishing trip in 2008 that rightwing billionaires funded.

The relationship goes back. Leo's political organization ''had run an advertising campaign supporting Alito in his confirmation fight, and Leo was reportedly part of the team that prepared Alito for his Senate hearings.''

So it appears that Justice Alito, A, improperly opined in the Wall Street Journal, B, to influence a specific ongoing dispute, C, possibly at the behest of counsel in that dispute, and D, to the benefit of a personal friend and ally.

None of that was disclosed in the interview either, and it brings us to the last and most damning point.

Justice Alito's opining, potentially at the behest of his friend and ally's lawyer, props up an argument being used to block inquiry into undisclosed gifts and travel received by Justice Alito himself. Justice Alito himself is the ultimate beneficiary of his own improper opining. It comes full circle.

In the worst-case scenario, Justice Alito broke the rules against opining in order to facilitate an organized campaign to obstruct congressional investigation into tens of thousands of dollars in gifts he, Alito, personally received and doesn't want investigated.

Whether Justice Alito was unwittingly used to provide fodder for such interference or intentionally participated in that interference plan and whether he did it to protect the rightwing billionaires or himself or both, those are questions whose answers require additional facts.

The heart of any due process is a fair determination of the facts. Uniquely in the whole of government, the Supreme Court has insulated its Justices from any semblance of fair factfinding. The obstruction of our inquiries by Mr. Rivkin and Mr. Leo, fueled by Justice Alito's opining, prevents Congress from gathering those facts, and the Supreme Court won't even look. That can't be—not in a nation of laws. That is flagrantly, obviously wrong.

So I have asked the Chief Justice or the Judicial Conference to take whatever steps are necessary to develop a process to investigate this affair and provide the public with the prompt and trustworthy answers it deserves. The Supreme Court's legitimacy cannot stand on an edifice of obstruction, secrecy, and lies.

To be continued, Mr. President.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC,
September 4, 2023.

DEAR CHIEF JUSTICE/CHAIRMAN ROBERTS: I write to lodge an ethics complaint regarding recent public comments by Supreme Court Justice Samuel Alito, which appear to violate several canons of judicial ethics, including standards the Supreme Court has long applied to itself.

I write to you in your capacity both as Chief Justice and as Chair of the Judicial Conference because, unlike every other federal court, the Supreme Court has no formal process for receiving or investigating such complaints, and asserted violations by justices of relevant requirements have sometimes been referred to the Judicial Conference and its committees. I include all justices in carbon copy because I am urging the

Supreme Court to adopt a uniform process to address this complaint and others that may arise against any justice in the future.

The recent actions by Justice Alito present an opportunity to determine a mechanism for applying the Judicial Conduct and Disability Act to justices of the Supreme Court. Nothing prohibits the Court or the Judicial Conference from adopting procedures to address complaints of misconduct. The most basic modicum of any due process is fair fact-finding; second to that is independent decision-making.

BACKGROUND

Some of the background facts here were related by members of the Senate Judiciary Committee who signed a letter to you dated August 3, 2023. As that letter explains, the *Wall Street Journal* on July 28, 2023, published an interview with Justice Alito conducted by David Rivkin and James Taranto. Justice Alito's comments during that interview give rise this complaint. The interview had the effect, and seemed intended, to bear both on legislation I authored and on investigations in which I participate.

During the interview, Justice Alito stated that ''[n]o provision in the Constitution gives [Congress] the authority to regulate the Supreme Court—period.'' Justice Alito's comments appeared in connection to my Supreme Court Ethics, Recusal, and Transparency Act, which the Senate Judiciary Committee had advanced just one week before the publication of this interview. That bill would update judicial ethics laws to ensure the Supreme Court complies with ethical standards at least as demanding as in other branches of government.

Justice Alito's comments echoed legal arguments made to block information requests from the Senate Judiciary Committee and the Senate Finance Committee, on both of which I serve. Those arguments assert (in my view wrongly) that our constitutional separation of powers blocks any congressional action in this area, which in turn is asserted (also wrongly, in my view) to block any congressional investigation. Sound or unsound, it is their argument against our investigations, as reflected in the letter appended hereto. The subjects of these committee investigations are matters relating to dozens of unreported gifts donated to justices of the Supreme Court.

As the author of the bill at issue, and as the only Senator serving in the majority on both investigating committees, I bring this complaint.

IMPROPER OPINING ON A LEGAL ISSUE THAT MAY COME BEFORE THE COURT

On the Senate Judiciary Committee, we have heard in every recent confirmation hearing that it would be improper to express opinions on matters that might come before the Court. In this instance, Justice Alito expressed an opinion on a matter that could well come before the Court.

That conduct seems indisputably to violate the Code of Conduct for United States Judges. Canon 1 emphasizes a judge's obligation to ''uphold the integrity and independence of the judiciary''; Canon 2(A) instructs judges to ''act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary''; and Canon 3(A)(6) provides that judges ''should not make public comment on the merits of a matter pending or impending in any court.'' These canons help ensure ''the integrity and independence of the judiciary'' by requiring judges' conduct to be at all times consistent with the preservation of judicial impartiality and the appearance thereof.

The Court's *Statement of Ethics Principles and Practices*, ''to which all of the current members of the Supreme Court subscribe,'' concurs. That document makes clear that, before speaking to the public, ''a Justice should consider whether doing so would create an appearance of impropriety in the minds of reasonable members of the public. There is an appearance of impropriety when an unbiased and reasonable person who is aware of all relevant facts would doubt that the Justice could fairly discharge his or her duties.'' These same precepts are also enforced through the federal recusal statute, which requires all federal justices and judges to recuse themselves from any matter in which their impartiality could reasonably be questioned.

Making public comments assessing the merits of a legal issue that could come before the Court undoubtedly creates the very appearance of impropriety these rules are meant to protect against. As Justice Kavanaugh pointed out, prejudging an issue in this manner is ''inconsistent with judicial independence, rooted in Article III,'' because ''litigants who come before [the Court] have to know we have an open mind, that we do not have a closed mind.''

Justice Alito and every other sitting member of the Supreme Court told the Senate Judiciary Committee during their confirmation hearings that it would be (in the words of Justice Alito) ''improper'' and a ''disservice to the judicial process'' for a Supreme Court nominee to comment on issues that might come before the Court. Justice Thomas said that such comments would at minimum ''leave the impression that I prejudged this issue,'' which would be ''inappropriate for any judge who is worth his or her salt.'' Justice Kagan echoed those comments, telling the Committee it would be ''inappropriate'' for her to ''give any indication of how she would rule in a case''—even ''in a somewhat veiled manner.'' And Justice Kavanaugh explained that nominees ''cannot discuss cases or issues that might come before them.'' He continued: ''As Justice Ginsburg said, no hints, no forecasts, no previews.''

Justice Gorsuch made clear during his confirmation hearing that this rule applies to the precise topic on which Justice Alito opined to the *Wall Street Journal:*

Senator Blumenthal. Thank you. I also want to raise a question, talking about court procedure, relating to conflicts of interest and ethics. I think you were asked yesterday about the proposed ethics rules that have been applied to your court—

Judge Gorsuch. Yes.

Senator Blumenthal: [continuing]. To the appellate court, to the District Court, but not to the Supreme Court. Would you view such legislation as a violation of the separation of powers?

Judge Gorsuch. Senator, I am afraid I just have to respectfully decline to comment on that because I am afraid that could be a case or controversy, and you can see how it might be. I can understand Congress? concern and interest in this area. I understand that. But I think the proper way to test that question is the prescribed process of legislation and litigation.

You, Justice Sotomayor, and Justice Barrett each expressly cited the canons of judicial ethics as the source of a nominee's obligation to refuse to comment on such matters. There seems to be no question that Justice Alito is bound by, and that his opining violated, these principles.

IMPROPER INTRUSION INTO A SPECIFIC MATTER

These principles apply broadly to any opining, on any issue that might perhaps come before the Court. But here it was worse; it was not just general opining, it was opining in relation to a specific ongoing dispute. The quote at issue in the article—''No provision in the Constitution gives [Congress] the authority to regulate the Supreme Court''—directly follows a mention of my judicial ethics bill. Justice Alito's decision to opine publicly on the constitutionality of that bill may well embolden legal challenges to the bill should it become law. Indeed, his comments encourage challenges to all manner of judicial ethics laws already on the books.

Justice Alito's opining will also fuel obstruction of our Senate investigations into these matters. To inform its work on my bill and other judicial ethics legislation, and oversee the performance of the statutory Judicial Conference in this arena, the Senate Judiciary Committee is investigating multiple reports that Supreme Court justices have accepted and failed to disclose lavish gifts from billionaire benefactors. Separately, the Senate Finance Committee is investigating the federal tax considerations surrounding the billionaires? undisclosed gifts to Supreme Court justices. Both committees' inquiries have been stymied by individuals asserting that Congress has no constitutional authority to legislate in this area, hence no authority to investigate. Justice Alito's public comments prop up these theories.

As the author of the bill in question and as a participant in the related investigations, I feel acutely the targeting of this work by Justice Alito, and consider it more than just misguided or accidental general opining. It is directed to my work.

IMPROPER INTRUSION INTO A SPECIFIC MATTER AT THE BEHEST OF COUNSEL IN THAT MATTER

Compounding the issues above, Attorney David Rivkin was one of the interviewers in the *Wall Street Journal* piece, and also a lawyer in the above dispute. This dual role suggests that Justice Alito may have opined on this matter at the behest of Mr. Rivkin himself. Bad enough that a justice opines on some general matter that may come before the Court; worse when the opining brings his influence to bear in a specific ongoing legal dispute; worse still when the influence of a justice appears to have been summoned by counsel to a party in that dispute.

The timeline of the *Wall Street Journal* interview suggests that its release was coordinated with Mr. Rivkin's efforts to block our inquiry. Mr. Rivkin's interview with Justice Alito was reportedly conducted in ''early July'' 2023. On July 11, Senate Judiciary Committee Chair Durbin and I sent a letter to Mr. Rivkin's client inquiring about undisclosed gifts and travel provided to justices. On July 20, the Senate Judiciary Committee voted to advance my judicial ethics bill mentioned above. (Notably, the Rivkin/Alito Congress-has-no-authority argument fared poorly in the committee that day, with no Republican rising to rebut the arguments against it.) On July 25, Mr. Rivkin by letter refused to provide the requested information on the purported ground that ''any attempt by Congress to enact ethics standards for the Supreme Court would falter on constitutional objections.'' That response, appended hereto, was instantly published in *Fox News* Three days later, on July 28, the *Wall Street Journal* editorial page published the supportive opining from Justice Alito.

IMPROPER INTRUSION INTO A SPECIFIC MATTER INVOLVING AN UNDISCLOSED PERSONAL RELATIONSHIP

On top of all this, the dispute upon which Justice Alito opined involves an individual with whom Justice Alito has a longstanding personal and political relationship. As my colleagues and I pointed out in our August 3 letter, ''Mr. Rivkin is counsel for Leonard Leo with regard to [the Judiciary] Committee's investigation into Mr, Leo's actions to facilitate gifts of free transportation and lodging that Justice Alito accepted from

Paul Singer and Robin Arkley II in 2008.'' Mr. Leo was Justice Alito's companion on the luxurious Alaskan fishing trip in 2008 and facilitated the gifts to the justice of free transportation and lodging. Two years earlier, Mr. Leo's political organization ''had run an advertising campaign supporting Alito in his confirmation fight, and Leo was reportedly part of the team that prepared Alito for his Senate hearings.

The timing of Justice Alito's opining suggests that he intervened to give his friend and political ally support in his effort to block congressional inquiries. It appears that Justice Alito (a) opined (b) on a specific ongoing dispute (c) at the behest of counsel in that dispute (d) to the benefit of a personal friend and ally. Each is objectionable, and appears to violate, *inter alia*, Canon 2(B) of the Code of Conduct for United States Judges, which provides, ''A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge.''

IMPROPER USE OF JUDICIAL OFFICE FOR PERSONAL BENEFIT

The final unpleasant fact in this affair is that Justice Alito's opining, apparently at the behest of his friend and ally's lawyer, props up an argument being used to block inquiry into undisclosed gifts and travel received by Justice Alito. At the end, Justice Alito is the beneficiary of his own improper opining. This implicates Canon 2(B) strictures against improperly using one's office to further a personal interest: a justice obstructing a congressional investigation that implicates his own conduct.

The Senate Judiciary Committee's investigation encompasses reports that Justice Alito accepted but did not disclose gifts of travel and lodging valued in the tens of thousands of dollars. Further investigation may reveal additional information that Justice Alito would prefer not come to light. The facts as already reported suggest that Justice Alito likely violated the financial disclosure requirements of the Ethics in Government Act. Perhaps Justice Alito should also have recused himself as required by the recusal statute in a 2014 case involving a company owned by Paul Singer, one of the billionaires who attended and paid for his Alaskan fishing vacation. Justice Alito's public suggestion that these laws are unconstitutional as applied to the Supreme Court, and that Congress lacks authority to amend them or investigate their implementation or enforcement, appears designed to impede Senate efforts to investigate these and other potential abuses.

CONCLUSION

In the worst case facts may reveal, Justice Alito was involved in an organized campaign to block congressional action with regard to a matter in which he has a personal stake. Whether Justice Alito was unwittingly used to provide fodder for such interference, or intentionally participated, is a question whose answer requires additional facts. The heart of any due process is a fair determination of the facts. Uniquely in the whole of government, the Supreme Court has insulated its justices from any semblance of fair fact-finding. The obstructive campaign run by Mr. Rivkin and Mr. Leo, fueled by Justice Alito's opining, appears intended to prevent Congress from gathering precisely those facts.

As you have repeatedly emphasized, the Supreme Court should not be helpless when it comes to policing its own members' ethical obligations. But it is necessarily helpless if there is no process of fair fact-finding, nor independent decision-making. I request that you as Chief Justice, or through the Judicial Conference, take whatever steps are necessary to investigate this affair and provide the public with prompt and trustworthy answers.

Sincerely,

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

BAKER HOSTETLER,
July 25, 2023.

Re Response to July 11, 2023 Letter to Leonard Leo.

DEAR CHAIRMAN DURBIN AND SENATOR WHITEHOUSE: We write on behalf of Leonard Leo in response to your letter of July 11, 2023, which requested information concerning Mr. Leo's interactions with Supreme Court Justices. We understand this inquiry is part of an investigation certain members of the Senate Judiciary Committee have undertaken regarding ethics standards and the Supreme Court. While we respect the Committee's oversight role, after reviewing your July 11 Letter, the nature of this investigation, and the circumstances surrounding your interest in Mr. Leo, we believe that your inquiry exceeds the limits placed by the Constitution on the Committee's investigative authority.

Your investigation of Mr. Leo infringes two provisions of the Bill of Rights. By selectively targeting Mr. Leo for investigation on a politically charged basis, while ignoring other potential sources of information on the asserted topic of interest who are similarly situated to Mr. Leo but have different political views that are more consistent with those of the Committee majority, your inquiry appears to be political retaliation against a private citizen in violation of the First Amendment. For similar reasons, your inquiry cannot be reconciled with the Equal Protection component of the Due Process Clause of the Fifth Amendment. And regardless of its other constitutional infirmities, it appears that your investigation lacks a valid legislative purpose, because the legislation the Committee is considering would be unconstitutional if enacted.

THE COMMITTEE'S INQUIRY RAISES SERIOUS FIRST AMENDMENT CONCERNS

Bedrock constitutional principles dictate that ''no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). In the guise of conducting an investigation concerning Supreme Court ethics, the Committee appears to be targeting Mr. Leo because of disagreement with his political activities and viewpoints on issues pertaining to our federal judiciary. An investigation so squarely at odds with the First Amendment cannot be maintained.

Mr. Leo is entitled by the First Amendment to engage in public advocacy, associate with others who share his views, and express opinions on important matters of public concern. ''[T]he freedom to think and speak is among our inalienable human rights.'' *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2311 (2023). Indeed, expressive activity of this kind is afforded the greatest protection possible. *See Connick v. Myers*, 461 U.S. 138, 145 (1983) (''[S]peech on public issues occupies the 'highest rung of the hierarchy [sic] of First Amendment values,' and is entitled to special protection.'' (quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982)). Yet Mr. Leo has, for years, been the subject of vicious attacks by members of Congress, specifically including members of the Committee majority, because of how he chooses to exercise his rights. In reference to Mr. Leo's public advocacy work, for example, Senator Whitehouse has called Mr. Leo the ''little spider that you find at the center of the dark money web.'' Senator Sheldon Whitehouse, Remarks on the Floor of the United State Senate (Sept. 13, 2022). Similar remarks from Senator Whitehouse and others are too numerous to recount.

This campaign of innuendo and character assassination has now moved beyond angry speeches and disparaging soundbites. In the July 11 Letter, Committee Democrats have now wielded the investigative powers of Congress to harass Mr. Leo for exercising his First Amendment rights. That transforms what has to this point been a nuisance occasioned by intemperate rhetoric into a constitutional transgression.

''[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech.'' *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019) (quotation omitted). Thus, an official is prohibited from ''tak[ing] adverse action against someone based on'' that person's expressive activity. *Id.* This bar against retaliatory action applies to Congress as much when it acts in its investigative capacity as when it legislates. *See Barenblatt v. United States*, 360 U.S. 109, 126 (1959) (''[T]he provisions of the First Amendment . . . of course reach and limit congressional investigations.'').

The Committee's investigation into Mr. Leo's relationship with Justice Alito quite clearly constitutes an adverse action for purposes of the First Amendment. The burden created by a congressional inquiry is significant. *See Watkins v. U.S.*, 354 U.S. 178, 197 (1957) (''The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference.''). It can chill expressive activity and infringe on First Amendment rights. *See, e.g., Smith* v. *Plati*, 258 F.3d 1167, 1176 (10th Cir. 2001) (''Any form of official retaliation for exercising one's freedom of speech, including prosecution, threatened prosecution, bad faith investigation, and legal harassment, constitutes an infringement of that freedom.''); *see also United States* v. *Hansen*, 143 S. Ct. 1932, 1963 (2023) (Jackson, J., dissenting) (noting that an investigative letter sent by members of Congress ''can plainly chill speech, even though it is not a prosecution (and, for that matter, even if a formal investigation never materializes).'').

It seems clear that this targeted inquiry is motivated primarily, if not entirely, by a dislike for Mr. Leo's expressive activities. Retaliatory motive can be shown in at least two ways: (1) where the ''evidence of the motive and the [adverse action] [are] sufficient for a circumstantial demonstration that the one caused the other,'' *Hartman* v. *Moore*, 547 U.S. 250, 260 (2006); or (2) where ''otherwise similarly situated individuals not engaged in the same sort of protected speech'' were not subjected to the same adverse action, *Nieves*, 139 S. Ct. at 1727. Both circumstances are present here.

As noted, Mr. Leo and the groups with which he is affiliated have been subjected to a barrage of disparaging remarks because of their views on judicial nominations and other judicial matters. Sen. Whitehouse has attacked ''creepy right-wing billionaires who stay out of the limelight and let others, namely Leonard Leo and his crew, operate their'' supposed ''far-right scheme to capture and control our Supreme Court.'' Senator Sheldon Whitehouse, Remarks on the Floor of the United State Senate (July 12, 2023). Senator Durbin has similarly decried ''Leonard Leo and the Federalist Society'' for their

''joint effort [with] very conservative groups, special interest, dark money groups, and the Republican party'' to shape ''what will be the future of the court.'' Senator RICHARD DURBIN, Interview with the Washington Post (July 13, 2023). And perhaps most tellingly, the present investigation was announced with a statement titled''Whitehouse, Durbin Ask Leonard Leo and Right-Wing Billionaires for Full Accounting of Gifts to Supreme Court Justices.'' Sens. Richard Durbin and Sheldon Whitehouse, Press Statement (July 12, 2023).

These explicitly political attacks, and others like them, made over the course of many years and reaching a crescendo in the days immediately following the transmission of the letter to Mr. Leo, provide an ample basis for concluding that the July 11 Letter is animated by animus toward ''conservative'' ''Right-Wing'' views and organizations, rather than a purely genuine concern about Supreme Court ethics. *See Lyberger* v. *Snider*, 42 F.4th 807, 813 (7th Cir. 2022) (explaining that statements from officials who took adverse action can demonstrate retaliatory motive). The circumstances of the Committee's investigation show that ''retaliatory animus actually caused'' the adverse action taken against Mr. Leo. *Nieves*, 139 S. Ct. at 1723.

This conclusion is confirmed by the targeted and one-sided nature of the investigation. Despite professing interest in potential ethics violations and influence-peddling at the Supreme Court, the Committee has focused its inquiries on individuals who have relationships with Justices appointed by Republican Presidents. Reported instances of Democrat-appointed Justices accepting personal hospitality or other items of value from private individuals have been ignored. Here are some examples:

In 2019, Justice Ruth Bader Ginsburg was given a $1 million award by the Berggruen Institute, an organization founded by billionaire investor Nicolas Berggruen. *See* Andrew Kerr, *Ruth Bader Ginsburg's Mysterious $1 Million Prize*, Washington Free Beacon (July 19, 2023). Justice Ginsburg used the money to make donations to various charitable causes of her choosing, most of which remain unknown. *See id.*

Between 2004 and 2016, Justice Stephen Breyer took at least 225 trips that were paid for by private individuals, including a 2013 trip to a private compound in Nantucket with billionaire David Rubenstein, who has a history of donating to liberal causes. *See* Marty Schladen, *U.S. Supreme Court justices take lavish gifts—then raise the bar for bribery prosecutions*, Ohio Capital Journal (April 26, 2023).

On September 30, 2022, the Library of Congress hosted an expensive investiture celebration for Justice Ketanji Brown Jackson that was funded by undisclosed donors. *See* Houston Keene, *Library of Congress explains why it hosted Jackson investiture but not for Gorsuch, Kavanaugh, Barrett*, Fox News (Sept. 30, 2022).

On two occasions, Justice Sonia Sotomayor failed to recuse herself from cases involving her publisher, Penguin Random House, which had paid her $3.6 million for the right to publish her books. *See* Victor Nava, *Justice Sonia Sotomayor didn't recuse her self from cases involving publisher that paid her $3M: report*, N.Y. Post (May 4, 2023).

Justice Sonia Sotomayor used taxpayer-funded Supreme Court personnel to promote sales of her books, from which she earned millions of dollars, including at least $400,000 in royalties. *See* Brian Slodysko & Eric Tucker, *Supreme Court Justice Sotomayor's I staff prodded colleges and libraries to buy her books*, Associated Press (July 11, 2023).

Throughout her tenure on the Supreme Court, Justice Ruth Bader Ginsburg maintained a close relationship with the pro-abortion group National Organization for Women (''NOW''), which frequently had business before the Court. *See* Richard A. Serrano & David G. Savage, *Ginsburg Has Ties to Activist Group*, Los Angeles Times (Mar. 11, 2004). Among other things, Justice Ginsburg helped the organization fundraise by donating an autographed copy of one of her decisions, and contributed to its lecture series, even as she participated in cases in which NOW filed amicus briefs. *See id.*; Katelynn Richardson, *Here Are the Times Liberal Justices had Political Engagements that Were Largely Ignored by Democrats*, Daily Caller (May 5, 2023).

Mr. WHITEHOUSE. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE DRESS CODE RESOLUTION

Mr. SCHUMER. Mr. President, in a moment, my friend from West Virginia will submit a resolution regarding the Senate dress code. Although we have never had an official dress code, the events over the past week have made us all feel as though formalizing one is the right path forward.

I deeply appreciate Senator FETTERMAN's working with me to come to an agreement that we all find acceptable, and, of course, I appreciate Senator MANCHIN's and Senator ROMNEY's leadership on this issue.

I will move for the Senate to adopt this resolution in a few minutes.

I now yield to my colleague from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. MANCHIN. Mr. President, let me thank Senator SCHUMER for working with us to come to this conclusion and bring all of us together. I appreciate it very much. I appreciate Senator MCCONNELL for being a part of this and joining this bipartisan effort and, of course, my dear friend Senator MITT ROMNEY, who has been a part of all of these efforts that we have worked on together and in putting together this small token of our appreciation for what we have been able to do. I want to thank Senator FETTERMAN also. Senator FETTERMAN and I have had many conversations, and he has worked with me to find a solution. I appreciate that very much. It has truly been a team effort.

You know, for 234 years, every Senator who has had the honor of serving in this distinguished body has assumed that there were some basic written rules of decorum and conduct and civility, one of which was a dress code. The presumed dress code was pretty simple. The male Senators were required to wear a coat, tie, and slacks or other long pants while on the floor of the Senate to show the respect that we had for our constituents back home.

Just after a week ago, we learned that there were not, in fact, any written rules about the Senators as to what they could and could not wear on the floor. So Senator ROMNEY and I got together, and we thought maybe it is time that we finally codified something that has been precedent, a rule, for 234 years. We drafted this simple, two-page resolution that will put all of that to bed once and for all by just codifying a longstanding practice into a Senate rule which makes it very clear for the Sergeant at Arms to be able to enforce.

I want to thank Senator ROMNEY for working, as always, in a bipartisan way on so many endeavors. This is just as important, maybe, as any of them we have ever done.

With that, I turn it over and yield to my good friend Senator ROMNEY.

The PRESIDING OFFICER. The Senator from Utah.

Mr. ROMNEY. Mr. President, I thank Senator MANCHIN. We have collaborated on quite a number of things together. It has been a great experience and a joy for me. I thank Leader SCHUMER for beginning this process and making sure that we reach a favorable and bipartisan conclusion.

This is not the biggest thing going on in Washington today. It is not even one of the biggest things going on in Washington today. Nonetheless, it is a good thing. It is another example of Republicans and Democrats being able to work together and solve, in this case, what may not be a really big problem but what is an important thing that makes a difference to a lot of people.

I have been thinking about the extraordinary Founders of our country and the leaders in the early days who decided to build this building. I mean, George Washington approved this building. In the years that followed, huge sacrifices were made. They could have built a building that looked like a Walmart, with La-Z-Boy chairs. Instead, they built this extraordinary edifice with columns and marble. Why did they do that? Why make that huge investment? For one, I think it was to show the respect and admiration that we have for the institution of the Government of the United States of America. This was at a time when we were an agricultural society. Yet they made this enormous sacrifice and built this amazing edifice.

I think it is in keeping with that spirit that we say we want those who serve inside this room, in this Hall, to show a level of dignity and respect which is consistent with the sacrifice they made and with the beauty of the surroundings.

So I appreciate the effort that Senator MANCHIN has led and that Senator SCHUMER has put on the floor this evening such that we might be able to proceed and codify what has been a longstanding practice of showing our admiration and respect for the institution in which we serve, the very building in which we are able to serve it,