

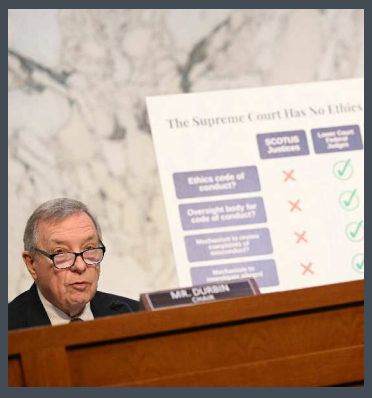


CIVICS IN REAL LIFE

The U.S. Supreme Court: Code of Conduct

Civics is all around us. There is a lot to know about the government and how “We the People” interact with the government and each other. Let’s help each other expand our civic literacy.

On May 2, 2023, the [Senate Judiciary Committee held a hearing](#) to investigate the rules that govern the conduct of [U.S. Supreme Court](#) justices. The motivation behind this hearing was tied to [reports](#) of Supreme Court justices failing to disclose their acceptance of lavish gifts and trips paid for by political donors, property sales to individuals connected with law firms, and spouses who have monetarily benefited in their work with law firms that have business before the Court. In opening the hearing, committee chair, Senator Dick Durbin (D-IL) stated, *“it is critical to our democracy that the American people have confidence that judges cannot be bought or influenced, and that they are serving the public interest - not their own personal interest.”* So, what are the [ethical](#) obligations of federal judges?



[Article III, Section I](#) of the U.S. Constitution grants Congress the power to establish inferior courts. Using these powers, Congress created the [Judicial Conference](#) in 1922 as a means of overseeing inferior courts. In 1973, the Judicial Conference adopted the

[Code of Conduct for United States Judges](#). Since then, multiple changes and additions have been made to the Code, including incorporating a requirement on financial disclosures after Congress passed a related [statute](#) in 1978. However, there is an irony here, and that is that this code of conduct is not enforceable on the U.S. Supreme Court

In lieu of testifying before the Senate Judiciary Committee, Chief Justice John Roberts sent a [letter](#) to Chairman Durbin in which he pointed out that *“in 1991, Members of the Court voluntarily adopted a resolution to follow the substance of the Judicial Conference Regulation,”* [namely that] they file the *“same annual financial disclosure reports as other federal judges.”* Further, while they view these rules as important, many of the code’s provisions are *“broadly worded principles”* and *“far too general.”* The chief justice noted that *“judges may reasonably differ in their interpretation”* of them. Additionally, the rules are not constitutionally binding and the Judicial Conference does not supervise the Supreme Court.

There are three main challenges to reforming the perceived lack of rules that govern the conduct of Supreme Court justices. The first challenge revolves around the question of who has the power to create the rules. Legal experts who testified before the committee disagreed on this. Some argued that Congress has the constitutional authority to institute judicial regulations while others claimed that the Court would have to write and adopt its own Code of Conduct. The Court has never taken on this endeavor, and Congress has failed to successfully pass any legislation ([1973,2015,2021](#)) although it is [trying again](#). The next challenge surrounds the topic of enforcement. Regardless of where a Supreme Court Code of Conduct would originate, who would investigate and enforce violations of the rules and guidelines? Lastly, some members of Congress do not agree that a Code of Conduct is necessary, as evidenced by the May 2, 2023 hearing turning into a fierce [partisan debate](#).



To Think and To Do: In Federalist 78, Alexander Hamilton wrote, *“The [standard of good behavior](#) for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government....It is the best expedient which can be devised in any government to secure a steady, upright and impartial administrations of the laws....”* With recent [polling](#) showing that 62% of Americans have little to no confidence in the Supreme Court, is the standard as expressed by Hamilton enough to secure the “steady, upright, and impartial administration of the laws,” or is a Code of Conduct for the Justices of the U.S. Supreme Court necessary? Explain.

Learn MORE:

- [1991 Supreme Court Internal Ethics Resolution](#)



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