

118TH CONGRESS
1ST SESSION

S. 359

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, Mr. MERKLEY, Mr. BOOKER, Mrs. GILLIBRAND, Mr. REED, Mrs. FEINSTEIN, Mr. WARNER, Mr. SANDERS, Mr. MARKEY, Mr. DURBIN, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Supreme Court Ethics,
5 Recusal, and Transparency Act of 2023”.

1 **SEC. 2. CODE OF CONDUCT FOR THE SUPREME COURT OF**
2 **THE UNITED STATES.**

3 (a) **IN GENERAL.**—Chapter 16 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 365. Codes of conduct**

7 “(a) **JUSTICES.**—Not later than 180 days after the
8 date of enactment of this section, the Supreme Court of
9 the United States shall, after appropriate public notice
10 and opportunity for comment in accordance with section
11 2071, issue a code of conduct for the justices of the Su-
12 preme Court.

13 “(b) **OTHER JUDGES.**—Not later than 180 days after
14 the date of enactment of this section, the Judicial Con-
15 ference of the United States shall, after appropriate public
16 notice and opportunity for comment in accordance with
17 section 2071, issue a code of conduct for the judges of
18 the courts of appeals, the district courts (including bank-
19 ruptcy judges and magistrate judges), and the Court of
20 International Trade.

21 “(c) **MODIFICATION.**—The Supreme Court of the
22 United States and the Judicial Conference may modify the
23 applicable codes of conduct under this section after giving
24 appropriate public notice and opportunity for comment in
25 accordance with section 2071.

1 **“§ 366. Public access to ethics rules**

2 “The Supreme Court of the United States shall make
3 available on its internet website, in a full-text, searchable,
4 sortable, and downloadable format, copies of the code of
5 conduct issued under section 365(a), any rules established
6 by the Counselor to the Chief Justice under section 677
7 and any other related rules or resolutions, as determined
8 by the Chief Justice of the United States, issued by the
9 Counselor to the Chief Justice of the United States or
10 agreed to by the justices of the Supreme Court.

11 **“§ 367. Complaints against justices**

12 “(a) RECEIPT OF COMPLAINTS.—Not later than 180
13 days after the date of enactment of this section, the Su-
14 preme Court of the United States shall establish proce-
15 dures, modeled after the procedures set forth in sections
16 351 through 364, under which individuals may file with
17 the Court, or the Court may identify, complaints alleging
18 that a justice of the Supreme Court—

19 “(1) has violated—

20 “(A) the code of conduct issued pursuant
21 to section 365(a);

22 “(B) section 455; or

23 “(C) any other applicable provision of Fed-
24 eral law; or

1 “(2) has otherwise engaged in conduct that un-
2 dermines the integrity of the Supreme Court of the
3 United States.

4 “(b) JUDICIAL INVESTIGATION PANEL.—

5 “(1) IN GENERAL.—Upon receipt or identifica-
6 tion of a complaint under subsection (a), the Su-
7 preme Court of the United States shall refer such
8 complaint to a judicial investigation panel, which
9 shall be composed of a panel of 5 judges selected
10 randomly from among the chief judge of each circuit
11 of the United States.

12 “(2) DUTIES.—The judicial investigation panel
13 shall—

14 “(A) review and, if appropriate as deter-
15 mined by the panel, investigate all complaints
16 submitted to the panel using procedures estab-
17 lished by the panel and modeled after the proce-
18 dures set forth in sections 351 through 364;

19 “(B) present to the Supreme Court of the
20 United States any findings and recommenda-
21 tions for necessary and appropriate action by
22 the Supreme Court, including dismissal of the
23 complaint, disciplinary actions, or changes to
24 Supreme Court rules or procedures;

1 “(C) if the panel does not recommend dis-
2 missal of the complaint, not later than 30 days
3 following the presentation of any findings and
4 recommendations under this paragraph, publish
5 a report containing such findings and rec-
6 ommendations; and

7 “(D) if the panel recommends dismissal of
8 the complaint, the panel may publish any find-
9 ings and recommendations if the panel deter-
10 mines that such publication would be in fur-
11 therance of the public interest.

12 “(3) POWERS.—In conducting any investigation
13 under this section, the judicial investigation panel
14 may hold hearings, take sworn testimony, issue sub-
15 poenas ad testificandum and subpoenas duces
16 tecum, and make necessary and appropriate orders
17 in the exercise of its authority.

18 “(4) ACCESS.—If the judicial investigation
19 panel determines that a substantially similar com-
20 plaint was previously submitted under section 351,
21 but that such substantially similar complaint was
22 dismissed for lack of authority to review or act upon
23 such complaint, the panel shall have access to any
24 information gathered pursuant to this chapter in re-
25 lation to such substantially similar complaint.

1 **SEC. 4. CIRCUMSTANCES REQUIRING DISQUALIFICATION.**

2 (a) ANTICORRUPTION PROTECTIONS.—Subsection
3 (b) of section 455 of title 28, United States Code, is
4 amended by adding at the end the following:

5 “(6) Where the justice or judge knows that a
6 party to the proceeding or an affiliate of a party to
7 the proceeding made any lobbying contact, as de-
8 fined in section 3 of the Lobbying Disclosure Act of
9 1995 (2 U.S.C. 1602), or spent substantial funds in
10 support of the nomination, confirmation, or appoint-
11 ment of the justice or judge.

12 “(7) Where the justice or judge, their spouse,
13 minor child, or a privately held entity owned by any
14 such person received income, a gift, or reimburse-
15 ment, as those terms are defined in section 13101
16 of title 5—

17 “(A) from a party to the proceeding or an
18 affiliate of a party to the proceeding; and

19 “(B) during the period beginning on the
20 date that is 6 years before the date on which
21 the justice or judge was assigned to the pro-
22 ceeding and ending on the date of final disposi-
23 tion of the proceeding.”.

24 (b) DUTY TO KNOW.—Subsection (c) of section 455
25 of title 28, United States Code, is amended to read as
26 follows:

1 “(c) A justice, judge, magistrate judge, or bankruptcy
2 judge of the United States shall ascertain—

3 “(1) the personal and fiduciary financial inter-
4 ests of the justice or judge;

5 “(2) the personal financial interests of the
6 spouse and minor children residing in the household
7 of the justice or judge; and

8 “(3) any interest of the persons described in
9 paragraph (2) that could be substantially affected by
10 the outcome of the proceeding.”.

11 (c) DIVESTMENT.—Subsection (f) of section 455 of
12 title 28, United States Code, is amended by inserting
13 “under subsection (b)(4)” after “disqualified”.

14 (d) DUTY TO NOTIFY.—Section 455 of title 28,
15 United States Code, is amended by adding at the end the
16 following:

17 “(g) If at any time a justice, judge, magistrate judge,
18 or bankruptcy judge of the United States learns of a con-
19 dition that could reasonably require disqualification under
20 this section, the justice or judge shall immediately notify
21 all parties to the proceeding.”.

22 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
23 Section 455 of title 28, United States Code, as amended
24 by this section, is amended—

1 (1) in the section heading, by striking “**judge,**
2 **or magistrate judge**” and inserting “**judge,**
3 **magistrate judge, or bankruptcy judge**”;

4 (2) in subsection (a), by striking “judge, or
5 magistrate judge” and inserting “judge, magistrate
6 judge, or bankruptcy judge”;

7 (3) in subsection (b)—

8 (A) in paragraph (2), by striking “the
9 judge or such lawyer” and inserting “the jus-
10 tice, the judge, or such lawyer”;

11 (B) in paragraph (5)(iii), by inserting
12 “justice or” before “judge”; and

13 (C) in paragraph (5)(iv), by inserting “jus-
14 tice’s or” before “judge’s”;

15 (4) in subsection (c), by inserting “justice or”
16 before “judge”;

17 (5) in subsection (d)(4)(i), by inserting “justice
18 or” before “judge”; and

19 (6) in subsection (e), by striking “judge, or
20 magistrate judge” and inserting “judge, magistrate
21 judge, or bankruptcy judge of the United States”.

22 (f) PUBLIC NOTICE.—The rules of each court subject
23 to section 455 of title 28, United States Code, as amended
24 by this section, shall be amended to require that the clerk
25 shall publish timely notice on the website of the court of—

1 (1) any matter in which a justice, judge, mag-
2 istrate judge, or bankruptcy judge of the United
3 States is disqualified under such section;

4 (2) any matter in which the reviewing panel
5 under section 1660 of title 28, United States Code,
6 rules on a motion to disqualify; and

7 (3) an explanation of each reason for the dis-
8 qualification or ruling, which shall include a specific
9 identification of each circumstance that resulted in
10 such disqualification or ruling, but which shall not
11 include any private or sensitive information deemed
12 by a majority of the reviewing panel under section
13 1660 of title 28, United States Code, as added by
14 section 5 of this Act, to be appropriate for redaction
15 and unnecessary in order to provide the litigants and
16 public a full understanding of the reasons for the
17 disqualification or ruling.

18 **SEC. 5. REVIEW OF CERTIFIED DISQUALIFICATION MO-**
19 **TIONS.**

20 (a) IN GENERAL.—Chapter 111 of title 28, United
21 States Code, is amended by adding at the end the fol-
22 lowing:

23 **“§ 1660. Review of certified motions to disqualify**

24 “(a) MOTION FOR DISQUALIFICATION.—If a justice,
25 judge, magistrate judge, or bankruptcy judge of the

1 United States is required to be disqualified from a pro-
2 ceeding under any provision of Federal law, a party to
3 the proceeding may file a timely motion for disqualifica-
4 tion, accompanied by a certificate of good faith and an
5 affidavit alleging facts sufficient to show that disqualifica-
6 tion of the justice, judge, magistrate judge, or bankruptcy
7 judge is so required.

8 “(b) CONSIDERATION OF MOTION.—A justice, judge,
9 magistrate judge, or bankruptcy judge of the United
10 States shall either grant or certify to a reviewing panel
11 a timely motion filed pursuant to subsection (a) and stay
12 the proceeding until a final determination is made with
13 respect to the motion.

14 “(c) REVIEWING PANEL.—

15 “(1) IN GENERAL.—A reviewing panel to which
16 a motion is certified under subsection (b) shall be
17 composed of 3 judges selected at random from
18 judges of the United States who do not sit on the
19 same court—

20 “(A) as the judge, magistrate judge, or
21 bankruptcy judge who is the subject of the mo-
22 tion; or

23 “(B) as the other members of the review-
24 ing panel.

1 “(2) **CIRCUIT LIMITATION.**—Not more than 1
2 member of the reviewing panel may be a judge of
3 the same judicial circuit as the judge, magistrate
4 judge, or bankruptcy judge who is the subject of the
5 motion.

6 “(3) **PARTICIPATION.**—The reviewing panel,
7 prior to its final determination with respect to a mo-
8 tion filed under subsection (a), shall provide the
9 judge, magistrate judge, or bankruptcy judge of the
10 United States who is the subject of such motion an
11 opportunity to provide in writing the views of the
12 judge on the motion, including the explanation of
13 the judge for not granting the motion.

14 “(d) **SUPREME COURT REVIEW.**—The Supreme
15 Court of the United States, not including the justice who
16 is the subject of a motion seeking to disqualify a justice
17 under subsection (a), shall be the reviewing panel for such
18 motions.”.

19 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
20 The table of sections for chapter 111 of title 28, United
21 States Code, is amended by adding at the end the fol-
22 lowing:

 “1660. Review of certified motions to disqualify.”.

23 **SEC. 6. DISCLOSURE BY PARTIES AND AMICI.**

24 Not later than 1 year after the date of enactment
25 of this Act, the Supreme Court of the United States shall

1 prescribe rules of procedure in accordance with sections
2 2072 through 2074 of title 28, United States Code, requir-
3 ing each party or amicus to list in the petition or brief
4 of the party or amicus, as applicable, a description and
5 value of—

6 (1) any gift, income, or reimbursement, as
7 those terms are defined in section 13101 of title 5,
8 United States Code, provided to any justice, during
9 the period beginning 2 years prior to the commence-
10 ment of the proceeding and ending on the date of
11 final disposition of the proceeding, by—

12 (A) each such party, amicus, or affiliate of
13 each such party or amicus;

14 (B) the lawyers or law firms in the pro-
15 ceeding of each such party or amicus; and

16 (C) the officers, directors, or employees of
17 each such party or amicus; and

18 (2) any lobbying contact or expenditure of sub-
19 stantial funds by any person described in subpara-
20 graphs (A), (B), and (C) of paragraph (1) in sup-
21 port of the nomination, confirmation, or appoint-
22 ment of a justice.

1 **SEC. 7. AMICUS DISCLOSURE.**

2 (a) IN GENERAL.—Chapter 111 of title 28, United
3 States Code, as amended by section 5, is amended by add-
4 ing at the end the following:

5 **“§ 1661. Disclosures related to amicus activities**

6 “(a) DISCLOSURE.—

7 “(1) IN GENERAL.—Any person that files an
8 amicus brief in a court of the United States shall
9 list in the amicus brief the name of any person
10 who—

11 “(A) contributed to the preparation or sub-
12 mission of the amicus brief;

13 “(B) contributed not less than 3 percent of
14 the gross annual revenue of the amicus, or an
15 affiliate of the amicus, for the previous calendar
16 year if the amicus is not an individual; or

17 “(C) contributed more than \$100,000 to
18 the amicus, or an affiliate of the amicus, in the
19 previous calendar year.

20 “(2) EXCEPTIONS.—The requirements of this
21 subsection shall not apply to amounts received in
22 commercial transactions in the ordinary course of
23 any trade or business by the amicus, or an affiliate
24 of the amicus, or in the form of investments (other
25 than investments by the principal shareholder in a
26 limited liability corporation) in an organization if the

1 amounts are unrelated to the amicus filing activities
2 of the amicus.

3 “(b) AUDIT.—The Director of the Administrative Of-
4 fice of the United States Courts shall conduct an annual
5 audit to ensure compliance with this section.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
7 The table of sections for chapter 111 of title 28, United
8 States Code, as amended by section 5, is amended by add-
9 ing at the end the following:

“1661. Disclosures related to amicus activities.”.

10 **SEC. 8. CONFLICTS RELATED TO AMICI CURIAE.**

11 (a) IN GENERAL.—Except as provided in subsection
12 (b), the Supreme Court of the United States and the Judi-
13 cial Conference of the United States shall prescribe rules
14 of procedure in accordance with sections 2072 through
15 2074 of title 28, United States Code, for prohibiting the
16 filing of or striking an amicus brief that would result in
17 the disqualification of a justice, judge, or magistrate
18 judge.

19 (b) INITIAL TRANSMITTAL.—The Supreme Court of
20 the United States shall transmit to Congress—

21 (1) the proposed rules required under sub-
22 section (a) not later than 180 days after the date of
23 enactment of this Act; and

1 (2) any rules in addition to those transmitted
2 under paragraph (1) pursuant to section 2074 of
3 title 28, United States Code.

4 **SEC. 9. STUDIES AND REPORTS.**

5 (a) STUDIES.—

6 (1) IN GENERAL.—Beginning on the date that
7 is 180 days after the date of enactment of this Act,
8 and every other year thereafter, the Director of the
9 Federal Judicial Center shall conduct a study on the
10 extent of compliance or noncompliance with the re-
11 quirements of sections 144 and 455 of title 28,
12 United States Code.

13 (2) ADDITIONAL TIME.—With respect to the
14 first such study required to be submitted under
15 paragraph (1), the requirements of that paragraph
16 may be implemented after the date described in that
17 paragraph if the Director of the Federal Judicial
18 Center identifies in writing to the relevant commit-
19 tees of Congress the additional time needed for sub-
20 mission of the study.

21 (3) FACILITATION OF STUDIES.—The Director
22 of the Federal Judicial Center shall maintain a
23 record of each instance in which—

24 (A) a justice, judge, magistrate judge, or
25 bankruptcy judge of the United States was not

1 assigned to a case due to potential or actual
2 conflicts; and

3 (B) a justice, judge, magistrate judge, or
4 bankruptcy judge of the United States disquali-
5 fies themselves after a case assignment is made.

6 (b) REPORTS TO CONGRESS.—Not later than April
7 1 of each year following the completion of the study re-
8 quired under subsection (a), the Director of the Federal
9 Judicial Center shall submit to Congress a report con-
10 taining the findings of the study and any recommenda-
11 tions to improve compliance with sections 144 and 455
12 of title 28, United States Code.

13 (c) GAO REVIEW.—Not later than 1 year after the
14 date on which the report is submitted under subsection
15 (b), and every 5 years thereafter, the Comptroller General
16 of the United States shall submit to Congress a report
17 containing—

18 (1) an evaluation of the methodology and find-
19 ings of the study required under subsection (a); and

20 (2) the audit required under section 1661 of
21 title 28, United States Code, as added by section 7
22 of this Act.

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