SUPREME COURT LEGITIMACY CRISIS

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INTRODUCTION

In recent years, the United States Supreme Court has found itself in a legitimacy crisis. Ethical concerns and scandals have negatively impacted public perception of the historical sanctity of the Court and undermined confidence in its impartiality. External and internal pressures to address these concerns gave rise to a five-canon Code of Conduct published by the Supreme Court on November 13, 2023 (Justice's Code). This Note argues that, like other checks and balances placed on the Supreme Court, the newly enacted Code of Conduct lacks the teeth necessary to adequately hold the Supreme Court Justices accountable for their potential indiscretions.

Part I is a discussion of the modern ethical issues that have necessitated the introduction of a Code of Conduct to protect a floundering image of legitimacy. Part II examines the pre-existing checks and balances, emphasizing their ineffectiveness in addressing judicial misconduct. Part III analyzes the structural and functional aspects of the Justice's Code and the Federal Judicial Code (Judge's Code), arguing that the Justice's Code is a reiteration of the existing broken mechanisms, particularly the Commentary (Supreme Commentary) surrounding Canon 3(B). Finally, Part IV discusses the political nature of the Supreme Court and proposes expanding the bench to enhance accountability and address ideological imbalances. The Note concludes by asserting that increasing the number of Justices is essential to aligning the Court with modern democratic realities.

I. MODERN ETHICAL ISSUES ARISING FROM THE SUPREME COURT

In the last decade, the political landscape of the United States has become increasingly polarized, leading to a growing sense of alienation among the general public and a political system that seems more partisan than responsive to their needs.[1] This divide has been exacerbated by contentious judicial rulings that reflect and amplify societal fractures.[2] The judicial and the executive branches seem to acknowledge a growing mistrust and the public's discourse on reform, yet some Supreme Court Justices persist in engaging in questionable behavior behind the scenes.[3]

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1. Bertrall L. Ross II, *Polarization, Populism, and the Crisis of American Democracy*, 20 ANN. REV. L. SOC. SCI. 293, 295 (2024).
2. Sofie Adams, Opinion, *Trust in U.S. Supreme Court Continues to Sink*, THE ANNENBERG PUB. POL'Y CTR. OF THE UNIV. OF PA. (Oct. 2, 2024), https://www.annenbergpublicpolicycenter.org/trust-in-us-supreme-court-continues-to-sink/.
3. Alan M. Cohn & Andrew Warren, Opinion, *If the Supreme Court Won't Hold Itself Accountable, Term Limits Can*, THE HILL (Sep. 20, 2023), https://thehill.com/opinion/judiciary/4211871-if-the-supreme-court-wont-hold-itself-accountable-term-limits-can/.

In 2020, the Judicial Conference, the body responsible for policing all federal courts, published an updated *Strategic Plan for the Federal Judiciary* to address fundamental issues critical to restoring public trust and confidence in the federal courts.[4] The plan identified seven key areas for reform: (1) the fair and impartial delivery of justice; (2) the public's trust, confidence, and understanding in and of the federal courts; (3) the effective and efficient management of resources; (4) a diverse workforce and an exemplary workplace; (5) technology's potential; (6) access to justice and the judicial process; and (7) relations with the other branches of government.[5] Similarly, in 2021 President Biden signed an Executive Order creating the Presidential Commission on the Supreme Court of the United States, a bipartisan group of scholars and experts tasked with analyzing modern arguments for Court reform; the length of service and turnover of justices on the Court; the membership and size of the Court; and the Court's case selection, rules, and practices.[6] The Commission's formation highlights the country's involvement in a prolonged and vigorous discussion regarding the Court's makeup, the trajectory of its legal principles, and whether either political party has violated the standards for confirming new Justices.[7] Although there are numerous concerns surrounding the Court, this Section will concentrate on the issues that dominated public and media attention prior to the adoption of the new Code—perceived political interference and the *Dobbs v. Jackson Women's Health Organization*[8] leak.[9]

A. Perceptions of Political Interference

Supreme Court Justices play a pivotal role in shaping the everyday lives of Americans, serving as the final arbiters of the law and guardians of constitutional rights. However, concerns about inappropriate behavior among Supreme Court Justices have intensified, particularly as public trust in the institution has waned.[10] For example, recent revelations regarding Justice Clarence Thomas, who accepted lavish gifts and travel from Harlan Crow, a prominent Republican, have raised serious ethical questions about potential conflicts of interest.[11] Similarly, Justice Sotomayor has been scrutinized for her use of court staff to organize and promote a high-profile book, which raises questions about the appropriate use of public

4. Admin. Off. of the U.S. Courts, *Strategic Plan for the Federal Judiciary*, JUDICIAL CONFERENCE OF THE U.S. (Sept. 21, 2020), https://www.uscourts.gov/sites/default/files/federaljudiciary_strategicplan2020.pdf.
5. *Id.*
6. Exec. Order No. 14,023, 86 Fed. Reg. 19,569 (Apr. 9, 2021).
7. *Id.*; Daniel Epps & Ganesh Sitaraman, *The Future of Supreme Court Reform*, 134 HARV. L. REV. F. 398, 400 (May 2021).
8. 142 S. Ct. 2228 (2022).
9. Cohn & Warren, Opinion, *supra* note 3.
10. Adams, *supra* note 2.
11. Alison Durkee, Opinion, *Clarence Thomas: Here Are All the Ethics Scandals Involving the Supreme Court Justice Amid New Ginni Thomas Report*, FORBES (Sept. 4, 2024), https://www.forbes.com/sites/alisondurkee/2024/09/04/clarence-thomas-here-are-all-the-ethics-scandals-involving-the-supreme-court-justice-amid-new-ginni-thomas-report/.

resources.[12] Justice Gorsuch failed to disclose that he sold almost $2 million in real estate to the head of a law firm that frequently argues cases in front of the court.[13] Gorsuch's final disclosure report for 2017 accounted for his 250–500k profit, but intentionally left the purchaser section blank.[14] Even the late Justice Ruth Bader Ginsburg was not immune to criticism; her comments labeling Donald Trump a "faker" in the months leading up to the 2016 election led to accusations of bias, further undermining the image of impartiality expected from the Court.[15]

In 2023, Justice Alito faced criticism for not disclosing a 2008 luxury fishing trip with Paul Singer, another Republican donor with cases pending before the Court.[16] However, the most inflammatory political scandal surrounding Justice Alito involved an upside-down flag (the political equivalent of a "Stop the Steal" sign for those contesting the 2020 Presidential Election results) flown outside his residence on January 17, 2021, just a week after insurrectionists loyal to President Trump stormed the Capitol.[17] Controversially, Justice Alito blamed his wife for displaying the flag and refused to recuse himself in two upcoming cases involving the insurrection.[18] These incidents have drawn scrutiny and contributed to a growing perception that the Court may be influenced by partisan interests, further eroding public confidence. As such issues continue to surface, the need for clear ethical guidelines and accountability mechanisms becomes increasingly urgent to restore confidence in the Supreme Court's impartiality and commitment to justice.

B. A Leaky Ship

While the Court has weathered breaches of confidentiality in the past, none have proved as sweeping as the May 2, 2022 disclosure, when Politico released the entire draft majority opinion in *Dobbs*.[19] For an institution traditionally steeped in secrecy regarding its decision-making process, a leak of this magnitude is particularly scandalous. The opinion, written by

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12. Zeeshan Aleem, Opinion, *Sonia Sotomayor's Ethics Problem with Book Sales isn't Trivial*, MSNBC (July 13, 2023), https://www.msnbc.com/opinion/msnbc-opinion/sonia-sotomayor-ethics-book-supreme-court-rcna93864.

13. Zachary B Wolf, Opinion, *This is why it's Difficult to Rein in the Supreme Court*, CNN POLITICS (Aug. 10, 2023), https://www.cnn.com/2023/08/10/politics/supreme-court-ethics-what-matters/index.html.

14. *Id.*

15. Joan Biskupic, *Justice Ruth Bader Ginsburg calls Trump a 'faker,' he says she should resign*, CNN POLITICS (July 12, 2016), https://www.cnn.com/2016/07/12/politics/justice-ruth-bader-ginsburg-donald-trump-faker/index.html.

16. Wolf, *supra* note 13.

17. Jodi Kantor, *Supreme Court Justice Alito's House Displayed a 'Stop the Steal' Flag After Jan. 6*, N.Y. TIMES (May 16, 2024), https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html.

18. *Id.*

19. Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2240–85 (2022); Josh Gerstein, *Exclusive: Supreme Court has voted to overturn abortion rights, draft opinion shows*, POLITICO (May 2, 2022), https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473; Chad Marzen & Michael Conklin, *Information Leaking and the United States Supreme Court*, 37 BYU J. PUB. L. 101, 104–08 (2023).

Justice Alito, revealed that the Court was primed to overturn *Roe v. Wade*[20] and caused such an enormous political media storm that the Court issued a press release to quell the negative discourse.[21] The Justices have long regarded leaks as serious threats to the Court's institutional integrity.[22] In his press statement, Chief Justice Roberts underscored the gravity of the moment, calling the *Dobbs* leak "a singular and egregious breach of that trust that is an affront to the Court and to the community of public servants who work here."[23] The resulting eight-month-long investigation launched by Chief Justice Roberts ended rather anticlimactically, with no identification of the culprit.[24]

The impact of a high-profile leak such as *Dobbs* was immense. Not only did the culprit breach the rules of confidentiality, but they also actively disregarded the rule of law and violated the Judicial Code of Conduct.[25] Although the Justices and their staff do not represent a client, leaking a draft opinion to the press undermines the confidentiality of the case, betrays the parties involved, and breaches trust among themselves.[26] Compounding the paranoia, media comments alleged that the leak was politically motivated, casting doubt on the Court's ability to remain independent from the politics of the other branches.[27] Further, the absence of accountability stemming from the investigation raises another troubling concern: a shadow saboteur may still lurk within the Court.[28]

These instances highlight a troubling trend of perceived impropriety among Justices, which not only jeopardizes the integrity of the judiciary but also poses significant challenges to maintaining public trust in an institution that upholds the rule of law.

II. EXISTING MECHANISMS IN PLACE TO CHECK THE SUPREME COURT

But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to

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20. 410 U.S. 113 (1973). Ironically, *Roe* was also leaked in advance before the opinion was handed down. Jonathan Peters, *Institutionalizing Press Relations at the Supreme Court: The Origins of the Public Information Office*, 79 MO. L. REV. 985, 1001 (2014).

21. Nathan T. Carrington & Logan Strother, *Plugging the Pipe? Evaluating the (Null) Effects of Leaks on Supreme Court Legitimacy*, 20:3 J. EMPIRICAL LEGAL STUD. 669, 670 (2023).

22. *Id.* at 671.

23. *Id.*at 669.

24. Press Release, U.S. Sup. Ct., *Dobbs* Leak Public Investigation Report (Jan. 19, 2023), https://www.supremecourt.gov/publicinfo/press/Dobbs_Public_Report_January_19_2023.pdf); Carrington & Strother, *supra* note 21, at 671.

25. Lynne Marie Kohm, *Why the* Dobbs *Draft Release Makes It Tougher to Teach Legal Ethics*, 13:2 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 319, 325–26 (2023); *see, e.g.*, MODEL CODE OF JUD. CONDUCT cmt. 3 (A.B.A. 2020); MODEL RULES OF PRO. CONDUCT r. 1.6(c) (A.B.A. 2023).

26. Kohm, *supra* note 25, at 326.

27. *Id.* at 328.

28. *Id.* at 322 ("Leaking the draft certainly violated the traditions of the Court. More importantly, it likely constitutes misappropriation of intellectual property and obstruction of justice, both federal criminal offenses.").

govern men, neither external nor internal controuls on government would be necessary.

–The Federalist No. 51[29]

To prevent any one branch of government from becoming too powerful, the Framers designed a framework ensuring that each branch has distinct responsibilities and powers.[30] Ideally, this system of checks and balances allows each branch to limit the actions of the others, protecting against tyranny, promoting accountability, and safeguarding individual rights.[31] For example, the President appoints Supreme Court Justices, but the Senate must confirm these appointments.[32] Once confirmed, Justices enjoy a lifetime tenure—ostensibly enabling them to remain free from the political pressures of the executive and legislative branches.[33] The landmark case *Marbury v. Madison*[34] established the judiciary's authority to review the constitutionality of legislative and executive actions.[35] The power of impeachment serves as the critical check on the judiciary and executive branches; the House of Representatives can impeach federal officials, including Supreme Court Justices, while the Senate conducts trials and removes officials with a two-thirds vote.[36] In theory, this intricate framework fosters accountability and maintains the rule of law in the United States. However, the crucial mechanism of impeachment has been used only once with respect to a Supreme Court Justice, illustrating how rare and difficult it is to employ.[37]

A. The Impeachment Clause

The Supreme Court's authority is not only derived from the Constitution, but from a long-standing tradition of judicial independence and integrity.[38] For institutions like the Supreme Court to function effectively, they rely on public trust.[39] The belief that Justices will act impartially and

29. THE FEDERALIST NO. 51 (James Madison).
30. *See generally* U.S. CONST. art. I, §8; U.S. CONST. art. II, §2–3; U.S. CONST. art. III, §2.
31. City of New York. v. Clinton, 985 F.Supp. 168, 179–80 (D.D.C. 1998).
32. H.W. WILSON CO., 87-1 THE REFERENCE SHELF: THE SUPREME COURT 13 (H.W. Wilson Co. March 12, 2015).
33. Jennifer Ahearn & Michael Milov-Cordoba, *The Role of Congress in Enforcing Supreme Court Ethics*, 52 HOFSTRA L. REV. 557, 564 (Spring 2024).
34. 5 U.S. 137, 178 (1803).
35. *See generally id.* at 181.
36. Daniel Hemel, *Can Structural Changes Fix the Supreme Court?*, 35:1 J. ECON. PERSPECTIVES 119, 119 (2021).
37. Elizabeth Nix, *Has a U.S. Supreme Court Justice Ever Been Impeached?*, HISTORY (Dec. 2, 2016), https://www.history.com/news/has-a-u-s-supreme-court-justice-ever-been-impeached.
38. Article III, Section 1 vests the highest judicial power of the United States in one Supreme Court while also placing limitations on the roles of its Justices. The second sentence innocuously begins, "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour . . .," yet the document does not define what is meant by "good Behaviour." U.S. CONST. art. III, §1. A layperson might interpret this phrase to mean that a Justice's position is contingent upon their moral conduct. However, after extensive legal debate over the text and its original meaning, the prevailing consensus interprets the clause as the foundation for lifelong tenure in the position. If the Good Behavior Clause cannot hold a Justice accountable for misconduct, then the Impeachment Clause must be the only remedy; *see* Marzen & Conklin, *supra* note 19.
39. Marzen & Conklin, *supra* note 19.

in good faith is essential to maintaining the credibility of the institution.[40] As the role of a Supreme Court Justice demands an elevated standard of conduct because the public relies on the Court's decision, the public expects their decisions to be based on legal reasoning, not personal biases or political considerations.[41] Yet when they fail to do so, the Constitution explicitly provides the remedy for accountability from all of its civil officers and federal judges—the Impeachment Clause.[42] The Impeachment Clause is found in Article II, Section 4 of the Constitution states: "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[43]

Since the Supreme Court's establishment in 1789, a total of 116 people have served on the bench.[44] Yet, in the past two centuries, the House of Representatives has impeached only one Justice—and even then, the Senate failed to confirm with the required two-thirds vote.[45] Does this suggest that every other Justice has acted beyond reproach? Such an assumption is difficult to accept. Rather, it suggests that this vital check is either broken or not being applied with equal measure to the Supreme Court as to the lower courts.[46]

The Impeachment Clause does not define "other high Crimes and Misdemeanors"—a phrase that has sparked discussion throughout the nation's history. As a result, we must look to case law to determine what offenses are deemed beyond reproach. To date, fifteen federal judges have been impeached by the House of Representatives, and only eight were convicted and removed from office by the Senate.[47] Impeachable offenses in these eight cases included intoxication on the bench, refusal to hold court, waging war against the nation, improper business relationships with litigants, tax evasion, perjury before a grand jury, accepting bribes, and making false statements.[48] Interestingly, of the other six judges who were either acquitted or resigned following an investigation, the primary charges included arbitrary and oppressive conduct of trials, abuse of the contempt power, abuse of power, favoritism in the appointment of bankruptcy receivers, impeding an official proceeding, and making false and

40. *Id.*
41. Gordon Bermant & Russell R. Wheeler, *Federal Judges and the Judicial Branch: Their Independence and Accountability*, 46 MERCER L. REV. 835, 839 (1995).
42. U.S. CONST. art. II, § 4.
43. *Id.*
44. *List of Supreme Court justices of the United States | Names & Years*, BRITANNICA (Sept. 28, 2011), https://www.britannica.com/topic/list-of-Supreme-Court-justices-of-the-United-States-1788861.
45. Solcyré Burga, *How Impeaching a Supreme Court Justice Works*, TIME (July 12, 2024), https://time.com/6997811/impeaching-supreme-court-justice-judges-history/; Cohn & Warren, *supra* note 3.
46. *Impeachments of Federal Judges*, FED. JUD. CENTER, https://www.fjc.gov/history/judges/impeachments-federal-judges.
47. *Id.*; Marzen & Conklin, *supra* note 19, at 115.
48. *Id*. at 115–16.

misleading statements.[49] This pattern underscores a reluctance to employ the Impeachment Clause when offenses are based on a judge or justice's personal discretion, instead of clear, objective violations of law or undeniable breaches of judicial duty: mental decline, intoxication on the bench, refusing to hold court and aiding the Confederacy, improper business relationships with litigants, charges of favoritism in the appointment of bankruptcy receivers, practicing law while sitting as a judge, tax evasion, remaining on the bench following a criminal conviction, perjury, and conspiring to solicit a bribe.[50] Thus, the impeachment power has historically served as a check on clear abuses of office, not as a tool for policing the gray areas of judicial discretion.

B. The Judicial Conference, 28 U.S.C. § 331

The Judicial Conference of the United States is an annual assembly chaired by the Chief Justice that conducts the business of federal courts, including the Supreme Court.[51] This Conference drafts and evaluates rules of procedure to ensure they align with federal law and submits annual reports to Congress, including recommendations for legislative actions such as rule adoption and impeachment.[52] Importantly, the Conference also oversees complaints related to judicial conduct and allegations of mental or physical disability among federal judges, underscoring its purpose of accountability to the public.[53] The Chief Justice has plenary power over the Judicial Conference committees' structure, sitting atop a vast administrative organization while simultaneously occupying the apex spot of the nation's foremost judicial decision-making body.[54] Contrastingly, the other Justices are not standing members of any committee, although they could be appointed to a special committee.[55] For these reasons, the role of the Chief Justice in overseeing the Judicial Conference, particularly in areas relating to conduct and rule changes, combined with the lack of independent, external oversight, indicates the enormous power and sway the Chief holds.[56] Unfortunately, the role of the Chief Justice also allows for potential conflicts of interest as it places the responsibility for policing the actions of the Supreme Court and other federal judges in the hands of a person who is part of the very institution being scrutinized. The Justices, selected for their exceptional legal acumen and experience, are tasked with navigating complex legal questions that often have profound societal

49. FED. JUD. CENTER, *supra* note 46.
50. *Id.* Notably, charges of favoritism in the appointment of bankruptcy receivers appear in at least two impeachment proceedings with one resulting in an acquittal and the other resulting in removal. This adds another layer of confusion regarding what is a "high Crime or Misdemeanor."
51. 28 U.S.C. § 1; 28 U.S.C. § 331; Dawn M. Chutkow, *The Chief Justice as Executive: Judicial Conference Committee Appointments*, 2:2 J. L. AND COURTS 301, 302 (2014).
52. 28 U.S.C. § 331; Chutkow, *supra* note 51, at 302.
53. 28 U.S.C. § 351; 28 U.S.C.§ 355.
54. Chutkow, *supra* note 51, at 301.
55. *Id.* at 303.
56. *Id.* at 309.

implications. However exceptional as they may be, the Justices are still human, and therefore not immune to error.

For example, despite their training and commitment to objectivity, the Chief Justice may unconsciously exhibit confirmation bias.[57] Confirmation bias is defined as people's tendency to search for information that supports their beliefs and ignore or distort data contradicting them, which could be significant in the legal context.[58] If confronted with issues related to judicial misconduct or impartiality, close relationships or shared experiences with other judges could lead to biases. For example, a highly conservative or liberal Chief Justice may, through implementation of procedural rules or committee appointments, attempt to advance a particular judicial self-interest.[59] Alternatively, the Chief Justice may prioritize protecting the reputation of the Court or avoid decisions that could create tension among peers, influencing the objectivity of any investigations. As James J. Sample aptly said in *The Supreme Court and the Limits of Human Impartiality*, "To assert that Justices must disavow their particular beliefs and identities is not only unrealistic and unfair, but also entirely impossible. The question then becomes one of crafting an institution with proper checks and balances to prevent these inherent biases from prevailing on the bench."[60] This statement highlights the limitations of expecting complete neutrality from Justices, even though they are tasked with interpreting the law without prejudice. For these reasons, the Judicial Conference is as flawed as the Impeachment Clause at holding Supreme Court Justices accountable for judicial misconduct. The combination of a lack of external oversight and the self-policing role of the Judicial Conference does not spark confidence in the ability of the Court to remain publicly accountable. Additionally, the Chief Justice's omnipotent role in shaping procedural rules, appointing committee members, and influencing the Court from within further exacerbates the issue, as it centralizes significant power in one individual without sufficient checks.

III. THE NEW CODE OF CONDUCT: ANOTHER CHECK LACKING TEETH

In 2023, the Supreme Court adopted its first-ever Code of Conduct (Justice's Code) to quash continuing ethics concerns.[61] However, this "new" ethics code was not new; in substance, it largely mirrored the

57. *See* Uwe Peters, *What is the Function of Confirmation Bias*?, 87 ERKENNTNIS 1351, 1351 (2022).
58. *Id.* at 1352.
59. *See* Chutkow, *supra* note 51, at 309–21 (a statistical analysis of how party affiliation impacts committee selection).
60. James J. Sample, *The Supreme Court and the Limits of Human Impartiality*, 52 HOFSTRA L. REV. 579, 580 n. 4 (2024).
61. U.S. SUP. CT., CODE OF CONDUCT FOR JUSTICES OF THE SUP. CT. OF THE U.S., at 1 (Nov. 13, 2023) [hereinafter CODE OF CONDUCT FOR JUSTICES]

existing rules for all current federal judges.[62] While the Justice's Code reaffirmed commitments to transparency and disclosures, it introduced notable exceptions that do not apply to lower court judges.[63] For example, a Justice is not required to recuse themselves if a relative submits a brief—an increasingly common occurrence, as some cases receive over 100 briefs.[64] Ultimately, the lack of any enforcement mechanism undermines the Code's effectiveness, raising concerns about the integrity of the Court's ethical standards.[65]

Furthermore, the Commentary (Supreme Commentary) section accompanying the Justice's Code also provides valuable insight into the Justices' decision-making process for adopting new canons.[66] Notably, the discussion surrounding Canon 3(B), which pertains to the "inherently judicial function of recusal," highlights the Justices' apparent inclination to prioritize the Court's operational needs over considerations of impartiality.[67] This willingness to overlook potential conflicts raises important questions about the balance between maintaining an adequately staffed Court and upholding the principles of fairness and objectivity in judicial proceedings.

The following analysis compares the Judge's Code and Justice's Code through functional, linguistic, and structural lenses. The Judge's Code—governing all U.S. circuit judges, district, bankruptcy, and magistrate judges, as well as the Court of International Trade and Court of Federal Claims—is notably robust, incorporating mechanisms for enforcement and oversight, as well as extensive commentary for each Canon. Contrastingly, the Justice's Code diverges in several subtle yet significant ways, particularly in its treatment of disqualification and divestment, and features a markedly abbreviated commentary framed in a defensive tone. These distinctions expose a substantial gap in accountability, illustrating that the Justice's Code is a commitment to a higher standard in appearance more than in practice.

A. Code of Conduct Comparison: Function

62. *See generally* 28 U.S.C.S. §§ 451–463 (LexisNexis 2019); U.S. COURTS, Published Ethics Advisory Opinions (Guide, Vol. 2B, Ch. 2) https://www.uscourts.gov/file/25752/download [hereinafter CODE OF JUD. CONDUCT FOR U.S. JUDGES].

63. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.

64. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 11.

65. Annie Gersh & Nina Totenberg, *The Supreme Court Adopts First-Ever Code of Ethics*, NPR (Nov. 13, 2023), https://www.npr.org/2023/11/13/1212708142/supreme-court-ethics-code.

66. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 10–14.

67. *Id.* at 10–12. The Justices set the tone of their recusal discussion by stating:

> The Justices follow the same general principles and statutory standards for recusal as other federal judges, including in the evaluation of motions to recuse made by parties. But the application of those principles can differ due to the effect on the Court's processes and the administration of justice in the event that one or more Members must withdraw from a case.

Despite their many similarities, the Justice's Code and the Judge's Code function quite differently due to the differing roles of Justices and other federal judges.[68] Both provide ethical guidelines for conduct while in office, but the Justices are not formally bound by the Justice's Code as lower federal judges are.[69] Violations of the Judge's Code may lead to disciplinary action, including suspension, censure, or removal from office, while the Justice's Code has no formal enforcement mechanism to conduct disciplinary proceedings in the event of a violation.[70] The Justice's Code is essentially a set of voluntary guidelines, which are more flexible and less extensive than those for other federal judges.

The primary objective in creating the Judge's Code was to codify all current laws relating to the judiciary, ensuring that it could operate efficiently while maintaining impartiality and personal accountability.[71] Contrastingly, the stated primary objective in promulgating the Code of Conduct for the Supreme Court was to "set out succinctly and gather in one place" the ethical rules and principles that guide the conduct of the Justices of the Court.[72] However, the broad and unspecific language of the Justice's Code undermines this postulation and fails to address rising public concerns surrounding accountability.[73] For instance, Canon 3(B)(1) begins with the assertion, "A Justice is presumed impartial . . . ."[74] Rather than reassuring the public through clear and demonstrable standards of impartiality, this phrasing instead "serves as a reminder to both Justices and the public that the Supreme Court and its Justices are inherently special and ethical—simply because of the position they hold."[75] On the other hand, Canon 3 of the Judge's Code begins, "The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased."[76] This foundational sentiment is conspicuously absent from the Justice's Code, which instead dives straight into enumerating the responsibilities of the role without establishing a comparable guidepost.[77] This omission reflects a troubling lack of emphasis on the higher standard of accountability.

The second objective of the Justice's Code is equally revealing. It was to dispel the "misunderstanding that Justices of this Court . . . regard themselves as unrestricted by any ethics rules," seemingly acknowledging the

68. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 10.
69. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
70. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
71. CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62, at 1–3.
72. *Id.*
73. *Id.* at 2–13.
74. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 2.
75. Sample, *supra* note 60, at 586.
76. CODE OF JUDICIAL CONDUCT FOR U.S. JUDGES, *supra* note 62, at 5.
77. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.

growing public perception that the Justices behave as they wish with no repercussions.[78] It suggests that the underlying motivation for promulgating these ethical rules stemmed less from an internal commitment to reform and more from mounting public pressure following a series of scandals and questions of impropriety. Never before in our nation's history has the Supreme Court published its own code of conduct, and the fact that this Court chose to do so implies an effort to preserve institutional credibility, perhaps even to quiet a sense of culpability. Taken together, the differences between the two codes suggest that while the Judge's Code functions to strengthen ethical accountability within the judiciary, the Justice's Code functions primarily as a symbolic gesture.

B. Code of Conduct Comparison: Language and Structure Analysis

Like other federal judges, the Supreme Court Justices have always been required to comply with the U.S. Constitution, certain federal statutes, and regularly updated Judicial Conference Regulations.[79] However, events mentioned in Part I of this Note led to the creation of the November 2023 Justice's Code, which was intended to dispel the misunderstanding that the Justices regard themselves as unrestricted by any ethics rules.[80] Admittedly, the canons within are nearly identical in text and sentence structure to the Judge's Code applicable to lower courts since 1973, yet they function quite differently.[81]

The five canons present in the Justice's Code reiterate the same goals as the Judge's Code: (1) integrity and independence; (2) avoidance of impropriety and the appearance of impropriety; (3) fairness, impartiality, and diligence; (4) extrajudicial activities consistent with the obligation of office; and (5) refraining from political activity. The purpose of the first canon in both codes is to preserve the integrity and independence of the judiciary.[82] The first canon within the Judge's Code states that a judge should maintain and enforce high standards of conduct and should *personally observe those standards,* whereas the Justice's Code makes no mention of the personal observation of those same standards.[83] The Judge's Code continues in a prescriptive and detailed manner, with a lengthy commentary following the first canon (Federal Commentary).[84] The Federal Commentary emphasizes that "adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary."[85] Contrastingly, the Justice's Code is broad, and the Supreme Commentary declines to discuss the first canon entirely. Their silence

78. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 1.
79. *Id.* at 13.
80. *Id.* at 1.
81. CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62, at 9–11.
82. *Id.*
83. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
84. CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
85. *Id.* at 3.

suggests either an assumption that the Justices' commitment to ethical conduct is self-evident or an unwillingness to subject themselves to the same level of ethical scrutiny imposed on lower court judges.[86] While independence is undoubtedly essential to uphold the law free from outside influence, it must not come at the expense of integrity. By failing to require personal adherence to high standards of conduct, the Justices risk furthering the perception that those at the highest level of the judiciary are above the very standards they are meant to embody.

The second canon in both the Judge's Code and the Justice's Code is identical in text and sentence structure.[87] Canon 2 discusses avoiding impropriety and the appearance of impropriety.[88] Although identical, the Judge's Code provides an extensive discussion in the Federal Commentary defining testimony as a character witness and memberships in organizations. Importantly, it also describes the appearance of impropriety: "[W]hen reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired."[89] The Supreme Commentary does not provide any insight into Canon 2, likely because they felt the detailed guidance was inapplicable or unnecessary due to the Court's unique position "at the head of a branch of the tripartite governmental structure."[90] This Canon also illustrates the Court's staunch devotion to independence and lack of commitment to avoiding impropriety or the appearance of impropriety.

Each Code contains about 2,800 words, sharing roughly 80% words in common.[91] Canon 3 reveals the greatest differences between the Codes in text, sentence structure, and detail. Specifically, the disqualification (or recusal) section illustrates the biggest difference between the two.[92] Although both Codes use the phrase "should not" nine times in Canon 3, the Judge's Code explicitly utilizes "shall" language in the disqualification, while the Justice's Code uses the former.[93] Markedly, Canon 3(B)(3) of the Justice's Code adds, "The rule of necessity may override the rule of disqualification," and the Supreme Commentary of 3(B) expressly recognizes

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86. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 9.
87. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
88. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
89. CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62, at 4.
90. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 9–10.
91. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62. To make this determination, the codes were charted side-by-side, and the words in common were highlighted. The author counted the total number of words in common between the columns and divided the result by the total word count of each Code's total word count, respectively, to get roughly 80% each ((2,375/2,877)=~82% and (2,375/2,814) = ~84%) (chart on file with Author).
92. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
93. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 1–2, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62, at 8.

the "duty to sit."[94] It also announces, "Neither the filing of a brief *amicus curiae* nor the participation of counsel for *amicus curiae* requires a Justice's disqualification," a significant statement given the hundreds to thousands of *amicus* briefs they receive each year.[95] It is worth noting that the Court itself recently adopted this "permissive approach" to *amicus* participation, a shift from its more historical practice, suggesting that the Justices have, to some extent, created the very conditions that now complicate their rules surrounding recusal and disqualification.[96] This reflects a more intentional and narrowly construed approach to disqualification and recusal than found in the Judge's Code.[97]

The Justices themselves decide when they should recuse from cases, while lower federal judges adhere to a formal process for conflicts and recusal. The Supreme Commentary provides an extensive discussion of Canon 3(B) and disqualification, spanning nearly two full pages.[98] This level of detail is not paralleled in the descriptions of the other Canons,[99] suggesting that the Court recognizes the increasing public, media, and scholarly calls for recusal and acknowledges the importance of addressing this issue comprehensively. Unfortunately, the rationale offered falls short of addressing these concerns meaningfully, failing to alleviate prevailing doubts about impartiality and instead leaning toward justifications for the necessity of judicial participation versus recusal. Not only do the Justices appear to rationalize their reluctance to recuse themselves, but they also erroneously justify this statement by implying that impartiality may become a logistical inconvenience.

In their discussion, the Justices attempt to explain the differences in Canon 3(B) from lower court provisions by stating that the "time-honored role of necessity may override the rule of disqualification."[100] In citing support for their proposition, they misguidedly employ Comment 3 of the ABA Model Code of Judicial Conduct Rule 2.11.[101] First, the ABA Model Rule includes the word "shall" concerning the disqualification of a Justice, while the new Code of Conduct utilizes "should."[102] Additionally, Comment 3 of Rule 2.11 opens with the assertion that "the rule of necessity may override the rule of disqualification."[103] However, the examples provided—such as participating in judicial review of a judicial salary statute or being the sole judge available for urgent matters like probable cause hearings or temporary restraining orders—illustrate a more limited

94. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 3, 11; Joanna R. Lamp, *The Supreme Court Adopts a Code of Conduct*, CONG. RSCH. SERV., LSB11078 (2023).
95. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 3.
96. *Id.* at 11.
97. *Id.*; Lamp, *supra* note 94, at 3.
98. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 10–12.
99. *See id.*
100. *Id.* at 11.
101. MODEL CODE OF JUD. CONDUCT r. 2.11 cmt. 3 (A.B.A. 2020).
102. MODEL CODE OF JUD. CONDUCT r. 2.11 (A.B.A. 2020); CODE OF CONDUCT FOR JUSTICES, *supra* note 61.
103. MODEL CODE OF JUD. CONDUCT r. 2.11 cmt. 3 (A.B.A. 2020).

scope.[104] While these decisions may hold significant implications for the individual parties involved, they lack the broader impact of the cases typically addressed by the Supreme Court.

The Court also supports its position with *United States v. Will*,[105] which offers an extensive analysis of the common law Rule of Necessity.[106] In this case, the Court applied the Rule of Necessity to conclude that 28 U.S.C. § 455, which governs judicial disqualification, does not require the disqualification of all federal judges from addressing certain issues under specific circumstances.[107] In doing so, the Court effectively established a workaround to an external congressional check on their authority, subsequently using this rationale to justify their reluctance to recuse themselves.

The discussion of disqualification in the Supreme Commentary begins as follows:

> Lower courts can freely substitute one district or circuit judge for another. The Supreme Court consists of nine Members who sit together. The loss of even one Justice may undermine the "fruitful interchange of minds which is indispensable" to the Court's decision-making process. Recusal can have a "distorting effect upon the certiorari process, requiring the petitioner to obtain (under our current practice) four votes out of eight instead of four out of nine." When hearing a case on the merits, the loss of one Justice is "effectively the same as casting a vote against the petitioner. The petitioner needs five votes to overturn the judgment below, and it makes no difference whether the needed fifth vote is missing because it has been cast for the other side, or because it has not been cast at all."[108]

While the Justices use the above argument to defend their recusal policy, these statements also inadvertently highlight a compelling argument for expanding the Court. The concern that the absence of a single Justice can skew outcomes emphasizes the fragile balance of the current nine-member structure. By acknowledging that a lost vote effectively diminishes the Court's capacity to function equitably,[109] the Justices illustrate the need for a more robust bench that can absorb such losses without compromising judicial integrity. This acknowledgement underscores the potential benefits of a larger Court, not only to mitigate the impact of recusals and balance it ideologically, but also to enhance the institution's ability to handle its growing caseload and maintain public confidence in its decisions.

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104. *Id.*
105. 101 S. Ct. 471 (1980).
106. *Id.* at 488. The Rule of Necessity is a legal principle allowing a judge or Justice to hear a case even if they have a personal interest or bias (when no other competent court is available), to ensure litigants are not denied their right to a fair hearing.
107. *Id.* at 488.
108. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 10 (internal citations omitted).
109. *Id.*

The fourth canon of each code discusses extrajudicial activities such as speaking, writing, and teaching, as well as how to report finances derived from those activities.[110] Again, the text and sentence structure of each are strikingly similar, but the subtle changes the Justices made are telling.[111] In the Justice's Code, the first change is an addition to the speaking, writing, and teaching activities section, emphasizing that Justices "should not speak at or otherwise participate in an event that promotes a commercial product or service, *except that a Justice may attend and speak at an event where the Justice's books are available for purchase*."[112] This may allude to the controversy surrounding Justice Sotomayor's 2013 book release, or it may simply acknowledge that the private sector offers substantial financial opportunities beyond the bench.[113] The second addition made falls under the fundraising section and allows the use of a Justice's name, position in an organization, and judicial designation on an organization's letterhead, including when that letter is used for fundraising or soliciting members.[114] This feels awfully close to the line of an endorsement made in an official capacity.

Finally, the most notable difference between the fourth canon of the two codes is what the Justice's Code omits. In the financial activities section, the Justice's Code excludes the instruction fund in the Judge's Code: "As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification."[115] Interestingly, this omission shares a relationship with disqualification, highlighting a protective stance toward Justices' personal financial interests that allows them greater discretion in determining when recusal is necessary, a topic discussed in more detail below. Admittedly, the Justice's Code has finally articulated fiduciary ethics and financial disclosure requirements, a step forward in addressing concerns about individual Justice actions.[116]

Finally, Canon 5 of each code focuses on refraining from political activity, with identical text in each.[117] The only difference is that "political organization" is defined in the Federal Commentary of the Judge's Code.[118] This omission of this definition in the Justice's Code is

110. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
111. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
112. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 5 (emphasis added).
113. Mark Walsh, *A bookish Supreme Court Keeps Stacking the Shelves*, A.B.A. J., (September 19, 2024) https://www.americanbar.org/groups/journal/articles/2024/books-by-supreme-court-justices/.
114. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 6.
115. CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62, at 14.
116. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 10–12.
117. *Compare* CODE OF CONDUCT FOR JUSTICES, *supra* note 61, *with* CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62.
118. CODE OF JUD. CONDUCT FOR U.S. JUDGES, *supra* note 62, at 19 ("The term 'political organization' refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.").

particularly concerning, given the perceived political behavior of some of the Justices.[119]

Overall, the text and sentence structure in the Justice's Code are nearly identical to the Judge's Code, but if the Justices were truly attempting to quell public concerns and reaffirm their ethical standards, they would have provided an enforcement mechanism within the document or encouraged Congress to create one. Moreover, the subtle changes and omissions surrounding Canons 3 and 4 show a deliberate narrowing of accountability. Taken together, the structural, linguistic, and substantive similarities between the two codes obscure their profound difference in function and purpose. While the Judge's Code was designed to guide and enforce judicial behavior, the Justice's Code functions primarily as a symbolic gesture rather than a meaningful form of accountability. As Progressive group *Take Back the Court* aptly observed, "With 53 uses of the word 'should' and only 6 of the word 'must,' the [C]ourt's new 'code of ethics' reads a lot more like a friendly suggestion than a binding, enforceable guideline."[120]

IV. INCREASING THE SIZE OF THE SUPREME COURT

Expanding the Court to twelve Justices could enhance its resilience and ensure a more diverse range of perspectives in deliberations, ultimately strengthening the decision-making process and safeguarding against the distortions that recusal might introduce. As the Justices themselves acknowledged in their new Code, the loss of a single Justice may undermine the quorum and diminish the Court's ability to provide an equitable resolution in a case. Undoubtedly, they put forth this argument to support their broad interpretation of recusal, but it instead illustrated the fragility of having a nine-Justice bench. Historical precedent does not favor increasing the Court's number, with members of both parties recognizing that it could lead to a never-ending political appointment battle;[121] however, there have also been several occasions when the number of Justices was changed.[122] In addition to ensuring that there will always be a quorum, increasing the size of the Court in a way that acknowledges and attempts to correct the political nature of the institution is vital to maintaining accountability among the Justices.

A. Precedent

The number of Supreme Court Justices is not defined in the Constitution but determined by Congress.[123] The composition of Justices has fluctuated through the years, ranging from six to ten before finally

119. Kantor, *supra* note 17.
120. Gersh & Totenberg, *supra* note 65.
121. Stephen M. Feldman, *Court-Packing Time? Supreme Court Legitimacy and Positivity Theory*, 68 BUFFALO L. R. 1519, 1519 (2020).
122 SUP. CT. OF THE U.S., *Frequently Asked Questions: General Information*, https://www.supremecourt.gov/about/faq_general.aspx (last visited January 1, 2025).
123. 28 U.S.C. § 1.

stabilizing at its current size of nine Justices in 1869.[124] Overall, the size of the Court has changed seven times.[125] Attempts to change the structure or pack the Court since then have been unsuccessful, particularly President Franklin Roosevelt's failed attempt to pack the Court in 1937.[126] Although there is historical precedent to keep the number of Justices at nine, Congress has the authority and the duty to pass legislation increasing the number on the bench to twelve, restructuring the Court to correct the ideological imbalance within.[127]

B. Restructuring the Court to Combat Political Nature

To begin, we must acknowledge the political nature of the Supreme Court as an institution, particularly the increasingly partisan nature of the confirmation process.[128] Historically, the Supreme Court has maintained that its role is to interpret the law and Constitution, not engage in political decision-making; however, the perception of the Court as a political institution persists. Apart from the political implications of its rulings on major issues such as abortion and gun control, the contentious and increasingly cut-throat confirmation process highlights Congress's growing attention to judicial philosophy falling along ideological lines as a basis for denying qualification.[129] The President, through his Appointment Power, has the ability to change the ideological makeup of the Court, although the appointments may be allocated unevenly across presidential terms.[130] While the Appointments Clause was designed to ensure public accountability by requiring the joint participation of the President and the Senate, it also ensures political influence, since both the Executive and Legislative branches are elected and have agendas of their own.[131] Notably, a politically polarized confirmation process, whereupon Congress bases its vote on judicial philosophy and ideological lines rather than professional merit, has become the norm.[132] For all of these reasons, in addition to those discussed in Part I of this Note, a formal acknowledgement of the political nature of the Supreme Court is past due.

To correct this political encroachment, Congress has a duty to amend 28 U.S.C. § 1 to increase the total number of Justices from nine to twelve, while keeping the quorum at six. To negate the possibility of politicization in the appointment process, the three new Justices would be chosen by the current bench through a unanimous vote, encouraging appointment based

124. *The Size of the United States Supreme Court*, IN CUSTODIA LEGIS (Mar. 3, 2020), https://blogs.loc.gov/law/2020/03/the-size-of-the-united-states-supreme-court/.
125. *Id.*
126. Epps & Sitaraman, *supra* note 7, at 400.
127. 28 U.S.C. § 1.
128. Hemel, *supra* note 36, at 125.
129. Freyja Quinn, *The Growing Politicization of the US Supreme Court*, EAGLETON POL. J. (Apr. 30, 2024), https://eagletonpoliticaljournal.rutgers.edu/growing-politicization-of-the-us-supreme-court/.
130. Hemel, *supra* note 36, at 126.
131. Edmond v. U.S., 520 U.S. 651, 660 (1997).
132. Quinn, *supra* note 129.

on qualification rather than ideology. The new Justices would have all the same obligations, duties, and expectations of the office and be considered equal to the other Justices in every way, also serving for life. The role of the Chief Justice would remain the same. Going forward, the original six seats would continue to be appointed by the President and confirmed by the Senate, respecting the Appointment Power and check on the judiciary, with the remaining three seats chosen by the Justices. This plan would not only address the political nature of the Court, but it would likely render Canons 3(B)(3) and 3(B)(4) in the Justice's Code moot. Keeping the quorum at six Justices while increasing the size of the Court would decrease the likelihood of not having enough Justices to adjudicate an issue should one or more members withdraw from a case.[133] Additionally, the availability of three additional Justices to participate in each Term would reduce the pressure on each individual to obtain a quorum. Faced with the dilemma of recusing oneself due to conflicts of interest paired with the absence of a quorum, a Justice would ideally be more apt to choose to recuse themselves properly, allowing for more accountability.

Opponents to increasing the court or "court packing" argue that it is simply a partisan bid to increase the political power of which there would be no end, but such concerns overlook the broader benefits of a larger bench. In addition to mitigating the political nature of the Court, this plan would also allow the Court to hear more cases. Currently, the Court receives over seven thousand petitions for a writ of certiorari each Term but only "grants and hears oral argument in about 80 cases."[134] By increasing the number of Justices, the Court would be better equipped to handle the mounting caseload, potentially improve its responsiveness, and boost public confidence in the institution.

CONCLUSION

Given their significant authority and the lasting implications of their rulings, the Justices are central figures in the ongoing dialogue about democracy, individual freedoms, and the rule of law. Unfortunately, the newly enacted Code of Conduct for Justices not only fails to address ongoing public dialogue but also provides no meaningful enforcement mechanism to hold Justices to the rule of law. Like other checks and balances placed on the Supreme Court, the newly enacted Justice's Code is merely a recitation of broken checks already in place. The Court's discussion regarding Canon 3(B) reveals the weakness of having only nine Justices and suggests there may be a benefit in increasing the size of the bench. This proposal to increase the size of the Supreme Court to twelve Justices, three of whom are chosen through a unanimous vote by the current bench, is not only a pragmatic solution to the current challenges facing the judiciary but also a means of reinforcing the integrity of a Court facing

133. CODE OF CONDUCT FOR JUSTICES, *supra* note 61, at 10.
134. SUP. CT. OF THE U.S., *Frequently Asked Questions: General Information*, https://www.supremecourt.gov/about/faq_general.aspx (last visited January 1, 2025).

growing political polarization. This reform would provide a more accountable, balanced, and effective judiciary, ensuring that the Court continues to fulfill its vital role in upholding the rule of law.