Congress of the United States
Washington, DC 20515

March 6, 2012

The Honorable John G. Roberts, Jr.
Chief Justice of the United States
United States Supreme Court
1 First Street Northeast
Washington, DC 20543

Dear Chief Justice Roberts:

We are writing in response to your Year-End Report on the State of the Federal Judiciary. We applaud the fact that the report responded to the mounting calls for ethics reform for the Supreme Court. The report, however well intentioned, does little to assuage our concerns and those of our colleagues in Congress and the American people that the Court's current approach to ethics is inadequately rigorous and relies too heavily on the interpretative whims of individual justices.

While every lower federal court judge is bound by the Code of Conduct, the ethical precepts contained in the Code do not explicitly apply to Supreme Court Justices. You assert in your report that, "the Court has had no reason to adopt the Code as its definitive source of ethical guidance." Yet, this fails to acknowledge the significant harm to our nation's judicial system when one set of ethical rules formally binds lower court judges, while Supreme Court justices, formally abjuring the need to bind themselves to these rules, merely consult the Code as one of many sources of non-binding ethical guidance. The public perception that arises is that the justices of the Supreme Court consider their personal and professional behavior to be superior to that of all other federal judges by virtue of their office.

Despite your assurance that, "All members of the Court do in fact consult the Code of Conduct in assessing their ethical obligations," the recent actions of some justices, such as speaking at fundraising events and engaging in political activity, suggest that some justices either do not understand or have disregarded the Code's boundaries. For example:

- Justices Clarence Thomas and Antonin Scalia appeared as headliners at the 2011 Federalist Society Dinner, which appears clearly to have been a fundraiser. The Justices' names were used to help sell tickets to the black tie event, which was sponsored by corporations like Pfizer, Coca-Cola, Verizon, Facebook, and Timer Warner.
- Justices Thomas and Scalia have each attended at least one retreat organized by the Koch brothers, the purpose of which is expressly political. According to the invitation for the 2011 retreat: *"At our most recent meeting ... our group heard plans ... to activate citizens against the threat of government over-spending and to change the balance of power in Congress this November."*
- Justice Samuel Alito headlined a 2009 fundraiser for the conservative Intercollegiate Studies Institute (ISI).

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- Justice Alito attended the American Spectator's annual fundraiser gala in 2010 and headlined the event in 2008. Tickets to the 2010 gala ranged from $250 to $250,000 and the event raised more than $245,000. When a journalist at the 2010 gala asked Alito whether he felt his attendance posed any ethical problems, Alito responded only that "it's not important that I'm here."
- Justice Thomas headlined a 2010 fundraiser for the National Association of Broadcasters, a lobby group that represents radio and television broadcasters.
- Justice Thomas was a featured speaker at the 2009 fundraiser for the Heritage Foundation.
- Justice Thomas has reportedly help solicit funds for the restoration of a seafood cannery in Pin Point, Georgia, where Clarence Thomas's mother once worked. Justice Thomas reportedly enlisted the financial assistance of Texas-based real estate developer and financier of conservative causes Harlan Crow. Crow has invested approximately $3 million on the project, which includes a museum dedicated to the history of the cannery with a tribute to Justice Thomas' legacy.

The guidelines contained in the Code exist to ensure that the public has faith that judicial decision-making is based on the facts and the law, not politics and outside interests. Their intent is to uphold the integrity and independence of the judiciary by demonstrating that those meting out justice are scrupulous in staying free of even the appearance of outside influence or bias. Public confidence in the judiciary suffers when our nation's highest court appears not to be governed by the same clear ethics rules that apply to all other judges. The Year-End Report's dismissal of calls for ethics reform exacerbates the public's perception, created by some justices' careless behavior, that the Supreme Court considers itself above the law.

We strongly believe that the formal adoption of the Code of Conduct would go far to renewing the American people's confidence in the integrity of our nation's highest Court. While there is legislation pending in Congress that would require the application of the Code to Supreme Court justices, we strongly urge you to work with the other justices to take the simple step of formally adopting the Code of Conduct and render those legislative proposals unnecessary.

Sincerely,

Louise M. Slaughter
Member of Congress

Christopher S. Murphy
Member of Congress

Earl Blumenauer
Member of Congress

Bruce L. Braley
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