

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

September 7, 2022

The Honorable John G. Roberts  
Chief Justice  
Supreme Court of the United States  
One First St. NE  
Washington, D.C. 20543

Dear Chief Justice Roberts:

We write as Chairmen of the Senate and House Judiciary Federal Courts Subcommittees to request information regarding another allegation of potentially unethical conduct at the Supreme Court of the United States.

On July 8, 2022, *Politico* reported that Rob Schenck, the former leader of the conservative religious group Faith and Action, admitted to leading a private judicial lobbying campaign over the course of two decades.<sup>1</sup> Critically, this campaign may have continued even as Faith and Action’s successor organization, Faith and Liberty, frequently appeared before the Court as a litigant and *amicus curiae*.<sup>2</sup>

From 1995 to 2018,<sup>3</sup> Faith and Action reportedly “coached” wealthy volunteers “to wine, dine and entertain conservative Supreme Court justices while pushing conservative positions” on social issues before the Court.<sup>4</sup> Specifically, Faith and Action “would rehearse lines” intended “to influence the justices while steering clear of the specifics of cases pending before the court.”<sup>5</sup> After the lobbying dinners, the volunteers reported back to Faith and Action with feedback on

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<sup>1</sup> Peter S. Canellos & Josh Gerstein, ‘Operation Higher Court’: Inside the religious right’s efforts to wine and dine Supreme Court justices, *Politico* (Jul. 8, 2022), <https://www.politico.com/news/2022/07/08/religious-right-supreme-court-00044739>.

<sup>2</sup> Mat Staver, founder and counsel for Liberty Counsel, which “absorbed Faith and Action in 2018,” has “argued numerous cases in front of the Supreme Court” since 1994, including one case this term in *Shurtleff v. Boston*. Staver has also authored numerous *amicus* briefs submitted to the Court, including one cited by Justice Alito in *Dobbs v. Jackson Women’s Health Organization*. Kara Voght & Tim Dickinson, *SCOTUS Justices ‘Prayed With’ Her – Then Cited Her Bosses to End Roe*, *Rolling Stone* (Jul. 6, 2022), <https://www.rollingstone.com/politics/politics-features/roe-supreme-court-justices-1378046/>.

<sup>3</sup> Although Schenck apparently left Faith and Action in 2018 when it was absorbed by Liberty Counsel, the successor organization Faith and Liberty appears to have picked up at least some portions of this campaign by engaging certain justices in their private chambers and regularly appearing before the Court. *Id.*

<sup>4</sup> Canellos & Gerstein, *supra*.

<sup>5</sup> *Id.*

the evening with the Justices and their wives.<sup>6</sup> Faith and Action referred to this campaign as “Operation Higher Court.”<sup>7</sup>

As part of this Operation, Faith and Action reportedly “arranged . . . for about 20 couples to fly to Washington to visit with and entertain” Justices Thomas, Alito, and Scalia.<sup>8</sup> One couple, Gayle Wright and her late husband Don, had an outsized role in “Operation Higher Court.” The Wrights allegedly “financed numerous expensive dinners with [Justices] Thomas, Alito, Scalia and their wives at Washington, D.C., hotspots.”<sup>9</sup> According to Schenck, the “Wright’s had strongly conservative views on abortion, homosexuality and gun rights, and dedicated themselves to reinforcing the Supreme Court justices’ own conservative views on these issues.”<sup>10</sup> Schenck also alleged that the late Justice Scalia visited the Wrights’ home in Jackson Hole, Wyoming.<sup>11</sup> Earlier this month, *Rolling Stone* revealed that leaders of Faith and Action’s successor organization, Faith and Liberty, continue to enjoy private, previously undisclosed access to certain justices; according to Faith and Liberty’s current vice president, the organization’s leaders frequently pray with some of the justices in their chambers.<sup>12</sup>

The existence and scope of this judicial lobbying campaign is alarming and further confirms the need for the judiciary to enact stronger ethics requirements as soon as possible. Litigants and the American public deserve to know when and how private groups are working to sway litigation by providing Supreme Court justices with lavish dinners or hunting trips. These concerns are especially acute if the counsel for these lobbyists is also arguing before these justices in court—as may be the case here.

Supreme Court justices, like other public officials, are entitled to maintain personal relationships and a certain level of privacy. At the same time, the American people are entitled to a fair day in court, in front of impartial judges. Private, undisclosed lobbying by motivated organizations threatens this promise, and has no place in our judiciary. Such lobbying should be expressly forbidden by a formal Supreme Court ethics code—as it appears to be under the Code of Conduct for United States Judges<sup>13</sup>—and the justices’ financial disclosures should provide enough transparency for the public to know when they may be overstepping these boundaries.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Voght & Dickinson, *supra*.

<sup>13</sup> Canon 4 of the Code of Conduct for United States Judges provides that “a judge should not participate in extrajudicial activities that . . . reflect adversely on the judge’s impartiality.” Accordingly, “[a] judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon,” and a judge may only “accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge’s judicial duties or otherwise give the appearance of impropriety.” Relatedly, Canon 4 also states that a “judge should not serve” in an organization “if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.” Code of Conduct for United States Judges, Canon 4.

Yet, without Mr. Schenck's confessions, much of this lobbying would have remained hidden from public view, as it has been for more than two decades. And without a formal ethics code, no Supreme Court rule discourages or prohibits the justices from accepting the kinds of gifts described by Mr. Schenck. To that end, we urge the Supreme Court to adopt a code of conduct without delay, and the entire federal judiciary to move quickly to update its financial disclosure requirements to match those of Congress and the executive branch.

In the meantime, we respectfully request that you provide responses to the following questions regarding the justices' knowledge of "Operation Higher Court."

1. Please describe any dinners or other hospitality received by justices that were paid for by volunteers or officials from Faith and Liberty, including its predecessor organizations Faith and Action and Liberty Counsel. Please include, to the extent possible, estimates for the cost of these dinners or events, as well as specific dates and names of the volunteers or officials in attendance.
2. Have any justices ever received travel or lodging paid for by volunteers or officials from Faith and Liberty or its predecessor organizations? If so, please describe each instance of travel or lodging, including the cost to the justices and the amounts paid for by volunteers or officials from these organizations.
3. Were any justices aware of "Operation Higher Court" at any time before the recent public reporting? If so, please state which justices and the extent to which they were aware of this Operation.
4. Were any of the justices who accepted dinners, travel, or lodging from volunteers or officials from these organizations aware that those gifts were arranged as part of Operation Higher Court?
5. The Ethics in Government Act of 1978 (5 U.S.C. App.) requires senior government officials, including justices of the Supreme Court, to disclose outside incomes, gifts, and reimbursements annually, with limited exceptions. However, none of the justices' annual financial disclosure statements dating back to 2001 include the gifts discussed here.
  - a. Why were none of the gifts discussed here reported on any justice's financial disclosure statements?
  - b. If it is a justice's position that disclosure of these gifts was not required, please explain the specific statutory exception upon which that position is based, including an explanation of why that exception applies here.
  - c. If it is a justice's position that disclosure of these gifts was not required under the Ethics in Government Act's "personal hospitality" exemption, please explain why the judiciary's interpretation of that exemption permits its application in this instance. Please also explain why the Court and the Judicial Conference believe that an interpretation of this exemption that permits the nondisclosure of the type

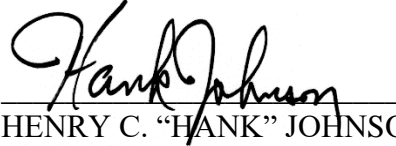
of decades-long lobbying campaign discussed here is appropriate and consistent with the purposes of the Ethics in Government Act.

Given the severity of our concerns, we ask that you respond to our requests on or before Wednesday, September 21.

Sincerely,



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



HENRY C. "HANK" JOHNSON, JR.  
Chairman, House Judiciary Subcommittee  
on Courts, Intellectual Property, and the  
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