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TWENTY-FIRST CENTURY COURTS ACT: SECTION-BY-SECTION

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Twenty-First Century Courts Act of 2022.”

Sec. 2. Code of Conduct for the Supreme Court. Section 2(a) requires the Supreme Court, after notice and comment, to promulgate a code of conduct for Supreme Court justices with 180 days of enactment, or be subject to the existing Code of Conduct for lower-court judges. Section 2(a) also requires the Judicial Conference of the United States to issue a code of conduct for all lower-court judges within 180 days of enactment; and permits modification of the respective codes of conduct following notice and comment.

Section 2(b) sets forth a clerical amendment.

Section 3. Disqualification of Federal Judges.

Section 3(1). Section 3(1) makes explicit that all statutory recusal requirements apply to bankruptcy judges.

Section 3(2). Reasons for Recusal. Section 3(2) codifies three new categories of instances requiring recusal:

- Whenever they have received in the prior 6 years income, a gift, or reimbursement that they are legally obligated to disclose from a party, party’s counsel, an individual employed in a supervisory capacity at a party or law firm, or an affiliate of a party or law firm in the case;
- Whenever a party, a party’s counsel, an individual employed in a supervisory capacity at a party or law firm, or an affiliate of a party or law firm in the case lobbied or spent substantial funds in support of a judge’s nomination; and
- Whenever they, their spouse, their child, or a spouse of their child has in the past six years:
 - Received income, a gift, or reimbursement that they are legally obligated to disclose from a party, lawyer, or affiliate of a party or law firm in a case;
 - Been employed by or volunteered for more than 6 consecutive months in a supervisory capacity for a party, lawyer, or affiliate of a party or law firm in a case; or
 - Been employed or volunteered for more than 6 consecutive months in an official supervisory or advisory role alongside a lawyer in a case.

Section 3(3). Knowledge of Financial Interests. Section 3(3) requires that judges inform themselves about their personal and fiduciary financial interests; requires judges to take care to inform themselves about their close family’s personal financial interests; and requires judges to take care to inform themselves about any other interest that could be substantially affected by the outcome of a case.

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Section 3(4). Definitions. Section 3(4) adds new definitions for the terms “official supervisory or advisory capacity,” “affiliate,” and “substantial funds.”

Section 3(5). Waiver. Section 3(5) allows waivers of the recusal requirement stemming from lobbying or the spending of substantial funds in support of a judge’s nomination only when all parties agree to waive the recusal requirement.

Section 3(6). Divestment of Interest. Section 3(6) clarifies that, where a financial interest triggers recusal, judges may avoid recusal only by divesting themselves of that financial interest.

Section 3(7), Notification, Panel Review, and Public Explanations. Section 3(7) adds three new subsections to the recusal statute.

- Notification: Judges must immediately notify all parties and to include that notification in the official case record as soon as the court learns that disqualification is required.
- Panel Review: Creates a process for parties to submit motions for recusal with a certificate of good faith and supporting affidavit. A subject judge must either grant the motion or submit it to a reviewing panel composed of randomly selected federal judges; at the Supreme Court, the full court is the reviewing panel.
- Public Explanations: Judge who have recused must publish a notice of the recusal and an explanation for the decision. Reviewing panels must also explain their decision to grant or deny a motion to recuse.

Section 4. Conflicts Related to Amici Curiae. Section 4 requires the Supreme Court and Judicial Conference of the United States to submit to Congress within 6 months of enactment rules of procedure detailing when a judge must prohibit the filing of or strike an amicus brief that would result in a judge’s impartiality being reasonably questioned.

Section 5. Amicus Disclosure. Section 5(a) requires additional disclosure for any amicus curiae in the Supreme Court or court of appeals. These amici must disclose the name of any person who (1) contributed to the preparation or submission of the amicus brief, (2) contributed at least 3 percent of the amicus’s gross annual revenue in the previous calendar year, or (3) contributed more than \$100,000 to the amicus in the previous year.

Section 5(a) also prohibits any amicus from providing gifts or travel to any Supreme Court justice or court of appeals judge, except for reimbursements for a justice or judge’s travel for an appearance at an accredited law school.

Section 5(b) sets forth a clerical amendment.

Section 6. Judicial Travel. Section 6(a) requires officials in all three branches of government to report the value of reimbursements disclosed under the Ethics in Government Act; and requires judges to report, and the Administrative Office of the United States Courts to publish online,

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reimbursements that judges have or will receive for travel within 30 days of completing that travel.

Section 6(b) brings the judiciary's definition of the "personal hospitality" exemption for financial disclosures in line with existing Senate ethics rules.

Section 7. Financial Conflicts of Interest. Section 7 adds officers and employees of the judicial branch to the class of persons prohibited by 18 U.S.C. § 208 from participating personally and substantially in a government matter in which they have a financial conflict of interest.

Section 8. Video Recording of Court Proceedings. Section 8(a) requires that all open proceedings in the circuit courts of the United States be made available by video for public transmission over the internet in real time for 5 years following the proceeding and not subject to copyright protection.

Section 8(b) requires that each Supreme Court oral argument and opinion reading be made available by video for public transmission over the internet in real time and not subject to copyright protection.

Section 9. Restrictions on Sealed Court Filings. Section 9(a) prohibits courts from sealing judicial records without considering enumerated factors; requires the Supreme Court and the Judicial Conference of the United States to promulgate rules related to public challenges to motions to seal filings; and preserves existing rights and duties with respect to public access to judicial records.

Section 10. Studies by the Federal Judicial Center. Section 10(a) requires the Federal Judicial Center to study every two years the extent of the judiciary's compliance with recusal requirements.

Section 10(b) requires the Federal Judicial Center to submit to Congress a report on its findings and any recommendations for improving compliance; and requires the Government Accountability Office to submit a separate report evaluating the Federal Judicial Center's methodology and findings.

Section 10(c) requires the federal judiciary to maintain information to facilitate these studies, including instances in which a judge was not assigned to a case because of a conflict and every instance in which a judge recused after being assigned to a case.