



# CONGRESSIONAL OVERSIGHT REGARDING THE JUDICIAL BRANCH

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## I. Introduction

Congress has a long history of conducting oversight over a range of judicial branch activities. In 1789, the very first United States Congress enacted [legislation](#) creating the federal district courts, establishing the jurisdiction and size of the Supreme Court, and setting forth the oath of office for all members of the federal judiciary.<sup>1</sup> Congress subsequently [established](#) the intermediate courts of appeal, enacted ethics laws imposing recusal and financial disclosure requirements and limits on outside income and gifts for members of the judiciary, and investigated federal judges, including Supreme Court justices, for possible impeachment.<sup>2</sup> Sitting Supreme Court justices have appeared at least [175 times](#) before congressional committees to provide testimony.<sup>3</sup>

Despite this history, two Supreme Court justices have suggested that the Court is not subject to congressional oversight. In a 2023 [interview](#) with the *Wall Street Journal*, Justice Samuel Alito asserted that “[n]o provision in the Constitution gives them the authority to regulate the Supreme Court – period.”<sup>4</sup> In 2011, in the annual report on the federal judiciary, Chief Justice John Roberts [stated](#) that the Court has “never addressed” whether Congress has authority to establish financial disclosure and gift limitations on the Supreme Court and “the limits of Congress’s power to require recusal have never been tested.”<sup>5</sup> In 2023, the Chief Justice [refused](#) the invitation of Senate Judiciary Committee Chair Richard Durbin to testify at a hearing on Supreme Court ethics.<sup>6</sup>

This summary discusses precedents regarding congressional oversight of the judiciary through ethics statutes, impeachment proceedings, calls for recusal, and appropriations measures.

## II. Precedents

### Ethics Statutes and Oversight

Congressional regulation of judicial branch ethics began in the first Congress of the United States and includes enactment of several major ethics laws within the last century. In 1789, Congress [codified](#) the

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<sup>1</sup> U.S. Congress, *Judiciary Act of 1789* (1 Stat. 73) (<https://www.govinfo.gov/content/pkg/STATUTE-1/pdf/STATUTE-1-Pg73.pdf>).

<sup>2</sup> U.S. Congress, *Judiciary Act of 1891* (26 Stat. 826) (<https://web.archive.org/web/20251112034645/https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/26/STATUTE-26-Pg826.pdf>).

<sup>3</sup> Congressional Research Service, *Appearances by Sitting U.S. Supreme Court Justices at Congressional Committee and Subcommittee Hearings (1960-2022)* (May 2, 2023) (<https://www.congress.gov/crs-product/IN12155>).

<sup>4</sup> Wall Street Journal, *Samuel Alito, the Supreme Court’s Plain-Spoken Defender* (July 28, 2023) (<https://www.wsj.com/opinion/samuel-alito-the-supreme-courts-plain-spoken-defender-precedent-ethics-original-sm-5e3e9a7>).

<sup>5</sup> Supreme Court of the United States, *2011 Year-End Report on the Federal Judiciary*, page 6 (December 31, 2011) (<https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf#page=6>).

<sup>6</sup> Supreme Court of the United States, *Letter from Chief Justice Roberts to Senator Durbin* (April 25, 2023) (<https://web.archive.org/web/20250916140845/https://int.nyt.com/data/documenttools/supreme-court-ethics-durbin/cf67ef8450ea024d/full.pdf>).

general boundaries on judicial conduct with the terms of the judicial oath. Under this law, members of the federal judiciary including Supreme Court Justices must pledge to “administer justice without respect to persons, and do equal right to the poor and to the rich,” and “faithfully and impartially discharge and perform” their duties according to the best of their abilities, consistent with the Constitution and laws of the United States.<sup>7</sup> Since then, Congress has enacted a range of laws defining specific requirements for conduct by members of the judiciary. These include:

- Disqualification. Congress in 1792 enacted legislation stating that lower court federal judges should disqualify themselves from cases in certain circumstances including where they had been a counsel for either party.<sup>8</sup> Congress has amended this law several times to expand on this language, including a 1948 revision extending the requirements to Supreme Court justices.<sup>9</sup> Codified at 28 U.S.C. § 455, the law currently contains a general standard requiring disqualification by a member of the judiciary in “any proceeding in which his impartiality might reasonably be questioned,” and in addition setting forth specific disqualifying circumstances.<sup>10</sup> Provisions on the procedure for parties to petition for recusal are codified at 28 U.S.C. § 144.<sup>11</sup>
- Financial Disclosures. Under the Ethics in Government Act of 1978, federal officials must make periodic public disclosures regarding their income, gifts received, certain financial transactions, and other financial information.<sup>12</sup> This law covers members of the federal judiciary including Supreme Court justices.<sup>13</sup> In the Courthouse Ethics and Transparency Act of 2022, Congress extended disclosure requirements regarding certain securities transactions to members of the judiciary including Supreme Court justices.<sup>14</sup>

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<sup>7</sup> U.S. Congress, *Judiciary Act of 1789*, section 4 (1 Stat. 73)

(<https://www.govinfo.gov/content/pkg/STATUTE-1/pdf/STATUTE-1-Pg73.pdf#page=4>).

<sup>8</sup> Dmitry Bam, *McGeorge Law Review, Understanding Caperton: Judicial Disqualification under the Due Process Clause*, page 67 (January 1, 2010)

(<https://web.archive.org/web/20240709170622/https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1252&context=mlr#page=4>).

<sup>9</sup> Justin C. Van Orsdol, *Wisconsin Law Review, Reining in Recusals*, page 1827 (2023)

(<https://web.archive.org/web/20240708033515/https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2023/12/1.-Justin-C.-Van-Orsdol-Reining-in-Recusals-2023-Wis.-L.-Rev.-1821.pdf#page=7>) (amendments); Amanda Frost, *Georgetown Journal of Legal Ethics, Judicial Ethics and Supreme Court Exceptionalism*, page 449 (2013)

([https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2389&context=facsch\\_lawrev#page=8](https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2389&context=facsch_lawrev#page=8)) (amendments); U.S. Congress, *An Act to revise, codify, and enact into law title 28 of the United States Code entitled “Judicial Code and Judiciary.”* (Public Law 80-773)

(<https://www.govinfo.gov/content/pkg/STATUTE-62/pdf/STATUTE-62-Pg869.pdf#page=40>) (requirement extension).

<sup>10</sup> 28 U.S.C. § 545 (<https://www.law.cornell.edu/uscode/text/28/455>).

<sup>11</sup> 28 U.S.C. § 144 (<https://www.law.cornell.edu/uscode/text/28/144>).

<sup>12</sup> U.S. Congress, *Ethics in Government Act of 1978* (Public Law 95-921)

(<https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg1824.pdf>).

<sup>13</sup> *Ibid.*, section 308.

<sup>14</sup> U.S. Congress, *Courthouse Ethics and Transparency Act of 2022* (Public Law 117-125)

(<https://www.congress.gov/117/plaws/publ125/PLAW-117publ125.pdf>).

- Judiciary Discipline Procedures. In 1980, Congress enacted a law setting forth procedures for processing judicial misconduct complaints.<sup>15</sup> A 1990 law provided for contempt proceedings by circuit councils, among other procedural modifications, and the Judicial Improvements Act of 2002 codified procedures the judiciary had adopted and directed expeditious consideration of misconduct complaints filed against judges.<sup>16</sup>
- Gifts and Outside Income. In 1989, Congress enacted legislation prohibiting U.S. government officials from accepting honoraria for making speeches or writing articles.<sup>17</sup> This limitation applied to officials in all three branches of government, including judges and Supreme Court justices. The Supreme Court in 1995 ruled that banning honoraria for lower-level executive branch employees is unconstitutional, but it did not address the applicability of the law to other branches of government or to senior executive branch employees.<sup>18</sup>

Congress historically has reviewed the efficacy of ethics requirements governing judicial conduct in oversight hearings in both the House and Senate. According to the Congressional Research Service, hundreds of judges have provided voluntary testimony to Congress in oversight hearings, including at least 175 appearances by Supreme Court justices.<sup>19</sup> While a substantial focus of this oversight concerns appropriations, members of the judiciary have addressed questions on ethics from members of Congress at oversight hearings on numerous occasions.<sup>20</sup> For example:

- In testimony before the House Appropriations Subcommittee on Financial Services and General Government in 2019, Justices Elena Kagan and Samuel Alito addressed whether Congress should enact legislation requiring that the code of ethical conduct that applies to the lower courts also apply to the Supreme Court. Both Justices testified that the Supreme Court already voluntarily complies with the ethics code. Justice Alito asserted that it would be inconsistent with the Constitution to have a structure where lower courts would review Supreme Court compliance with ethics rules, with Justice Kagan adding that the Supreme Court takes ethics responsibilities

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<sup>15</sup> U.S. Congress, *Judicial Councils Reform and Judicial Conduct and Disability Act of 1980*, section 3 (Public Law 96-458) (<https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg2035.pdf#page=2>).

<sup>16</sup> U.S. Congress, *Civil Justice Reform Act of 1990*, section 403 (Public Law 101-650) (<https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg5089.pdf#page=36>); U.S. Congress, *Judicial Improvements Act of 2002* (Public Law 107-273) (<https://www.congress.gov/107/statute/STATUTE-116/STATUTE-116-Pg1758.pdf#page=91>).

<sup>17</sup> U.S. Congress, *Ethics Reform Act of 1989*, section 501 (Public Law 101-194) ([https://web.archive.org/web/20251023191149/https://www.oge.gov/web/OGE.nsf/0/3942A940906D39B0852585B6005A15AE/\\$FILE/PL101-194.pdf#page=46](https://web.archive.org/web/20251023191149/https://www.oge.gov/web/OGE.nsf/0/3942A940906D39B0852585B6005A15AE/$FILE/PL101-194.pdf#page=46)).

<sup>18</sup> *United States v. Treasury Employees*, 513 U.S. 454 (1995) (<https://supreme.justia.com/cases/federal/us/513/454/>).

<sup>19</sup> Congressional Research Service, *Enlisting Assistance or Intruding On Judicial Independence? Compelling Testimony by Supreme Court Justices*, page 1 (May 9, 2023) (<https://www.congress.gov/crs-product/LSB10962>) (quantity of judicial testimony); Congressional Research Service, *Appearances by Sitting U.S. Supreme Court Justices at Congressional Committee and Subcommittee Hearings (1960-2022)* (May 2, 2023) (<https://www.congress.gov/crs-product/IN12155>) (Supreme Court).

<sup>20</sup> Congressional Research Service, *Appearances by Sitting U.S. Supreme Court Justices at Congressional Committee and Subcommittee Hearings (1960-2022)* (May 2, 2023) (<https://www.congress.gov/crs-product/IN12155>).

seriously, follows the code, and consults with their legal office when questions arise about compliance.<sup>21</sup>

At the same hearing, the Justices also addressed whether the federal judiciary can properly assess the level of judicial misconduct in the absence of an inspector general for the federal judiciary. Both Justices asserted that the judiciary had launched review of misconduct procedures and was also specifically examining procedures for handling sexual assault allegations.<sup>22</sup>

In addition to the 2019 hearing, justices were asked ethics questions during annual appropriations subcommittee testimony in 2011, 2013, and 2015.<sup>23</sup>

- In testimony before the Senate Judiciary Committee in 2011, Justices Stephen Breyer and Antonin Scalia addressed questions from Senator Durbin about whether the Supreme Court should be more transparent about the ethics restrictions articulated by a 1991 Court resolution. Justice Breyer responded that there are some statutory ethics requirements that “bind us, period,” and there are others that “are just in this ethics volume,” but that he does not distinguish between whether the provisions are legally binding or voluntary and where he has a question, he consults with ethics experts.<sup>24</sup>

In response to a question about whether there should be additional Supreme Court transparency about internal conflict of interest deliberations, Justice Breyer testified: “[I]f there is a difficult question, usually there is a press inquiry,” and “usually the press gets an answer... so I do not think there is some kind of secret thing that goes on.”<sup>25</sup>

- In testimony before the Senate Judiciary Committee in 2007, Justice Anthony Kennedy addressed several issues relating to an ethics bill under review at that time by Congress. Regarding whether

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<sup>21</sup> U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 96 (2019)

(<https://www.govinfo.gov/content/pkg/CHRG-116hhrg38124/pdf/CHRG-116hhrg38124.pdf#page=98>).

<sup>22</sup> *Ibid.*, page 97.

<sup>23</sup> See U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 158 (2011)

(<https://www.govinfo.gov/content/pkg/CHRG-112hhrg66756/pdf/CHRG-112hhrg66756.pdf#page=164>); U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 28 (2013)

(<https://www.govinfo.gov/content/pkg/CHRG-113hhrg80953/pdf/CHRG-113hhrg80953.pdf#page=34>); U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 127 (2015)

(<https://www.govinfo.gov/content/pkg/CHRG-114hhrg97155/pdf/CHRG-114hhrg97155.pdf#page=129>).

<sup>24</sup> Senate Judiciary Committee, *Considering the Role of Judges under the Constitution of the United States*, page 26 (S. Hrg. 112-137) (October 5, 2011)

(<https://www.govinfo.gov/content/pkg/CHRG-112shrg70991/pdf/CHRG-112shrg70991.pdf#page=30>).

<sup>25</sup> *Ibid.*, page 28.

restrictions should be enacted regarding the reported practice in which judges received gifts from or attended seminars sponsored by parties who may appear before them, Justice Kennedy stated: “I do think we have to be very careful about perceptions of impropriety, especially the judiciary. It must be above any perceptions of impropriety. Seminars are part of the American way of life. That is what makes our society very efficient. You go into any hotel in any major city of the United States and you find doctors, nurses, social workers, prosecutors, and they are learning about the newest thing. And judges should not be left out of that. … I think it is certainly worth looking at.”<sup>26</sup> He also addressed the question of whether he supported a ban on honoraria to members of the judiciary for teaching, stating: “It has been a tradition that judges teach. I see no particular abuse of it.”<sup>27</sup>

- In testimony before the House Appropriations Committee Subcommittee on Commerce, Justice, State, and the Judiciary on the budget for FY 2000, Justices David Souter and Clarence Thomas addressed questions about hiring practices of the Supreme Court and the low numbers of minority and female Supreme Court law clerks.<sup>28</sup> Justice Souter explained that the justices “rely on the law schools and the other courts to make a lot of the cuts for us.”<sup>29</sup>

## Impeachment

In cases of egregious ethics violations or other misconduct by members of the judiciary, Congress has exercised its constitutional authority to conduct impeachment proceedings to evaluate whether the conduct merits removal from office.<sup>30</sup> In total, the House of Representatives has impeached 15 federal judges, 8 of which resulted in conviction by the Senate. The most recent judicial impeachment proceeding occurred in 2010, which resulted in the conviction and removal from office of federal district court judge G. Thomas Porteous, Jr.

A Supreme Court Justice, Samuel Chase, was impeached in 1804. In approving the articles of impeachment, the House of Representatives stated that Justice Chase had conducted a trial of an individual accused of treason in an unfair and arbitrary manner that prejudiced the jury against the defendant. Following a Senate trial, the Senate acquitted Chase in 1805.<sup>31</sup>

More recently, impeachment was threatened but not carried out against Supreme Court Justices Abe Fortas and William O. Douglas. When President Lyndon Johnson nominated Fortas to succeed Earl

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<sup>26</sup> Senate Judiciary Committee, *Judicial Security and Independence*, page 27 (S. Hrg. 110-14) (February 14, 2007) (<https://www.govinfo.gov/content/pkg/CHRG-110shrg34448/pdf/CHRG-110shrg34448.pdf#page=31>).

<sup>27</sup> *Ibid.*, page 28.

<sup>28</sup> U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies* (1999) (<https://www.govinfo.gov/content/pkg/CHRG-106hhrg57911/html/CHRG-106hhrg57911.htm>).

<sup>29</sup> *Ibid.*

<sup>30</sup> U.S. Constitution, Article 1 (<https://constitution.congress.gov/constitution/article-1/>).

<sup>31</sup> U.S. Congress, *Hind's Precedents*, Chapter 72: The Impeachment and Trial of Samuel Chase (<https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3-21.pdf>).

Warren as Chief Justice in 1968, reports emerged that Fortas had received a legal retainer from the family foundation of someone under investigation by the Securities and Exchange Commission.<sup>32</sup> As pressure built for the House to pursue impeachment, with several House members preparing impeachment resolutions, Fortas withdrew himself from consideration and, several months later, resigned from the Supreme Court.<sup>33</sup>

In the case of Douglas, the House Judiciary Committee created a special subcommittee to carry out an impeachment investigation following floor remarks by then-House minority leader Gerald Ford accusing Douglas of improprieties including publishing materials that encourage rebellion, failing to recuse from a case in which he had a conflict of interest, and receiving payments from a foundation with ties to alleged criminals.<sup>34</sup> Five months later, in September 1970, the Special Subcommittee's final report did not recommend bringing impeachment charges against Justice Douglas.<sup>35</sup>

With respect to the 14 impeachments of lower court judges,<sup>36</sup> several involved allegations of perjury or false statements<sup>37</sup> or abuse of power,<sup>38</sup> including two allegations of abuse of the contempt power.<sup>39</sup> Other charges that the House has included in articles of impeachment of federal judges include improper acceptance of gifts including cash payments and trips,<sup>40</sup> intoxication on the bench,<sup>41</sup> tax

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<sup>32</sup> The Washington Post, *Gerald Ford tried to impeach a Supreme Court justice — and failed* (March 29, 2022) (<https://www.washingtonpost.com/history/2022/03/29/gerald-ford-william-douglas-impeachment/>).

<sup>33</sup> The Washington Post, *The Supreme Court justice who resigned in disgrace over his finances* (April 17, 2023) (<https://www.washingtonpost.com/history/2023/04/17/supreme-court-clarence-thomas-abe-fortas/>) (impeachment resolutions); The Washington Post, *Gerald Ford tried to impeach a Supreme Court justice — and failed* (March 29, 2022) (<https://www.washingtonpost.com/history/2022/03/29/gerald-ford-william-douglas-impeachment/>) (resignation).

<sup>34</sup> House Judiciary Special Subcommittee on H. Res. 920, *First Report by the Special Subcommittee on H. Res. 920* (1970) ([https://play.google.com/books/reader?id=qZLlkBgc\\_Q4C&pg=GBS.PP6&hl=en](https://play.google.com/books/reader?id=qZLlkBgc_Q4C&pg=GBS.PP6&hl=en)) (special subcommittee); Rep. Gerald Ford, *Congressional Record*, page 11912 (April 15, 1970) (<https://www.congress.gov/91/crecb/1970/04/15/GPO-CRECB-1970-pt9-3-2.pdf#page=52>) (floor remarks).

<sup>35</sup> House Judiciary Special Subcommittee on H. Res. 920, *First Report by the Special Subcommittee on H. Res. 920*, page 349 (September 17, 1970) (<https://play.google.com/books/reader?id=cQgEZ8QghEkC&pg=GBS.RA1-PA348&hl=en>).

<sup>36</sup> Federal Judicial Center, *Impeachments of Federal Judges* (<https://www.fjc.gov/history/judges/impeachments-federal-judges>).

<sup>37</sup> U.S. Senate, *Impeachment of Judge G. Thomas Porteus, Jr.*, page 19 (March 17, 2010) (<https://www.govinfo.gov/content/pkg/CDOC-111sdoc13/pdf/CDOC-111sdoc13.pdf#page=23>).

<sup>38</sup> U.S. Senate, *Articles of Impeachment Presented Against George W. English*, page 1 (April 1, 1926) ([https://tile.loc.gov/storage-services/service/ll/llserialsetpdf/08/55/8\\_00/\\_0/0/08558\\_00\\_00/08558\\_00\\_00-016-0101-0000/SERIALSET-08558\\_00\\_00-016-0101-0000.pdf#page=3](https://tile.loc.gov/storage-services/service/ll/llserialsetpdf/08/55/8_00/_0/0/08558_00_00/08558_00_00-016-0101-0000/SERIALSET-08558_00_00-016-0101-0000.pdf#page=3)).

<sup>39</sup> U.S. Congress, *Hind's Precedents*, Chapter 78: The Impeachment and Trial of Charles Swaine (<https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3-27.pdf>).

<sup>40</sup> Patrick J. McGinnis, *A Case of Judicial Misconduct: The Impeachment and Trial of Robert W. Archbald* (<https://journals.psu.edu/pmhb/article/viewFile/43388/43109>) (hyperlink to PDF download).

<sup>41</sup> U.S. Congress, *Hind's Precedents*, Chapter 71: The Impeachment and Trial of John Pickering, page 692 (<https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3-20.pdf#page=12>).

evasion,<sup>42</sup> favoritism in the appointment of bankruptcy receivers,<sup>43</sup> and failure to recuse.<sup>44</sup> Based on research cited in [Deschler's precedents](#) and review by Co-Equal, all of the charges at issue in the impeachments of members of the judiciary related to either the use of judicial power or non-judicial conduct involving allegedly criminal activity.<sup>45</sup>

## Appropriations Laws and Oversight

An additional means through which Congress exercises oversight authority over the judiciary is through funding to support judicial branch operations. As part of this process, the Supreme Court, like other federal departments and agencies, annually submits its budget request to the House and Senate's Appropriations Committees for the upcoming year. The budget request for the rest of the judiciary is submitted by the Judicial Conference of the United States and the Administrative Office of the U.S. Courts.

Following submission of their budget requests, representatives from the Supreme Court, Judicial Conference, and Administrative Office typically testify before the subcommittees of the House Appropriations Committee with jurisdiction over the judicial branch's funding. Before 2012, it was customary for two Supreme Court Justices to explain the Court's funding requests and answer members' questions. In 2008, Justice Anthony Kennedy [noted](#) the importance of justices appearing before the appropriations subcommittees:

"The fact that we do come before you is really important for us because it gives us a discipline, structure, a rule. We know that we must justify our budget, and that makes us as an institution careful about adopting a new program, careful about the expenditures of public funds. And so this [process] serves that very important purpose."<sup>46</sup>

In recent years, however, justices have appeared less frequently, with their last appearance before an appropriations subcommittee occurring in [2019](#).<sup>47</sup>

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<sup>42</sup> U.S. Congress, *Impeachment and Trial of Judge Harry E. Claiborne* (<https://www.govinfo.gov/content/pkg/GPO-CDOC-106sdoc3/pdf/GPO-CDOC-106sdoc3-19-4.pdf>).

<sup>43</sup> U.S. Congress, *Deschler's Precedents*, Chapter 14, page 2216 (<https://www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3-5-5-5.pdf#page=e=12>).

<sup>44</sup> U.S. Congress, *Impeachment of Judge G. Thomas Porteous, Jr.*, page 16 (March 17, 2010) (<https://www.govinfo.gov/content/pkg/CDOC-111sdoc13/pdf/CDOC-111sdoc13.pdf#page=20>).

<sup>45</sup> U.S. Congress, *Deschler's Precedents*, Chapter 14, page 2013 (<https://www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3.pdf#page=455>).

<sup>46</sup> U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 103 (2008) (<https://www.govinfo.gov/content/pkg/CHRG-110hrg42830/pdf/CHRG-110hrg42830.pdf#page=105>).

<sup>47</sup> U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 96 (2019) (<https://www.govinfo.gov/content/pkg/CHRG-116hrg38124/pdf/CHRG-116hrg38124.pdf#page=98>).

After receiving testimony from the justices and representatives from the Judicial Conference and Administrative Office, the House and Senate Appropriations Committees negotiate and finalize the Court and judicial branch's funding, which is provided in the regular annual appropriations acts. The annual measures generally contain similar language from year to year. For example, the [FY2024](#) and [FY2023](#) appropriations to the Court and judicial branch illustrate how Congress has typically appropriated funding.<sup>48</sup>

These measures also include legislative provisions related to the judicial branch and Supreme Court (commonly referred to as "riders"). For example, the final [FY2001](#) and [FY2023](#) appropriations acts included legislative riders related to the Supreme Court, including the Court's police force and the justices' salaries.<sup>49</sup>

In FY2000, the Senate Appropriations Committee's appropriation to the Court included a [legislative provision](#), which Chief Justice William Rehnquist [requested](#), that would have allowed federal judges to accept honoraria payments.<sup>50</sup> This provision, however, was [not enacted](#) into law.<sup>51</sup> During the same appropriations process, a member of the House Appropriations Committee asked the Supreme Court in writing if it would be bound by a legislative mandate to diversify its hiring of law clerks should such a mandate be included in the Court's appropriation. In response, a representative from the Court highlighted the constitutional implications of the question, stating: "This question raises serious constitutional issues, and the Court is forbidden by the Constitution to give advisory opinions."<sup>52</sup>

In addition to the appropriations acts, the appropriations process provides members of Congress with additional oversight tools. The two primary methods of oversight include questioning justices and other representatives of the judiciary during their testimony before appropriations subcommittees and issuing specific directives in committee reports to address concerns about judicial conduct.

For example, in 2001, members of the House's Commerce, Justice, State, and Judiciary Appropriations Subcommittee raised concerns about the lack of representation of women and racial and ethnic

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<sup>48</sup> U.S. Congress, *Further Consolidated Appropriations Act, 2024*, Title III (Public Law 118-47) (<https://www.congress.gov/118/bills/hr2882/BILLS-118hr2882enr.pdf#page=79>); U.S. Congress, *Consolidated Appropriations Act, 2023*, Title III (Public Law 117-328) (<https://www.congress.gov/117/plaws/plubl328/PLAW-117publ328.pdf#page=210>).

<sup>49</sup> U.S. Congress, *Judiciary Appropriations Act, 2001*, section 308 (Public Law 106-553) (<https://www.congress.gov/106/statute/STATUTE-114/STATUTE-114-Pg2762.pdf#page=87>); U.S. Congress, *Consolidated Appropriations Act, 2023*, Title III, sections 307-308 (Public Law 117-328) (<https://www.govinfo.gov/content/pkg/CPRT-117HPRT50347/pdf/CPRT-117HPRT50347.pdf#page=1102>).

<sup>50</sup> U.S. Congress, *Judiciary Appropriations Act, 2001*, section 305 (bill draft with provision) (<https://www.congress.gov/106/bills/hr4690/BILLS-106hr4690rs.pdf#page=175>); The New York Times, *G.O.P Agrees to Act on Speaker Fee Ban* (September 14, 2000) (request by Chief Justice Rehnquist) (<https://www.nytimes.com/2000/09/14/us/gop-agrees-to-act-on-speaker-fee-ban.html?searchResultPosition=1>).

<sup>51</sup> The Washington Post, *Rehnquist Raises the Flag: Pay Judges More* (January 7, 2001) (<https://www.washingtonpost.com/archive/politics/2001/01/08/rehnquist-raises-the-flag-pay-judges-more/2fd13560-38b3-4dc4-b6fa-c05e2149eb86/>).

<sup>52</sup> U.S. House of Representatives, *Hearings before the House Appropriations Committee's Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies*, page 55 (1999) ([https://drive.google.com/file/d/1VnYOTloAt9300tHEJ7Sh\\_0kI2dxHCv51/view#page=50](https://drive.google.com/file/d/1VnYOTloAt9300tHEJ7Sh_0kI2dxHCv51/view#page=50)).

minorities among the justices' law clerks, when Justice Souter and Justice Thomas appeared before the committee.<sup>53</sup> Following the hearing, the Appropriations Committee report accompanying the Court's appropriation noted that the Committee was "looking forward to continuing progress in this matter."<sup>54</sup> The following year, a member of the same appropriations subcommittee asked Justices Anthony Kennedy and Clarence Thomas for a progress report on the issue, and Justice Kennedy responded:

"The hearings last year...did cause the Court to take a second look at this. We are renewing our effort.... I think it having been raised in the committee has been very helpful. We have again a renewed and conscious awareness to do better."<sup>55</sup>

The conference committee reports and an explanatory statement accompanying the Court's appropriations in 2002, 2003, and 2004 included directives related to the hiring of law clerks.<sup>56</sup> Members have continued to raise the issue in hearings with justices throughout the 2000s, including their most recent appearance in 2019.<sup>57</sup>

In addition, members of the House's Financial Services and General Government Appropriations Subcommittee have raised the issue of the Supreme Court adopting a code of conduct when the justices appeared to testify in 2011, 2013, 2015, and 2019.<sup>58</sup> The House Appropriations Committee reports for

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<sup>53</sup> U.S. House of Representatives, *Hearings before the House Appropriations Committee's Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies*, page 9 (2000) (<https://www.govinfo.gov/content/pkg/CHRG-106hhrg68612/pdf/CHRG-106hhrg68612.pdf#page=13>).

<sup>54</sup> House Appropriations Committee, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 2001*, page 93 (H. Rpt. 106-680) (June 19, 2000) (<https://www.congress.gov/106/crp/106hrpt680/CRPT-106hrpt680.pdf#page=93>).

<sup>55</sup> U.S. House of Representatives, *Hearings before the House Appropriations Committee's Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies*, page 39 (March 29, 2001) (<https://www.govinfo.gov/content/pkg/CHRG-107hhrg77310/pdf/CHRG-107hhrg77310.pdf#page=43>).

<sup>56</sup> House Appropriations Committee, *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, page 141 (H. Rpt. 107-278) (November 9, 2001) (<https://www.congress.gov/107/crp/107hrpt278/CRPT-107hrpt278.pdf#page=141>); House Appropriations Committee, *Making Further Continuing Appropriations for the Fiscal Year 2003, and for Other Purposes*, page 734 (H. Rpt. 108-10) (February 13, 2003) (<https://www.congress.gov/108/crp/108hrpt10/CRPT-108hrpt10.pdf#page=736>); House Appropriations Committee, *Conference Report on H.R. 2673, Consolidated Appropriations Act, 2004*, Title III (reprinted in the Congressional Record November 25, 2003, see page H12515) (H. Rpt. 108-401) (<https://www.congress.gov/108/crec/2003/11/25/CREC-2003-11-25-house-bk2.pdf#page=193>).

<sup>57</sup> U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 93 (2019) (<https://www.govinfo.gov/content/pkg/CHRG-116hhrg38124/pdf/CHRG-116hhrg38124.pdf#page=95>).

<sup>58</sup> See U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 158 (2011) (<https://www.govinfo.gov/content/pkg/CHRG-112hhrg66756/pdf/CHRG-112hhrg66756.pdf#page=164>); U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 28 (2013) (<https://www.govinfo.gov/content/pkg/CHRG-113hhrg80953/pdf/CHRG-113hhrg80953.pdf#page=34>); U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General Government*, page 127 (2015) (<https://www.govinfo.gov/content/pkg/CHRG-114hhrg97155/pdf/CHRG-114hhrg97155.pdf#page=129>); U.S. House of Representatives, *Hearings before the House Appropriations Subcommittee on Financial Services and General*

the Court's [FY2021](#), [FY2022](#), and [FY2023](#) appropriations bills included directives urging the Supreme Court to adopt a code of conduct.<sup>59</sup>

The most recent example of a report directive addressing other conduct concerns is the House Appropriations Committee [report](#) for the FY2025 appropriations bill for the judiciary.<sup>60</sup> It includes a directive to the Administrative Office's Office of Judicial Integrity to continue to inform Congress "on the challenges remaining to provide an exemplary workplace for every judge and every court employee." Additionally, it urges the Judiciary and Federal Judicial Center to provide "regular and appropriate access" to the information requested by the Government Accountability Office and National Academy of Public Administration to complete their review of workplace misconduct in the federal judiciary.

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*Government*, page 96 (February 26, 2019)

(<https://www.govinfo.gov/content/pkg/CHRG-116hhrg38124/pdf/CHRG-116hhrg38124.pdf#page=98>).

<sup>59</sup> House Appropriations Committee, *Report on Financial Services and General Government Appropriations Bill, 2021*, page 46 (H. Rpt. 116-456) (July 17, 2020)

(<https://www.govinfo.gov/content/pkg/CRPT-116hrpt456/pdf/CRPT-116hrpt456.pdf#page=46>) (FY2021); House Appropriations Committee, *Report on Financial Services and General Government Appropriations Bill, 2022*, page 50 (H. Rpt. 117-79) (July 1, 2021)

(<https://www.govinfo.gov/content/pkg/CRPT-117hrpt79/pdf/CRPT-117hrpt79.pdf#page=50>) (FY2022); House Appropriations Committee, *Report on Financial Services and General Government Appropriations Bill, 2023*, page 49 (H. Rpt. 117-393) (June 28, 2022) (<https://www.congress.gov/117/crpt/hrpt393/CRPT-117hrpt393.pdf#page=49>) (FY2023).

<sup>60</sup> House Appropriations Committee, *Report on Financial Services and General Government Appropriations Bill, 2024*, page 34 (H. Rpt. 118-145) (July 17, 2023)

(<https://www.congress.gov/118/crpt/hrpt145/CRPT-118hrpt145.pdf#page=38>).