



2022 SELECTED STUDENT ESSAYS



STATE BAR OF NEW MEXICO SENIOR LAWYERS DIVISION

To: The Senior Lawyers Division of the State Bar of New Mexico
From: Andrew V. Conticelli
Re: U.S. Supreme Court Code of Conduct

No, U.S. Supreme Court Justices should not be required to comply with the Code of Conduct for U.S. Judges. The U.S. Supreme Court should have a unique Code of Conduct that considers the significant level of power and impact they have on the country. The nine Justices on the Supreme Court maintain a substantial amount of responsibility and influence on the trajectory of laws, policy, and culture for American citizens. Consequently, former and current Supreme Court Justices should create a Code of Conduct that considers their special role and influence in American politics, the law, and society while understanding that they are not above the law and should be held accountable for their opinions, decision making, and implications of their work.

Instead of the five canons associated with U.S. Judges, the proposed Code of Conduct for the U.S. Supreme Court Justices would have seven canons. Additionally, there would be a disciplinary section that would specifically delineate a relevant and appropriate process and procedure to address possible ethical concerns and/or other important violations of the Code of Conduct.

The first five canons would mirror the canons for U.S. Judges except for a few changes. The word “Judge” would be “Justice” and “Judiciary” would change to “U.S. Constitution.” The two additional canons of the proposed Code of Conduct would be as follows: (6) A Justice Should Be Held Accountable Regarding Past Positions on a Matter of Law; and (7) A Justice Should Be Competent in Interpreting the Constitution, Specific Cases, and the Law. The sixth canon would explain a past position on a matter of law and emphasize the importance of the

hearing process with the U.S. Senate. The seventh canon would analyze the experience of a Justice and decide whether there was proficiency in the law at issue.

Finally, the disciplinary section of the Code of Conduct for Justices would state specific instructions to be taken for a violation of any of the seven canons. The instructions would provide: (1) whether the violation should be heard in front of the Senate; (2) whether the violation has a three-strike policy; and (3) whether the punishment should be decided internally by the Chief Justice or Senate. The purpose of having a disciplinary section in the Code of Conduct is to hold the Justices accountable for their actions and inform the American people about the decision-making process of the U.S. Supreme Court. Overall, it is important for the U.S. Supreme Court to balance both privacy and transparency when carrying out their duty to uphold the Constitution.

Furthermore, if the Justices on the U.S. Supreme Court adopt their own Code of Conduct it will promote transparency between the Justices and the American people. Additionally, there will be less speculation regarding whether the U.S. Supreme Court is upholding the Constitution.

Senior Lawyer Division Essay by Emilee Greenhouse

In its last session, the United States Supreme Court overturned long-standing judicial precedent. The Court's decisions created seismic shifts in the day-to-day lives of the American people. The Court's next session is likely to do the same. Many have criticized the Court's recent decisions as being rooted in political and personal bias. As the foundation of our nation shifts beneath our feet, the impartiality of the Court is in question. Even those who agree with the results of the Court's recent decisions find it hard to argue that politics, personal beliefs, and alliances did not influence the Justices' votes.

Every United States judge—except for the nine Supreme Court Justices—is bound to the Code of Conduct of United States Judges. The Code requires that judges act fairly, impartially, and uphold the integrity of the judiciary. The Justices of the United States Supreme Court should be held to the same standard as every other judge in the federal judiciary and therefore should be required to comply with the same Code of Conduct.

The duties of the Supreme Court extend beyond deciding individual cases, but no duty requires it to abandon its integrity. District judges decide individual cases. Circuit judges establish precedents that impact an entire Circuit. The Justices of the Supreme Court interpret the Constitution and are the last word on precedents that become universal truths for every person in the United States. Therefore, the Supreme Court should be held to the highest of standards; at a minimum, they should be held to the same standard as every judge below them.

Most Americans do not understand the minutia of why one principle or legal fiction prevails over another. However, every person understands bias. This natural inclination towards bias is why the standard is heightened for the judiciary. It is unfortunate that these requirements should need to be enforced, however, even where the Justices are bound by statute to disqualify themselves in certain cases they do not consistently comply. The Court is a self-governed body and yet there is no mechanism to enforce the Justices' compliance with any statute or Code. Theoretically, Congress can impeach a Justice, but no Justice in the United States' history has been impeached. The lack of any real enforcement mechanism does not mean that the bar for the Justices' conduct should not be established.

From a cynical point of view, the effect of requiring the Justices to comply with the Code of Conduct is symbolic. In a time where there is little confidence in the Justices' ability to be fair and impartial, requiring them to comply with the Code of Conduct could be the first step in reestablishing the legitimacy of the Court. Simply put, Americans should require of the Justices the integrity that democracy demands. The United States Supreme Court Justices should be confronted with their duty to the judiciary and the American public by being held to the Code of Conduct of the United States Judges.

Justice for Beauty Pageant Contestants! (And the American public)

Written by: Barbara Ogushi

My mother once forced me to compete in my hometown's beauty pageant. Although I took great issue with the big hair, obscene amounts of hairspray, uncomfortable high heels, and the ridiculously tight dress I was forced to wear, what I took *real* issue with was the absence of impartiality once I glanced at the judges' table. One of the judges was a close friend of one of my competitor's mothers. Another had gone to the same school as one of my competitor's brothers. "How unfair!" I muttered. How could impartiality exist in this judgment if there were countless conflicts of interest? This experience was the beginning of my journey with justice and politics. As I have learned, impartiality – in any area of life – is a myth unless there are consequences. It is for this same reason, along with the growing public disenchantment with the Supreme Court itself that I believe the U.S. Supreme Court Justices should be bound by a code of conduct, like the rest of the federal judges in the United States.¹

What do the nine most powerful Justices in our country and my hometown's beauty pageant judges have in common? Apparently, a lot. Both groups have failed to recognize clear conflicts of interest and have refused to recuse themselves at appropriate times. Unfortunately, there have been countless instances where a Supreme Court Justice has carelessly participated in the decision of a case despite a legitimate conflict of interest. For example, despite Justice Thomas' wife's open involvement with the January 6, 2021 insurrection, Justice Thomas failed to recuse himself from countless cases related to the insurrection.² Similarly, Justice Kagan neglected to

¹ Jeffrey M. Jones, *Confidence in the U.S. Supreme Court Sinks to Historic Low*, Gallup, Inc., <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx> (last updated on June 23, 2022).

² Gabe Roth, *Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests*, Fix the Court, <https://fixthecourt.com/2022/09/recent-times-justice-failed-recuse-despite-clear-conflict-interest/> (last updated on

September 19, 2022).

recuse herself in *U.S v. Briones, Jr.*, despite her earlier involvement in the case during her time as U.S Solicitor General.³ Further, because the Supreme Court is not required to follow a code of conduct, Justices have historically made their political affiliations known.⁴ Studies have shown that most Americans believe Supreme Court decisions are now made in line with political ideologies, instead of law.⁵ Forgoing a code of conduct tarnishes our democracy and weakens our judicial branch itself.

Impartiality within the Supreme Court cannot become a reality until we hold the Justices to the same standard and code of conduct that all other federal judges in the United States are made to follow. We cannot allow the decline in the power and respect accredited to the Supreme Court to erode democracy. It is one thing for small town politics to unfairly declare a beauty pageant winner and quite another to allow the Supreme Court to run amok without ethical boundaries and stern consequences. In the present partisan state in which we find our country in, it is now more crucial than ever that we hold law and justice above all else by instilling a code of conduct on the Supreme Court.

³ *Id.*

⁴ Adam Liptak, *Justice Thomas Ruled on Election Cases. Should His Wife's Texts Have Stopped Him?*, The New York Times, <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html> (last updated on March 25, 2022).

⁵ Jones, *supra* note 1.