

**Congress of the United States**  
Washington, DC 20510

December 23, 2024

The Honorable Robert Conrad  
Director  
Administrative Office of the United States Courts  
One Columbus Circle, NE  
Washington, D.C. 20544

Dear Director Conrad:

We write today to request additional information on the new financial disclosure policy adopted by the Judicial Conference’s Committee on Financial Disclosure in September 2024 and disclosed to the public last week.

Since 2019, we have worked to bring the judiciary’s financial disclosure polices into compliance with federal law under the Ethics in Government Act requirement that Supreme Court justices and federal judges file annual financial disclosure reports. The Act contains exceptions, including for “food, lodging, and entertainment received as personal hospitality of an individual.”<sup>1</sup> After evidence emerged that the late Supreme Court Justice Antonin Scalia abused this exemption to avoid disclosing lavish trips, Senator Whitehouse introduced legislation to ensure a full accounting of gifts,<sup>2</sup> and we urged the judiciary to improve its financial disclosure rules to foreclose abuse of the personal hospitality exemption.<sup>3</sup>

In March 2023, Director Mauskopf announced in a letter to Senator Whitehouse that the Judicial Conference’s Committee on Financial Disclosure had adopted revisions to “clarify” its policy.<sup>4</sup> In the following months, public reporting documented how Supreme Court justices had accepted decades of lavish gifts from billionaire benefactors secretly, on the grounds that those gifts ostensibly fell within the personal hospitality exemption.<sup>5</sup> The plain statutory text of the Ethics in Government Act always required disclosure of these gifts. However, justices and their defenders argued that they did not have to amend previous disclosure reports because the

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<sup>1</sup> 5 U.S.C. § 13104(a)(2)(A).

<sup>2</sup> Sen. Sheldon Whitehouse, Press Release, *Judicial Travel Accountability Act Unveiled in Congress* (Oct. 17, 2019), <https://www.whitehouse.senate.gov/news/release/judicial-travel-accountability-act-unveiled-in-congress/>. See, e.g., Stephen Bruce, ‘Any Good Hunting?’: *When a Justice’s Impartiality Might Reasonably Be Questioned* (Oct. 7, 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2782170](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2782170).

<sup>3</sup> See Sen. Sheldon Whitehouse, Press Release, *As SCOTUS Ducks Ethics Questions, Whitehouse Calls for Update on Personal Hospitality Rules for Federal Judges* (Feb. 22, 2023), <https://www.whitehouse.senate.gov/news/release/as-scotus-ducks-ethics-questions-whitehouse-calls-for-update-on-personal-hospitality-rules-for-federal-judges/>.

<sup>4</sup> Letter from Hon. Roslynn R. Mauskopf to Sen. Sheldon Whitehouse (Mar. 23, 2023), <https://www.whitehouse.senate.gov/wp-content/uploads/2024/12/2023-03-23-Letter-from-AO-Personal-Hospitality.pdf>.

<sup>5</sup> Alison Durkee, *Supreme Court Ethics Controversies: All the Scandals That Led Biden to Endorse Code of Conduct*, *Forbes* (July 29, 2024), <https://www.forbes.com/sites/alisondurkee/2024/07/29/supreme-court-ethics-controversies-all-the-scandals-that-led-biden-to-endorse-code-of-conduct/>.

Conference’s clarification constituted a “new rule.”<sup>6</sup> We repeatedly asked the Judicial Conference to resolve whether this was a clarification or a new rule.<sup>7</sup>

Last week, the Judicial Conference report summarizing its September 2024 meeting stated that the Committee on Financial Disclosure agreed to a new policy regarding the personal hospitality “clarification”:

The Committee approved an addition to the Filing Instructions for Judicial Officers and Employees (AO-10) (Filing Instructions) clarifying that, upon discovery of errors or omissions, filers must promptly amend reports filed in the past six years and may amend reports filed more than six years prior to the discovery. The Committee determined that amendment is required for gifts of transportation that were omitted or misreported in reports filed in 2023 onward (for filing years 2022 to the present), but that due to confusion arising from past guidance, amendment will not be required for gifts of transportation filed six years ago through 2022 (for filing years 2018 through 2021).<sup>8</sup>

The policy seems to acknowledge that the Ethics in Government Act always required disclosure of gifts of transportation, because such gifts do not fall within the plain language of the statute’s personal hospitality exemption limited to food, lodging, and entertainment. Logically, the Conference’s “clarification” on this point should apply retroactively, because that is what federal law has always required, and the word “clarification” has that implication.

However, the policy adopts a provision excusing past non-compliant filers “due to confusion arising from past guidance.” We do not see the confusion, and would appreciate an explanation of it. The text of the underlying law has always been clear about the limitation of personal hospitality only to “food, lodging, and entertainment.”<sup>9</sup>

Financial disclosures help ensure the honesty of public officials, weed out conflicts of interest, and bolster confidence in government. The judiciary should not excuse compliance because it is mildly burdensome; and judges responsible for deciding some of the most complex cases in federal court ought to understand clear rules.

The Committee also reduced disclosure by enlarging the exemption for personal hospitality received at corporate-owned residences, without waiver of retroactive application of this

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<sup>6</sup> See Elliot Berke, *Elliot S. Berke Releases Statement on Behalf of Client Justice Clarence Thomas* (Aug. 31, 2023), <https://www.berkefarah.com/news/2023/8/31/elliott-s-berke-releases-statement-on-behalf-of-client-justice-clarence-thomas-1>.

<sup>7</sup> Letter from Sen. Sheldon Whitehouse to Hon. Roslynn R. Mausekopf (Sept. 15, 2023), <https://www.whitehouse.senate.gov/wp-content/uploads/2024/12/2023-09-15-Letter-to-Judge-Mausekopf-Rules-Clarification.pdf>; Letter from Sen. Sheldon Whitehouse and Rep. Henry C. “Hank” Johnson, Jr. to Hon. Roslynn R. Mausekopf (Dec. 14, 2023), <https://www.whitehouse.senate.gov/wp-content/uploads/2024/12/2023-12-14-Letter-to-Judicial-Conference-Outstanding-Oversight.pdf>; Letter from Sen. Sheldon Whitehouse to Rep. Henry C. “Hank” Johnson, Jr. to Hon. Robert Conrad (June 17, 2024), <https://www.whitehouse.senate.gov/wp-content/uploads/2024/06/2024-06-17-Letter-to-Director-Conrad.pdf>.

<sup>8</sup> *Report of the Proceedings of the Judicial Conference of the United States* at 15, September 17, 2024, [https://www.uscourts.gov/sites/default/files/2024-12/jcus-sep-2024-proceedings\\_cj-approved\\_final-for-posting.pdf](https://www.uscourts.gov/sites/default/files/2024-12/jcus-sep-2024-proceedings_cj-approved_final-for-posting.pdf).

<sup>9</sup> 5 U.S.C. § 13104(a)(2)(A).

“clarification.”<sup>10</sup> As a result, filers who failed to disclose lodging in a corporate-owned residence are granted fully retroactive expansion of this exemption.<sup>11</sup>

As of today, the Conference’s updated Filing Instructions for this new clarification are not publicly available; whereas the Conference immediately published the new Financial Disclosure regulations adopted at the same September meeting.<sup>12</sup>

We request that the Conference provide our offices with a briefing on this latest clarification at a date to be scheduled in January. Ahead of that briefing, please provide a copy of the most current version of the Financial Disclosure Filing Instructions for Judicial Officers and Employees.

Sincerely,



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



HENRY C. “HANK” JOHNSON, JR.  
Ranking Member, House Judiciary  
Subcommittee on Courts, Intellectual  
Property, and the Internet

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<sup>10</sup> *Report of the Proceedings*, *supra* note 8, at 15-16.

<sup>11</sup> See 5 U.S.C. § 13101(14) (defining “personal hospitality of any individual” as “hospitality extended . . . by an individual, *not a corporation or organization*, at the personal residence of that individual or the individual’s family or on property or facilities *owned by that individual or that individual’s family*”) (emphasis added); 5 U.S.C. § 13104(a)(2)(A) (exempting disclosure of “food, lodging, or entertainment received as personal hospitality *of an individual*”) (emphasis added).

<sup>12</sup> See Nate Raymond, *US Supreme Court justices, other judges can stay at corporate-owned homes without disclosure*, Reuters (Sept. 24, 2024), <https://www.reuters.com/world/us/us-supreme-court-justices-other-judges-can-stay-corporate-owned-homes-without-2024-09-24/>.