

March 8, 2022

The Honorable Clarence Thomas
Associate Justice
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Copies to: Chief Justice of the United States John Roberts; Senator Dick Durbin, Chair of the United States Senate Committee on the Judiciary; Representative Jerrold Nadler, Chair of the United States House of Representatives Committee on the Judiciary

Justice Thomas,

We respectfully ask you to recuse yourself from all Supreme Court cases where a potential conflict of interest exists or appears to exist between the possible outcomes of the case and your wife Virginia “Ginni” Thomas’ political activities. We further ask that you publicly announce the criteria you will use to determine whether to recuse yourself from such cases.

As you are no doubt well aware, 28 USC 455 (a) requires federal judges and justices to disqualify themselves in situations where their “impartiality might reasonably be questioned,” and 28 USC 455 (b)(5) likewise requires disqualification where the judge’s spouse has “an interest that could be substantially affected by the outcome of the proceeding.” In addition, Canon 3(C)(1)¹ of the Code of Conduct for United States Judges calls for a judge to “disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned,” including circumstances where “the judge or the judge’s spouse [...] [has] an interest that could be substantially affected by the outcome of the proceeding.” Unlike the federal statute, Supreme Court justices are not specifically bound by the Code of Conduct, but the principles of fairness, impartiality, and transparency upon which it is based are universal.

We know you do not consider yourself immune to the concept of conflict of interest, as you previously recused yourself² from a case dealing with enrollment at the Virginia Military Institute (VMI) while your son was a student there. Though that case concerned future applicants to VMI and thus would not have affected your son’s experience there, as he was then in his fourth year at the school, you recognized that your “impartiality might reasonably be questioned” and appropriately recused.

In light of the universally understood objective standard that a judge should not hear a case in which his or her impartiality might be questioned, and of your own recognition of this principle, it is striking that in more than 30 years on the Supreme Court you have never — not once — recused yourself from a case because of a conflict of interest presented by professional political

¹ See, Code of Conduct for United States Judges

² See, [High Court To Hear Case About V.M.I.](#), *The New York Times*, October 6, 1995

activities of your wife, a prominent Republican strategist who has been involved in some of the most controversial matters to come before the Court.³

A full accounting of the conflicts of interest posed by your wife's political activity is impossible due to the opaque nature of many of her political activities and your own repeated omission of hundreds of thousands of dollars of income she has received for political work on your required annual financial disclosure documents. A few publicly-reported examples of past and current conflicts of interest are illustrative:

- In 2000, you cast the deciding vote in *Bush v. Gore*, the infamous⁴ 5-4 decision that handed the presidency to George W. Bush, whose father appointed you to the Supreme Court. Your wife Ginni Thomas was at the time an employee of the right-wing Heritage Foundation, where she worked on the effort to staff a prospective Bush White House.⁵
- In 2017-18, your wife's consulting firm took more than \$200,000 in consulting fees from the Center For Security Policy — income you failed to disclose as required in your annual financial disclosure forms. In 2017, Center for Security Policy President Frank Gaffney filed an amicus brief with the Court in support of the Trump administration's Muslim ban. Later that year, your wife gave Gaffney an "Impact Award" at a ceremony held at Trump's Washington DC hotel. A few months later, in June 2018, you cast the deciding vote upholding the Trump policy.⁶
- On January 6, 2021, your wife Ginni Thomas publicly cheered on the pro-Trump rally that turned into a deadly insurrection at the United States Capitol. She has since denounced the House Select Committee investigating that insurrection, and signed a letter to House Republican Leader Kevin McCarthy calling for Republican members of the committee to be expelled from the House Republican Caucus and accusing the committee of issuing improper subpoenas. A member of the Conservative Action Project, which issued the letter, told *The New Yorker* that Ginni Thomas was a member of the group "not because of her qualifications but 'because she's married to Clarence.'"⁷ In light of Ginni Thomas's attacks on the House Select Committee, her reported ties to "Stop the Steal" organizers, and her promotion of 'The Big Lie' among a group of your former clerks,⁸ your refusal to recuse yourself from a case in which former President Trump sought to block the House Select Committee from gaining access to records relating to the insurrection was deeply troubling. The clear conflict of interest was driven home by the fact that you were the only member of the Supreme Court to side with

³ See, [Critics say Ginni Thomas's activism is a Supreme Court conflict. Under court rules, only her husband can decide if that's true.](#), *The Washington Post*, January 31, 2022

⁴ See, [As Supreme Court Weighs Election Cases, a New Life for Bush v. Gore](#), *The New York Times*, November 5, 2020

⁵ See, [CONTESTING THE VOTE: CHALLENGING A JUSTICE: Job of Thomas's Wife Raises Conflict-of-Interest Questions](#), *The New York Times*, December 12, 2000

⁶ See, [Is Ginni Thomas a Threat to the Supreme Court?](#), *The New Yorker*, January 31, 2022

⁷ *Id.*

⁸ *Id.*

Trump by publicly dissenting from the Court's decision to allow the Committee to obtain the records in dispute. That case is unlikely to be the last case related to the January 6 insurrection that will come before the Court. We ask that you recuse yourself from any future involvement in any such cases.

- In just a few months, the Supreme Court will hear a challenge to affirmative action programs at Harvard and the University of North Carolina. Your wife serves on the advisory board of an organization that has filed amicus briefs with the Court supporting the challenge.⁹

It must be acknowledged that you are not the only Supreme Court justice who has conflicts of interest in cases before the Court; nor are you the only justice who has failed to recuse from such cases. But no justice — now or at any time in history — has had a spouse whose role as a key political strategist has raised as many conflicts as you face. The breadth and depth of these conflicts demands an ethical response. And your status as the Court's senior justice demands that you demonstrate leadership by modeling ethical behavior rather than continuing to establish a precedent that justices are free to involve themselves in cases in which they have a conflict of interest.

As you are no doubt aware, the credibility of the Supreme Court is in freefall. The Court's approval rating is at an all-time low¹⁰, and a majority of Americans disapprove of the Court. A bipartisan majority of Americans now believe the Supreme Court is motivated by politics, not upholding the Constitution.¹¹ The perception that Supreme Court justices are partisan political actors rather than impartial jurists has been fed in part by unprecedented manipulation of the composition of the Court by Republican politicians, and by the actions of several justices themselves. In the last year alone, Justice Amy Coney Barrett appeared at a political event alongside Senate Republican Leader Mitch McConnell; Justice Samuel Alito delivered a partisan speech denouncing the news media; Justice Neil Gorsuch headlined a closed-door Federalist Society conference with Florida Governor Ron DeSantis and former Vice President Mike Pence — both frequently mentioned as likely Republican presidential contenders; and you spoke alongside Senator McConnell at an event held by the Heritage Foundation, a key pillar of the conservative movement. These activities reinforce the perception that the Court's conservative supermajority is little more than the legal department of the Republican Party — but they pale in comparison to your participation in cases that involve your wife's partisan political activities. In recent weeks, your conflicts of interest have drawn scrutiny in every major news outlet in America.

There is a clear crisis of Americans' faith in the Supreme Court. Failure to recuse yourself from cases in which you may have conflicts of interest will only further erode public support for the

⁹ See, [Ginni Thomas' political activism brings scrutiny to Justice Clarence Thomas and the Supreme Court's recusal rules](#), *CNN*, February 4, 2022

¹⁰ See, [Approval of U.S. Supreme Court Down to 40%, a New Low](#), *Gallup*, September 23, 2021

¹¹ See, [Majority Say Supreme Court Motivated By Politics, Not The Law. Quinnipiac University National Poll Finds: Support For Stricter Gun Laws Falls](#), *Quinnipiac University*, November 19, 2021

Court. Justice may be blind, but the American people can see right through patently unethical behavior.

Sincerely,
Take Back the Court
Indivisible
People's Parity Project
Stand Up America