

# A Proposal for Supreme Court Ethics Self-Discipline\*

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Thank you very much. I appreciate the welcome and being here. This is a gathering of law students and law professors. And so that means that we all have a favorite Federalist Paper. I have always been partial to No. 57. Federalist Paper No. 57 proclaims that “[t]he aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place,” and this is the important part, “to take the most *effectual precautions* for keeping them virtuous whilst they continue to hold their public trust.”<sup>1</sup> This passage addresses concerns about leadership of our new kind of government and the risk of individual or collective self-aggrandizement at the expense of the masses, notwithstanding the extraordinary checks and balances in the proposed Constitution for the United States.

I have made a career, a good living overall, working in the quote unquote “effectual precautions” industry.<sup>2</sup> I retired last year from the U.S. Department of Justice Office of Legislative Affairs as mentioned in my introduction. My portfolio primarily concerned issues of public integrity, freedom of information, election law, ethics, professional responsibility, among other matters. As mentioned also, I was previously Director of Investigations and Enforcement and Deputy Chief Counsel

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\* This transcript has been edited for clarity and readability. Minor revisions have been made to reflect the author’s prepared remarks while preserving the substance and intent of the original comments.

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1. THE FEDERALIST NO. 57 (James Madison) (emphasis added).
2. *Id.*

for the House of Representatives Committee on Ethics. I supervised the Lobbying Disclosure Act<sup>3</sup> and the Honest Leadership and Open Government Act<sup>4</sup> implementation as counsel for the Clerk of the House of Representatives. And as mentioned, I've worked additionally for the Federal Election Commission. In 2023, I was detailed by the Department of Justice to work as Ethics Counsel in the Office of Vice President Kamala Harris.

But my background is just to show that I know something about the issue. It's really a digression from my point, which is that ethical behavior among our nation's leaders and consequences for their misconduct was a concern referenced at the very outset of the formation of our system of government. The public and civic culture of the United States is based on the notion that public officials should always perform their duties in the public interest. High expectations about the behavior of public officials are deeply ingrained within the framework and fabric of the laws and operations of governance in our country.

Ethical behavior has long been measured in the country not just by the imposition of consequences for misconduct, but also by the perceptions of the nation's citizens. It is not enough that an official be held accountable or exonerated. Rather, the issue is that the public must never doubt that the official has been improperly influenced or could be improperly influenced in conducting their official duties. This perception of corruptibility is a threat to our system of government because public faith and trust are the foundations of a democratic government.

Language in the Constitution reflects the high expectations Americans had about the conduct of its leaders. If you look at it, it says a lot about ethics and effectual precautions. The Constitution begins with the words "We the People."<sup>5</sup> These words signify that all government authority, whether exercised by elected or appointed officials, is ultimately derived from, and accountable to the American people. It does not stop there. Proceed to Article I, Section 5—concerning the Legislative Branch. It says, "Each House [referring to the Senate and House of Representatives] may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the

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3. 2 U.S.C. §§ 1601–14.

4. Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735.

5. U.S. CONST. pmb1.

Concurrence of two thirds, expel a Member.”<sup>6</sup> Consider how remarkable this is. Persons elected by the citizens, by the people, may be effectively unelected by representatives of other citizens. Not for no reason, but “for disorderly Behaviour.”<sup>7</sup>

Article II, Section 1 commands that the President take an “Oath or Affirmation,” swearing or affirming that they “will faithfully execute the Office of President of the United States, and will to the best of [their] Ability, preserve, protect and defend the Constitution.”<sup>8</sup> It also commands that the President “take Care that the Laws [of Congress] be faithfully executed.”<sup>9</sup> This is also an attempt at accountability. The offices of legislator and President have built-in term limits, of two years, four years, or six years, which are effectual precautions to keep officeholders virtuous if they want to stay in office. These articles further provide that the President and other officers “*shall* [it is a command] be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>10</sup> Our foundational document refers to, and anticipates and addresses, the danger of bribery.

Now this leaves the Judicial Branch—what does Article III say about that? It says that “judicial Power . . . shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”<sup>11</sup> And “Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.”<sup>12</sup> This is a mandate in the Constitution that Justices may hold office only during “good Behaviour.”<sup>13</sup> We will come back to the courts shortly.

But first, I want to point out that, within this framework, we have in the United States a very highly developed ethics infrastructure. In our multi-government system, nearly every government is bound by ethics laws and rules, from the smallest towns to every county, city, and state government, as are the agencies and committees that make up those governments. Not only for the executives, but also for local

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6. U.S. CONST. art. I, § 5, cl. 2.
  7. *Id.*
  8. *Id.* art. II, § 1, cl. 8.
  9. *Id.* art. II, § 3.
  10. *Id.* art. II, § 4 (emphasis added).
  11. *Id.* art. III, § 1.
  12. *Id.*
  13. *Id.*

legislators and local government employees. The regulations are imposed by those bodies themselves, as well as by overarching state and federal laws. They make up many forms: laws requiring public disclosure, open meetings, mandatory ethics training, financial asset and income disclosure, laws prohibiting misuse of public resources, strict limitations on outside income, and restrictions on gifts, bribes, and gratuities. Enforcement comes from the government in the form of prosecutors and investigators, but also from licensing bodies, and from oversight from courts and legislators, and from newspapers, television, and bloggers.

The nation's ethics infrastructure covers not only public officials, but also private individuals. Our lawyers—some of you will be lawyers pretty soon—must maintain ethical standards and belong to bar associations that themselves carry out investigations and audits, impose discipline, including the possibility of removal from the practice of law. The same for accountants, doctors, pharmacists, social workers, and our other professionals. Contractors can be debarred from public contracts. Based on the model set forth in the Constitution, it is not surprising that we have imposed ethical standards and conduct for persons who care for our pets and who work in our schools.

Indeed, for the same act of behavior, a public official potentially can be removed from office, fined, jailed, audited, disbarred, prohibited from public office and from contracts, subject to loss of professional license, and be sued civilly. And that is in addition to being subject to public reprobation. I have met civil society reformers from all over the world. They envy our system. They are amazed that even those who are the most wealthy and powerful, and represented by the finest lawyers, are accountable and subject to many multilayered regulatory systems and penalties.

Turning back to our constitutional structure, I can tell you that Congress has acted on and implemented mechanisms for addressing misconduct by its own members. The committee I worked for, the House Committee on Standards of Official Conduct, now called the House Committee on Ethics, was created in 1967 to create a uniform and consistent system for congressional self-discipline.<sup>14</sup> Before that

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14. See JACOB R. STRAUS, CONG. RSCH. SERV., 98-15, HOUSE COMMITTEE ON ETHICS: A BRIEF HISTORY OF ITS EVOLUTION AND JURISDICTION 2 (2025), [https://www.congress.gov/crs\\_external\\_products/RL/PDF/98-15/98-15.27.pdf](https://www.congress.gov/crs_external_products/RL/PDF/98-15/98-15.27.pdf) (“Prior to the creation of the House Committee on Standards of Official Conduct in

time the House still addressed matters of misconduct, but they did so on an ad hoc basis.<sup>15</sup> In fact, the first instance dates back to 1798,<sup>16</sup> when Roger Griswold of Connecticut attacked Matthew Lyon of Vermont with a hickory walking stick.<sup>17</sup> Mr. Lyon responded with a pair of fireplace tongs.<sup>18</sup> This followed accusations of cowardice during the Revolutionary War and the spitting of tobacco juice, and for two weeks the House debated expulsion resolutions, but a two-thirds majority was not achieved.<sup>19</sup> But now there is a formalized ethics process, with a non-partisan Ethics Committee—the only one in the House of Representatives. The 1967 formation of the Committee coincided with the adoption of a Code of Official Conduct<sup>20</sup> as well as a Code of Ethics for Government Service, the latter of which governs the entire Executive Branch as well as Congress.<sup>21</sup> Subsequently, the House added a separate Office of Congressional Ethics (now renamed the Office of Congressional Conduct),<sup>22</sup> as well as its own Inspector General.<sup>23</sup>

Turning to the Executive Branch, the checks on behavior are numerous. Every federal department and agency from the Department of Defense to the Marine Mammal Commission is subject to Inspector General investigations, Government Accountability Office audits, Department of Justice prosecution, congressional oversight, Office of

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the 90th Congress (1967–1968), no uniform mechanism existed for self-discipline in the House of Representatives.”).

15. *See id.* at 2 (“In the period preceding the creation of the Committee . . . investigations into alleged wrongdoing by Members and staff of the House were dealt with in an ad-hoc fashion.”).

16. Stephen M. Rochford, Jr., *A Case Study of Disorderly Behavior and Congressional Self-Discipline*, 26 WHITTIER L. REV. 869, 883 (2005).

17. Paul S. Gillies, *Ruminations: The Trial of Matthew Lyon*, 37 VT. BAR J. 7, 15 n.2 (2011).

18. *Id.*

19. Rochford, Jr., *supra* note 16.

20. *See* STRAUS, *supra* note 14, at 5–6.

21. *Id.* at 2 (citing Code of Ethics for Government Service, H.R. Con. Res. 175, 85th Cong., 72 Stat. B12 (1958)).

22. *Id.* at 18 (“On March 11, 2008, the House adopted H.Res. 895 to create the Office of Congressional Ethics (OCE).”).

23. *See* JACOB R. STRAUS, CONG. RSCH. SERV., OFFICE OF THE HOUSE OF REPRESENTATIVES INSPECTOR GENERAL (2025), <https://www.congress.gov/crs-product/IF11024> (“As part of the reform efforts, the House created an Inspector General (IG) to provide periodic reports to the House leadership on audits of House officers.”).

Special Counsel enforcement, General Services Administration and Merit Systems Protection Board review, and public information requests. And we have an entire federal agency dedicated to regulating the codes of ethics; and that's the Office of Government Ethics that was created under President Jimmy Carter in response to the Watergate scandal.<sup>24</sup> There are laws governing ethics, disclosure, hiring, firing, purchasing, and for uniform procedures to carry out core agency functions, and this is in addition to quadrennial executive orders on ethics commitments made by the presidents. Codified in the ethics codes for government service are many provisions, but there are a few particular principles that I want to highlight here: one, that no person in government should "dispens[e] of special privileges or favors to anyone" and two, that they "must never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."<sup>25</sup>

Now we can finally turn to the Supreme Court. We now have, as mentioned by the panel of judges earlier, effective November 2023, a code of conduct.<sup>26</sup> These are meaningful rules in this code of conduct. They address commitments to the integrity of the rule of law; they address the need for the avoidance of impropriety and for the need of impartiality, as well as instructions concerning extrajudicial conduct, and political activity.

Codes of ethics, however, are not uncommon. The American Mini Pig Association has one.<sup>27</sup> As does the United Kingdom Tibetan

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24. See Loretta Santacrose, *The Impact of the Ethics in Government Act of 1978*, 12 COLONIAL LAW. 11, 11 (1982); *Remarks on Signing Into Law the Ethics in Government Act of 1978*, AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/remarks-signing-into-law-the-ethics-government-act-1978> (last visited Mar. 25, 2026).

25. Code of Ethics for Government Service, H.R. Con. Res. 175, 85th Cong., 72 Stat. B12 (1958), <https://ethics.house.gov/manual/code-of-ethics-for-government-service-2/>.

26. CODE OF CONDUCT FOR JUSTICES OF THE SUPREME COURT OF THE UNITED STATES (Nov. 13, 2023), [https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices\\_November\\_13\\_2023.pdf](https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf) [hereinafter SUPREME COURT CODE OF CONDUCT].

27. *Owners Code of Ethics*, AM. MINI PIG ASS'N, <https://americanminipigasociation.com/owners/owners-code-of-ethics/> (last visited Nov. 10, 2025).

Spaniel Association.<sup>28</sup> As well as the International Brotherhood of Magicians and the Society of American Magicians.<sup>29</sup> There are even ethics principles associated with the Official Ultimate Elvis Tribute Artist Contest,<sup>30</sup> right here in Memphis. And kids' soccer teams have codes of conduct.<sup>31</sup> Not just for the players, but for the officials,<sup>32</sup> and also for the parents at the games.<sup>33</sup> Remember Lehman Brothers? They had a code of conduct.<sup>34</sup> Remember ENRON?<sup>35</sup> Their code of conduct is more than 100 pages long. Now, I am not making light of these organizations for the fact that they have codes of ethics. And I am not trying to diminish the importance of ethical standards. They are critical. It is, however, just one part of the puzzle.

What am I getting at? Let's take a look at the Supreme Court's rules. Let's consider Canon 3, titled: "A Justice Should Perform the Duties of Office Fairly, Impartially, and Diligently."<sup>36</sup> It states within it that "[a] Justice should disqualify himself or herself in a proceeding in which the Justice's impartiality might reasonably be questioned, that

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28. *The Tibetan Spaniel Association General Code of Ethics*, TIBETAN SPANIEL ASS'N., <https://tibetanspanielassoc.co.uk/tsa-code-of-ethics/> (last visited Nov. 10, 2025).

29. *Joint I.B.M. and S.A.M. Ethics Statement*, INT'L BHD. OF MAGICIANS, <https://www.magician.org/pdf/JointIBMAAndSamEthics.pdf> (last visited Nov. 10, 2025).

30. *2025 Ultimate Elvis Tribute Artist Contest Official Rules and Guidelines*, GRACELAND, [https://assets.speakcdn.com/assets/2597/ultimate\\_official\\_rules\\_and\\_guidelines\\_draft\\_copy.pdf](https://assets.speakcdn.com/assets/2597/ultimate_official_rules_and_guidelines_draft_copy.pdf) (last visited Oct. 20, 2025).

31. See, e.g., *Alliance Code of Conduct*, ALL. SOCCER CLUB, <https://www.alliancesoccerclub.com/about-us/code-of-conduct/> (last visited Nov. 10, 2025); *Code of Conduct*, KENSINGTON SOCCER CLUB, <https://www.kensingtonsoccer.org/code-of-conduct> (last visited Nov. 10, 2025).

32. See, e.g., *Coaches Code of Conduct*, UNION CITY YOUTH SOCCER LEAGUE, <https://ucysl.org/coaches-code-of-conduct/> (last visited Nov. 10, 2025).

33. See, e.g., *Parents Code of Conduct*, KINGS HAMMER, <https://kingshammer.com/parents/parents-code-of-conduct/> (last visited Nov. 10, 2025); *Code of Conduct*, GALAXY SOCCER CLUB, <https://galaxysc.com/club/26831> (last visited Nov. 10, 2025).

34. *Lehman Brothers Code of Ethics*, <https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1533&context=yyps-documents> (last visited Nov. 10, 2025).

35. *Enron Code of Ethics*, FBI, <https://www.fbi.gov/history/artifacts/enron-code-of-ethics> (last visited Nov. 10, 2025).

36. SUPREME COURT CODE OF CONDUCT, *supra* note 26, at 1.

is, *where an unbiased and reasonable person who is aware of all relevant circumstances would doubt that the Justice could fairly discharge his or her duties.*<sup>37</sup> Thus, under the Supreme Court's rules and commentary, the "reasonable person" is the Justice judging their own case.<sup>38</sup> I am not going to make an argument here concerning self-dealing, but I will point out that the difference between the Supreme Court ethics rules and that of the Congress and that of the Executive Branch, is the existence in the other branches of rules enforcement bodies.

And finally, that's what I'm here to talk about. In my view, the Supreme Court should consider creating for itself its own office and process for self-discipline. This is not to disparage proposals for laws imposing enforceable rules on the Court or an attempt to opine on the contours or constitutionality of any laws that Congress may try to impose on the Court. Attempts at reform by statute are all well and good. However, a self-disciplinary body is important in the Court itself. Not only would it be consistent with constitutional instruction regarding the good behavior of Justices and the examples already in place in the other branches, but it also would be a response to the growing attention on the judiciary which brought us here today.

In-house self-discipline would communicate the Court's own willingness to be responsive to public expectations. It would demonstrate the Court's own willingness to hold itself to account as an institution for the conduct of its own members. Self-discipline would also not be an intrusion by the other branches of government, which the courts have sedulously resisted. With its own mechanisms for ethics administration, the Court could trust its own process and address its own very justifiable doubts about selective prosecutions or political persecution.

What would this process look like? I propose a bifurcated system in which the Court would separate investigative and adjudicative functions to provide for independence and objectivity of both. It is a regulatory and law enforcement norm that a combination of investigative and adjudicative functions creates a real or perceived bias during the investigative process. The same entity should not act as investigator or prosecutor, and as a grand jury and a trial jury, all at once. This separation of functions is on display in the mechanisms established within

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37. *Id.* at (B)(2) (emphasis added).

38. *See id.*

the Legislative and Executive Branch models. And my suggestions, far from being very inventive, draw from those models that already exist.

For the decision to initiate an investigation, the Court can create its own Ethics Board with multiple members, non-partisan of course, who are appointed by the court, and which would review submissions of allegations concerning misconduct by Justices of the Supreme Court. This office would review complaints and allegations and carry out a review limited to determining whether a reasonable basis exists to conclude that a non-trivial violation has occurred of the Supreme Court's own rules. This panel should have at least eight members, and a vote of a supermajority (three-fourths of all members) should be required to move forward with any complaint. Why the supermajority? Because this would address concerns about political influence or favoritism. Who should serve on this panel? This would be up to the Court, but it could be law professors or bar association leaders appointed by the Court following the submission of applications to serve. Alternatively, the Court could appoint a panel to serve ad-hoc for specific complaints. In all cases, panelists would be obligated to act impartially and to not be influenced by politics.

If a finding of a "reasonable basis" is made, the matter would proceed next to the Supreme Court's own Ethics Commission. This entity would be responsible for investigating the allegations, including gathering records and witness statements—using compulsory means if necessary. This entity would function like a multi-member body such as an administrative board. The Court would decide who would serve. It could be made up of current or former state or federal judges. The mission of this panel would be clear: to determine whether there is probable cause to believe a violation of the Supreme Court's own ethics rules has occurred, and then make a report with recommendations to an adjudication panel.

How would adjudication work? Members of the Supreme Court who are not the subject of the investigation or a witness in the investigation could serve on this panel. It would review the evidence and findings; it would seek additional information if it desires; and it would hold hearings if it wants; and then make a final determination as to whether a violation has occurred. Consistent with due process and the norms for investigations and adjudications, every step of this process would be undertaken under procedural rules established by the Court. These rules would be an essential and vital part of this framework so

that there would be confidence by Justices subject to investigation that their matters are being handled fairly and consistently. A framework for these rules could be modeled based on the rules used elsewhere.

What would be some of the procedural rules? Minimum standards for the submission of complaints, such as a requirement that complaints be sworn and include credible accounts by persons with direct knowledge of events. An opportunity for the subject of investigation to review the complaints and witness statements and to provide a factual response or to argue that the rules of the Court are not implicated. Of course, the right of representation by legal counsel would be permitted. Not only for investigatory subjects, but for witnesses. Disclosure to the subject of the investigation of investigative files should be mandatory, including the complaint itself, and any information that is exculpatory. The mechanics of the process would be determined by the Court, but the necessary principle is that due process be honored and that cases are reviewed using consistent standards.

In addition, since a disciplinary review is a quasi-judicial activity, it would be appropriate to provide a respondent with the ability to challenge the eligibility of a particular member of one of the reviewing panels on the grounds that they may not be impartial. This is a well-established principle.

There should be a statute of limitations. The breadth and scope are up to the Court to determine. However, keep in mind that members of the Supreme Court sometimes serve for decades. Must they maintain documentation of every financial transaction they undertook during that time? Must they be held accountable by the Court for their conduct prior to being confirmed? These are matters the Court must decide. The House of Representatives, for example, has decided for itself that it shall not investigate any alleged violation that may have occurred before the third previous Congress (six years).

The proposal I have laid out derives from self-discipline processes of other institutions and is consistent with formal and informal suggestions from the Court and elsewhere. Would it be awkward and uncomfortable for Justices to sit in judgment of their colleagues? Presumably, yes. But this is not an argument against them doing so; and they might actually prefer this to the assessment by some independent body that exists outside of the Court itself. Already, members of Congress must assess the behavior and make determinations about their colleagues whom they serve with on committees and that they see on

the floor of the House and Senate and whose collaboration and agreement is needed to secure passage of legislation. Yet, the institution of Congress has deliberated and resolved scores of such matters over its history.

Nor do I think that internal self-discipline is meaningless or toothless just because a Justice has life tenure. The admonishment and judgment of peers would have enormous influence on preventative behavior, as well as lead to revisions that may be needed to the Court's own ethics rules to prevent unintentional wrongdoing in the future. The Court could decide to refer a matter to an Executive Branch law enforcement agency, or to the House of Representatives for consideration of impeachment. Findings of the self-disciplinary bodies of the Senate and House have led to resignations in advance of public reprobation or formal removal proceedings.

And who is to say the Court may not do more? Article III provides that all "judicial Power" of the United States "shall be vested" in the Supreme Court.<sup>39</sup> How expansive is this "judicial Power?" We know that in addition to the general power to decide cases are ancillary powers to punish for contempt of court, and authority to make their own rules of proceedings in the courtroom to prevent abuse, oppression, and injustice.<sup>40</sup> Judges already have the authority to appoint masters and other investigators, to order protection of property and persons, and to admit and disbar attorneys.<sup>41</sup>

Thus, it is well-established that courts may make rules essential and inherent to the function of the Court. Rules attendant to the faith and confidence of the public in courts are essential to their functioning. The Court can find within itself capacity to meet the constitutional mandate of "good Behaviour."<sup>42</sup>

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39. U.S. CONST. art. III, § 1.

40. *See, e.g.*, *Chambers v. NASCO, Inc.* 501 U.S. 32, 43 (1991) ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates. These powers are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" (citations omitted)).

41. *See id.* at 41 ("[T]he Court has held that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it.").

42. U.S. CONST. art. III, § 1.

Circling back to our premise, the end goal is not mere compliance with specific rules, but for public officials, all public officials, to have a clear understanding and deep commitment to the principles that strengthen the public's trust in the legitimacy of the institutions of our government of the people. I want to thank the organizers for putting together this important conference. Thank you.