

April 1, 2022

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

Dear Chair Durbin and Chair Nadler,

The latest revelations about Virginia “Ginni” Thomas, wife of Supreme Court Justice Clarence Thomas, and her active participation in efforts to overturn the 2020 presidential election are alarming and gravely serious. We are particularly troubled by Justice Thomas’ role in these events, namely his unethical decision to participate in the adjudication of Supreme Court cases related to the January 6, 2021 insurrection and the 2020 election. This is only the latest and most shocking example of Justice Thomas’ refusal to recuse himself from cases in which his wife’s activities pose a conflict or appearance of a conflict of interest.

We write to you today to **request that the House and Senate Judiciary Committees open a formal investigation** into Associate Supreme Court Justice Clarence Thomas’ misconduct in his handling of cases regarding the January 6 insurrection, the 2020 presidential election, and other cases involving his wife’s political activities. **These investigations should examine whether Justice Thomas’ conduct was consistent with basic principles of judicial ethics, whether he violated federal law and his oath to “impartially discharge and perform” his judicial duties, and what actions must be taken in response.** As you know, the January 6 Select Committee plans to investigate Ginni Thomas’ activities related to the insurrection. But Justice Thomas’ unethical conduct from the bench is within the purview of the House and Senate Judiciary Committees, and we urge the committees to investigate that conduct fully, in cooperation with the January 6 Select Committee as needed.

As you know, Supreme Court justices are bound by 28 U.S.C. § 455 — a federal statute that bars them from hearing cases in which their “impartiality might reasonably be questioned,” or in which their spouse has “an interest that could be substantially affected by the outcome of the proceeding.” **Justice Thomas clearly violated these provisions when he refused to recuse himself from a case directly implicating his wife’s activities in support of the January 6 insurrection, and it is incumbent on Congress to respond.**

On March 24, news articles reported that Ginni Thomas was in constant communication with White House Chief of Staff Mark Meadows, encouraging Donald Trump’s efforts to overturn the election in the two months before the deadly insurrection on January 6. In her messages, Ginni Thomas demanded that Meadows not let Trump concede the election: “Do not concede. It takes

time for the army who is gathering for his back.” She referenced QAnon-backed anti-mail-ballot conspiracy theories and referred to President Joe Biden’s victory in the 2020 election as “the greatest Heist of our History.” In response, Meadows thanked Thomas “for all that [she] do[es].”

As New York University Law Professor Stephen Gillers [explained](#), these new revelations make clear that “Clarence Thomas cannot sit on any matter involving the election, the invasion of the Capitol, or the work of the January 6 Committee.” But Justice Thomas *already* sat on such a case, *Trump v. Thompson*, and was the sole justice who voted to stonewall transparency on matters of the insurrection and efforts to overturn the 2020 election. In an 8-1 vote, the Court ruled that the House Select Committee investigating the January 6 attack was entitled to access to key Trump administration documents. Thomas was the lone dissenter — and [provided no reason or justification](#) for siding with Donald Trump. This came after Ginni Thomas publicly smeared the bipartisan panel, signing a letter to House Republican Leader Kevin McCarthy calling for Republican members of the committee to be expelled from the House Republican Conference and baselessly accusing the committee of issuing improper subpoenas.

University of California Irvine Law Professor Richard Hasen laid bare the severity of Justice Thomas’ decision not to recuse himself from *Trump v. Thompson*, [explaining that](#) Justice Thomas should have recused himself, “[g]iven Ginni Thomas’s deep involvement in trying to subvert the outcome of the 2020 election based upon outlandish claims of voter fraud, and her work on this with not only activists but the former President’s chief of staff.” In addition, Justice Thomas’ actions also further damaged the Supreme Court’s credibility as an independent judicial body at a time when public disapproval of the Court is already at an all-time high.

On other matters related to the 2020 election, Thomas dissented from the Court’s decision not to take up a case threatening the legitimacy of Pennsylvania’s mail-in ballots. In his alarming [dissent](#), Thomas incorrectly claimed that mail-in ballots are more likely to be fraudulent — a position echoing “Stop the Steal” rioters and right-wing “Big Lie” propaganda promoted by his wife.

After Ginni Thomas’ known correspondence with Mark Meadows began on November 5, 2021, the Supreme Court considered at least 16 cases involving the 2020 election.

The severity of the conflicts of interest between Ginni Thomas’ participation in the insurrection and Clarence Thomas’ role as associate justice is difficult to overstate. But these conflicts are hardly the first to come under fire.

In over 30 years on the Court, Justice Thomas has not once recused himself from a case related to his wife’s political activities — despite a long and storied history of potential conflicts of interest. In 2000, when Clarence Thomas [cast a decisive vote](#) handing the 2000 election to George W. Bush (whose father appointed Thomas to the Court), Ginni worked at the Heritage Foundation [recruiting](#) potential staff for the would-be Bush administration. In 2017 and 2018, Justice Thomas failed to disclose more than \$200,000 in consulting fees Ginni Thomas’ consulting firm took from the Center For Security Policy, in violation of Supreme Court annual

financial disclosure requirements. In 2018, the Center's President Frank Gaffney filed an amicus brief with the Court in support of the Trump administration's Muslim ban — a controversial policy Thomas later voted to uphold in June 2018. In just a few months, the Supreme Court will hear a challenge to affirmative action programs at Harvard College and the University of North Carolina, and Justice Thomas has given no indication that he will recuse himself despite his wife serving on the advisory board of an organization that has filed amicus briefs before the Court supporting the challenge.

Recusal is certainly not the only potential ethics violation by Justice Thomas that merits investigation. Justice Thomas has repeatedly failed to disclose employers who paid his wife hundreds of thousands of dollars, as required by the Ethics in Government Act of 1978. This raises serious questions about what, if anything, Justice Thomas is trying to hide, whether any other undisclosed payments exist, and what possible judicial outcomes such hidden details relate to.

Justice Thomas' unethical decision to sit in judgment in cases involving his wife's efforts to overturn the 2020 election, including a case in which he attempted to block the January 6 committee's efforts to investigate the insurrection, demands a thorough investigation.

Public trust in the Court is already at an historic low. Allowing Justice Thomas to avoid scrutiny will surely cause the American people's faith in our judicial system to deteriorate further — perhaps beyond repair. Americans know that Justice Thomas cannot act impartially in cases related to his wife's political activities. It's up to your committees to ensure that he is held accountable for abusing his power and pretending otherwise.

Thank you in advance for your consideration.

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