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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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February 13, 2012

The Honorable John Roberts
Chief Justice of the United States
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Dear Chief Justice Roberts:

We write to follow up on your discussion of ethics issues and the Supreme Court in the 2011 Year-End Report on the Federal Judiciary (hereinafter Year-End Report). We appreciate your effort to provide greater clarity about the Supreme Court's adherence to financial regulations and the Judicial Conference's Code of Conduct for United States Judges (hereinafter Code of Conduct).

Last fall, the Judiciary Committee held an important hearing entitled "Considering the Role of Judges Under the United States Constitution." We were honored to have Justices Scalia and Breyer participate in a lively and educational conversation. Senator Durbin posed several questions concerning financial and ethics restrictions. The response was similar to your clarification in the Year-End Report which implies that Justices of the Supreme Court do follow the Code of Conduct which binds lower court judges. We write today to request greater transparency about the internal resolutions the Court has adopted to address ethical issues.

On page six of the Year-End Report, you noted that the Members of the Court adopted "an internal resolution" in 1991 which stated that they agreed to follow the Judicial Conference's regulations on gifts and outside income, honoraria, and employment, which apply to other federal judges. Thank you for providing us with a copy of the resolution. We request that the Court make this internal resolution cited in the Year-End Report public, just as it did with its Statement of Recusal Policy in 1993. If there are any other Court resolutions of this nature, we suggest they be released as well.

As you noted in your Year-End Report, there have been a number of calls recently to make the Code of Conduct binding on the Court. You indicated that "the Code remains the starting point and a key source of guidance for the Justices as well as their lower court colleagues." As you point out, since the Code may not answer all ethics considerations, the Court, like all other federal judges, may also consult judicial opinions, treatises, scholarly articles, and disciplinary decisions. Since the Court already appears to follow the Code in practice, why not adopt a resolution, similar to the 1991 resolution, stating that Members of the Court abide by the Code of Conduct?

Because we have a high regard for the Supreme Court and its Members, we emphasize that we do not intend to question or impugn the ethics of any individual Justice or the Court itself by making these requests. We have worked for many years to increase openness and transparency in government, and we hope to increase public trust and confidence in all of our institutions, including the Supreme Court. We firmly believe that full disclosure of the Court's rules and its processes can only lead to greater confidence in the Court, and we look forward to working with you and the other Members of the Court to achieve this goal.

Sincerely,



RICHARD J. DURBIN
United States Senator



PATRICK LEAHY
Chairman



SHELDON WHITEHOUSE
United States Senator



AL FRANKEN
United States Senator



RICHARD BLUMENTHAL
United States Senator