

THE ETHICALLY CHALLENGED SUPREME COURT

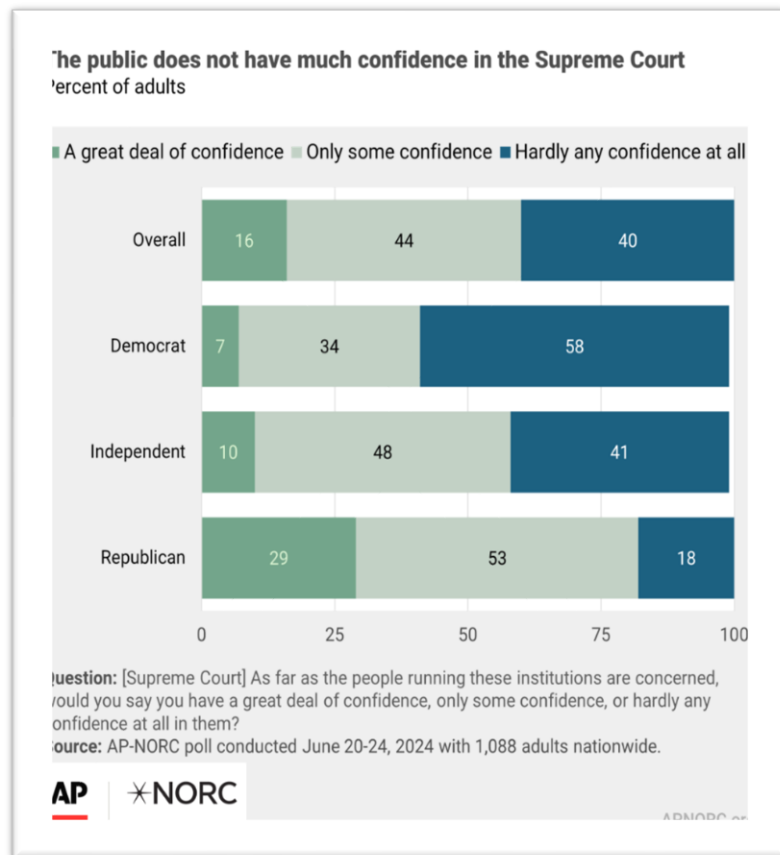
The judiciary has historically enjoyed more public trust than the legislative and executive branches of the federal government, as Americans have long believed that, unlike politicians, judges make their decisions based on legal reasoning rather than politics. That is no longer the case. Trust in the Supreme Court has sunk to historically low levels in response to recent decisions.

The two justices who have been the most controversial in recent years are also the two who are most likely to retire during the next administration. Samuel Alito, New Jersey's conservative addition to the Court, was nominated to the bench by President George W. Bush in 2006 and is 74 years old. Clarence Thomas was nominated by President H.W. Bush in 1991 and is 76 years old. So, whoever wins the White House this election may be able to appoint younger justices to the Court that will tip the ideology of the bench for another generation. Donald Trump has already appointed three justices to the Supreme Court which significantly impacted personal rights of Americans. **In short, the Supreme Court is on the ballot this election.**

JUDICIAL CONFIDENCE IN DECLINE:

- Low overall confidence:
 - According to a June 2024 AP-NORC poll, only 16% of U.S. adults have "a great deal" of confidence in the Supreme Court.
 - A Gallup poll from September 2023 found that 41% approve of the Court's job performance, close to the record low of 40%.
- Reasons for low confidence:
 - Controversial decisions, particularly the 2022 Dobbs decision overturning Roe v. Wade.
 - Perception that the Court is too conservative (39% in a 2023 Gallup poll).
 - Ethics concerns and scandals involving some justices.
 - Belief that justices are guided by their own ideologies rather than serving as an independent check.

- Concerns about specific issues:
 - Low confidence in the Court's handling of abortion (67%), gun policy (67%), presidential power and immunity (66%), and election/voting cases (63%).
- Historical context:
 - Current confidence levels are near or at historic lows in multiple surveys.
 - The decline has been particularly sharp since 2020.



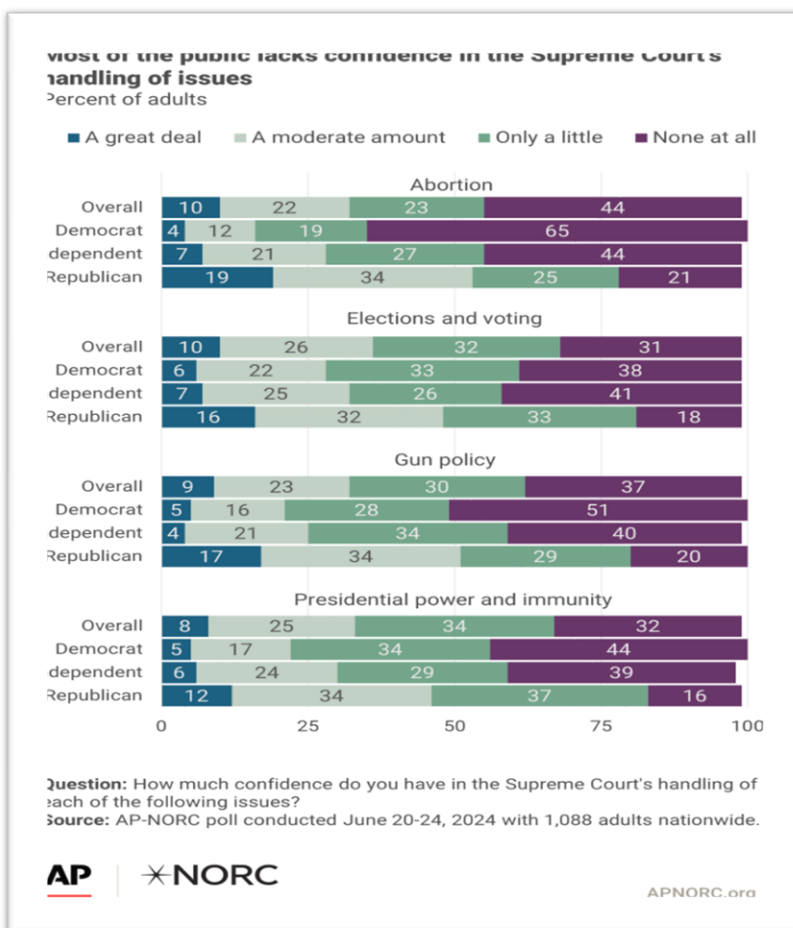
This low public confidence is seen as problematic for the Court's legitimacy and the rule of law, potentially affecting compliance with its decisions and overall trust in the judiciary.

REASONS FOR ERODING CONFIDENCE:

Several cases on sensitive issues have contributed to the decline in public confidence because the outcomes are perceived to be based upon the political ideology of the Justices as opposed to legal reasoning. In particular, the opinions in these cases ignore or overturn long standing legal precedence. Further, the opinions themselves, although lengthy, are criticized for sloppy legal reasoning and lame historical analysis. The conservative majority, long proponents of “original intent” ignore original intent when reaching their decision to reach a calculated outcome. None more exemplifies this issue then the court’s decision and opinion written by Justice Alito in *Dobbs v Jackson Women’s Health Organization* (2022):

- Dobbs v. Jackson Women's Health Organization* (2022):

- This decision overturned *Roe v. Wade*, eliminating the constitutional right to abortion.



- It led to a significant drop in trust and confidence in the Court, especially among Democrats and independents.

- Polls showed that about 60% of Americans disapproved of overruling *Roe*.

- Cases involving presidential power and immunity:

- *Trump v United States* – in which certain actions by a president are wholly immune from criminal prosecutions, essentially erasing the concept of no man is above the law.

- Gun policy cases:

- *New York State Rifle and Pistol Assn v. Bruen*, the Court twisted the text of the Second Amendment and misrepresented the history of firearm regulations in England, the colonies, and this country to justify invalidating virtually all state regulation of gun possession. The decision entirely ignored the harm to human life that it will cause, as well as the relevant history of firearms regulation and outright prohibition,

- Election and voting cases:

- *Moore v Harper*, the Court is considering the bizarre notion that state legislatures are uncontrollable by state courts in deciding the manner of elections.
- Contributing Factors:
 - Decisions perceived as politically motivated:
 - A majority of Americans (63% in one poll) believe the Supreme Court is mainly motivated by politics rather than impartial legal reasoning.
 - Issues related to leaking of opinions and results known by lobbying groups prior to decisions being released
 - Ethical violations, questionable conduct of Justices
 - Lack of accountability by Justices and perceived arrogance on the part of Justices

The Dobbs decision is highlighted as a particularly significant turning point, after which trust in the Court plummeted to its lowest point in at least 50 years. The perception that the Court is advancing a "far-right agenda" and that its scholarship is often questionable has further eroded public confidence. Additionally, concerns about some justices' relationships with wealthy ideological allies have contributed to the decline in trust.

THE ETHICAL QUAGMIRE OF THE COURT:

Leaks of decisions and access to Justices:

There have been several controversies and concerns regarding lobbying access to Supreme Court justices and leaked decisions:

1. Lobbying efforts targeting justices:
 - Rev. Rob Schenck led "Operation Higher Court," recruiting wealthy Christian couples to befriend and lobby Supreme Court justices on issues like gun rights and abortion.
 - The Supreme Court Historical Society has been used as a way for donors and interest groups to gain access to justices at events.



2. Alleged leaks of decisions:

- Rev. Schenck claimed he learned of the 2014 *Burwell v. Hobby Lobby* decision and its author (Justice Alito) days before it was publicly announced.
- In 2022, a draft of the *Dobbs v. Jackson Women's Health Organization* decision overturning *Roe v. Wade* was leaked to Politico about two months before the official release.
- In 2024, a draft decision in *Moyle v. United States* was accidentally posted on the Supreme Court website briefly.

3. Concerns about ethics and influence:

- Relationships between some justices and wealthy ideological allies have raised questions about potential conflicts of interest.
- The use of amicus briefs, particularly by groups like the U.S. Chamber of Commerce, has been seen as a form of lobbying the Court.

4. Impact on Court's legitimacy:

- These incidents have contributed to declining public confidence in the Supreme Court.

- Legal experts warn that leaks are "enormously destructive" to the Court's deliberative process and undermine its decision-making.

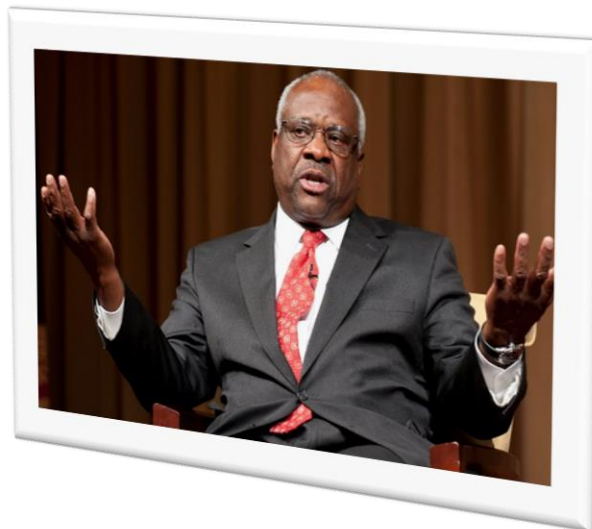
The controversies highlight tensions between desires for transparency and the Court's need for confidentiality in deliberations, as well as concerns about undue influence on the judicial process.

Ethical Violations by Justices:

There have been allegations of ethical violations against both conservative and liberal Justices, but the degree of violations most definitely rests on the conservative side of the bench, with two Justices in particular, Samuel Alito and Clarence Thomas.

The ethics violations alleged against Clarence Thomas:

- Accepting millions of dollars' worth of undisclosed gifts over two decades, totaling approximately \$4.2 million to \$6 million.
- Failing to disclose numerous luxury vacations, private jet flights, and yacht trips provided by billionaire Harlan Crow and other wealthy donors.
- Not reporting gifts of transportation on his financial disclosure forms, which is required by law.
- Accepting and failing to disclose private jet trips in May 2017, March 2019, and June 2022.
- Failing to disclose private jet and yachting portions of 2019 trips to Indonesia and Santa Rosa, California, estimated to be worth at least \$500,000.
- Accepting and not disclosing VIP passes to professional and college sporting events.
- Receiving undisclosed stays at luxury resorts in Florida and Jamaica.
- Having a standing invitation to an exclusive golf club without proper disclosure.



- Attending Koch network donor summits without disclosure, including a private jet trip in 201
- Receiving benefits through his membership in the Horatio Alger Society from wealthy friends, some of whom had business before the court.
- Accepting a rent-free home for his mother without proper disclosure.
- Receiving private school tuition for a person he considered "like a son" without disclosure.
- Obtaining an RV through a loan that he allegedly never paid back.

These allegations have raised significant concerns about potential conflicts of interest and violations of judicial ethics rules, leading to calls for investigations and stricter ethics regulations for Supreme Court justices.

The ethics violations alleged against Samuel Alito:

1. Accepting a luxury fishing trip to Alaska in 2008 from billionaire Paul Singer without disclosing it on his annual financial disclosure forms.
2. Failing to disclose the private jet flight provided by Singer for the Alaska trip, which could have cost over \$100,000 if chartered.
3. Not recusing himself from cases involving Singer's hedge fund that came before the Supreme Court after the trip.
4. Accepting and not disclosing a trip to Rome in 2022, paid for by Notre Dame's Religious Liberty Initiative, which included transportation, lodging, and meals.
5. Potentially violating federal law by not disclosing gifts as required, particularly the private jet flight.
6. Failing to recuse himself from at least 10 cases involving Paul Singer's interests that came before the Supreme Court after the 2008 trip.



7. Allegedly knowing the outcome of the 2014 *Burwell v. Hobby Lobby* case before it was officially announced, as reported by the New York Times.
8. Attending a dinner with conservative donors where the Hobby Lobby case outcome was allegedly discussed, raising questions about improper disclosure of court decisions.

These allegations have raised concerns about potential conflicts of interest, transparency, and adherence to judicial ethics rules for Supreme Court justices.

Failure to Recuse:

There are several instances where critics claim Justices Alito and Thomas should have recused themselves:

For Justice Clarence Thomas:

1. Issues related to the 2020 election and January 6th events, due to his wife's involvement in efforts to overturn the election results.
2. Cases involving companies or individuals who provided him with undisclosed gifts or benefits.
3. Claims about **Ginni Thomas** have been made that relate to Justice Clarence Thomas's ethics and calls for his recusal due to:
 - Political activism: Ginni Thomas has been actively involved in conservative politics, which has raised concerns about potential conflicts of interest for Justice Thomas.
 - Efforts to overturn 2020 election results: Texts revealed that Ginni Thomas urged then-White House Chief of Staff Mark Meadows to pursue efforts to overturn the 2020 election results. 2020 election controversy: Texts revealed that Ginni Thomas urged then-White House Chief of Staff Mark Meadows to pursue efforts to overturn the 2020 election results. This led to calls for Justice Thomas to recuse himself from cases related to the 2020 election and January 6th events, especially when the Supreme Court was deciding whether Trump White House documents could be released to the House January 6th Committee.



FrontLine: Clarence and Ginni Thomas: Politics, Power and the Supreme Court (full documentary) | [Click on image to play video](#)

- Potential conflicts of interest: Ginni Thomas's connections to various conservative organizations and donors have raised questions about potential influence on Justice Thomas's work on the Court. For example, her receipt of a \$25,000 payment from conservative activist Leonard Leo in 2012 for polling services coincided with an organization Leo was affiliated with filing an amicus brief in a voting rights case before the Supreme Court that same year.
- Shared conservative vision: The Thomases are described as pursuing a shared conservative vision, with Ginni Thomas being active in far-right politics. This alignment has led to concerns about Justice Thomas's impartiality on certain issues.
- Participation in luxury trips: Ginni Thomas has accompanied Justice Thomas on numerous undisclosed luxury vacations provided by wealthy donors. While not directly her actions, her presence on these trips has contributed to the ethics concerns surrounding her husband.

- Involvement with conservative groups: Ginni Thomas's connections to various conservative organizations and donors have raised questions about potential influence on Justice Thomas's work on the Court.
- Appearance of impropriety: The couple's close ties to conservative causes and figures have led to concerns about the appearance of impropriety and potential conflicts of interest, even if no direct influence is proven.

Ginni Thomas has denied that her activism impacts her husband's work, stating she does not discuss details of her political activities with him. However, the perception of potential influence and the lack of clear ethical guidelines for Supreme Court justices have continued to fuel controversy and calls for reform. These claims have led to increased scrutiny of Justice Thomas's ethics and calls for him to recuse himself from cases that might involve his wife's political activities or connections, particularly those related to conservative causes and the 2020 election aftermath.

For Justice Samuel Alito:

1. Cases involving Paul Singer's hedge fund interests after Alito accepted a luxury fishing trip to Alaska from Singer in 2008.
2. At least 10 cases involving Paul Singer's interests that came before the Supreme Court after the 2008 trip.
3. The upcoming case CFPB v. the Community Financial Services Association of America (CFSA), due to Alito's connection with Paul Singer, who holds significant investments in companies overseen by the CFPB.
4. Cases related to the January 6th insurrection and presidential immunity, due to flags associated with the "Stop the Steal" movement being flown at his properties.
 - a. Just like Clarence Thomas, Justice Alito has courted controversy based upon actions by his spouse, Martha-Ann Alito, which has raised questions about his impartiality and calls to recuse himself. Those controversies center around several incidents:
 - b. Flag dispute: Following the 2020 U.S. presidential election, Martha-Ann Alito was involved in a dispute with neighbors over political yard signs. This escalated to the Alitos flying an upside-down American flag outside their Virginia home in 2021, which some interpreted as support for the "Stop the Steal" movement. Confrontation with neighbors: Martha-Ann Alito allegedly had heated confrontations with neighbors over anti-Trump signs. This included accusations of her spitting at a neighbor's car and using profanity during a verbal altercation.
 - c. Pride flag comments: In a secretly recorded conversation, Martha-Ann Alito expressed frustration about having to look at a Pride flag in her neighborhood. She stated her desire to fly a "Sacred Heart of Jesus flag" in

response and discussed creating her own flag with the Italian word for "shame".

- d. Unrepentant attitude: In recordings, Martha-Ann Alito appeared unapologetic about the flag controversies, referring to her critics as "feminazis" and threatening libel lawsuits against the press.
- e. Ethical concerns: These incidents have raised questions about potential conflicts of interest for Justice Alito, particularly regarding cases related to the 2020 election aftermath and the January 6th Capitol attack. Some have called for Justice Alito to recuse himself from such cases.
- f. Justice Alito's response: Defending his wife's autonomy: Alito has emphasized that his wife is an "independently minded private citizen" who "makes her own decisions." He stated, "She makes her own decisions, and I honor her right to do so." Uncompromising tone: Analysts have noted that Alito's responses have been unapologetic and unconciliatory, which some argue could be more damaging to the court's reputation than the initial controversy. In recorded conversations, Alito expressed concerns about increasing polarization in the country and blamed the press for contributing to negative perceptions of the court.

CODE OF ETHICS FOR SCOTUS:

Current status:

- There is not an enforceable code of ethics for the Supreme Court of the United States.
- The Supreme Court issued its first formal code of conduct in November 2023. However, this code lacks any enforcement mechanism.
- Unlike lower federal courts, which have been subject to a binding code of conduct since 1973, the Supreme Court has historically operated without a formal, enforceable ethics code.



- The lack of enforcement for the Supreme Court's ethics rules has drawn criticism and calls for reform from various quarters, including President Biden and some Democratic lawmakers.
- Some justices have expressed openness to an enforceable ethics code:
- Justice Ketanji Brown Jackson stated she doesn't "have any problem with an enforceable code" and is "considering supporting it as a general matter."
- Justice Elena Kagan has publicly advocated for an enforcement mechanism, suggesting a panel of lower court judges could evaluate ethics complaints against justices.
- Critics argue that the current situation, where justices largely self-regulate their ethical conduct, is inadequate given the court's power and influence.



[Justice Kagan elaborates on potential Supreme Court ethics code enforcement](#)
[Lawrence Hurley](#)

In summary, while there is growing discussion and some support for an enforceable ethics code for SCOTUS, as of now, no such binding and enforceable code exists.

Proposed Corrections:

President Biden has proposed a number of SCOTUS reforms. Biden emphasized that these reforms aim to restore trust and accountability to the Court and American democracy. However, these proposals would face significant challenges in passing through a divided Congress and any success is likely determined in the upcoming election.

Proposed corrections to address ethics challenges at the Supreme Court have been suggested:

1. Enforceable Code of Ethics:

- Biden criticized the current ethics code adopted by the Court in November 2023 as "weak and self-enforced." President Biden has called for Congress to establish an enforceable ethics code for the Supreme Court justices. This code would require justices to:
 - Disclose gifts
 - Refrain from public political activity
 - Recuse themselves from cases where they or their spouses have financial or other conflicts of interest.
- Justice Elena Kagan has advocated for adding an enforcement mechanism to the existing ethics code adopted in November 2023.

2. External Enforcement Panel:

- Kagan proposed creating a panel of lower court judges, appointed by Chief Justice John Roberts, to address ethics accusations against the justices.
- This panel would evaluate complaints, dismiss frivolous claims, and examine legitimate concerns.

3. Term Limits:

- President Biden has proposed implementing term limits for Supreme Court justices. Biden proposes ending lifetime appointments for Supreme Court justices. Instead, he suggests 18-year term limits for justices. Under this system, each president would appoint a new justice every two years.

4. Constitutional Amendment:

- Biden suggested a constitutional amendment to limit the justices' recent decision on presidential immunity.

5. Congressional Action:

- The New York City Bar Association concluded that Congress has the constitutional power to enact "binding and enforceable ethics rules" for Supreme Court justices.
- They cited the Necessary and Proper Clause in Article I, the impeachment clause in Article II, and Article III's "good Behavior" provision as legal bases for congressional action.

6. Improved Disclosure and Recusal Practices:

- There are calls for more stringent disclosure requirements for gifts, travel, and potential conflicts of interest.
- Clearer guidelines for when justices should recuse themselves from cases.

7. Independent Oversight:

- Some propose creating an independent body to oversee the Court's ethical practices, separate from the justices themselves.

8. Strengthening Existing Code:

- Suggestions to strengthen the language in the current Code of Conduct, making it more aligned with federal law and the code for lower courts.

9. Constitutional Amendment on Presidential Immunity:

- Biden proposes a constitutional amendment called the "No One is Above the Law Amendment."
- This amendment would clarify that the Constitution doesn't grant immunity from federal criminal indictment, trial, conviction, or sentencing to a former president.
- This proposal is in response to the Supreme Court's recent decision regarding presidential immunity.

These proposals aim to address the perceived lack of accountability and transparency in the Supreme Court's ethical practices, particularly considering recent controversies involving several justices. Biden in making his recommendations emphasized that these reforms aim to restore trust and accountability to the Court and American democracy. However, the search results note that these proposals face significant challenges in passing through a divided Congress, especially with the upcoming election.



Arguments In Favor of SCOTUS Reforms:

The main arguments in favor of proposed Supreme Court reforms are:

1. Restoring public trust and confidence:
 - Biden argues that recent ethics scandals and controversial decisions have undermined public confidence in the Court.
 - The reforms aim to strengthen the integrity and independence of the Court.
2. Enhancing accountability:
 - The binding code of ethics would require justices to disclose gifts, refrain from public political activity, and recuse themselves from cases with conflicts of interest.
 - This would bring Supreme Court justices in line with ethics rules that apply to other federal judges.
3. Limiting undue influence:
 - Term limits would ensure more regular changes to the Court's membership.
 - This would reduce the chance of any single presidency radically altering the Court's makeup for generations.
4. Improving predictability:
 - Term limits would make the timing of Court nominations more predictable and less arbitrary.
5. Aligning with other democracies:

- Biden notes that the U.S. is the only major constitutional democracy giving lifetime appointments to its highest court justices.
6. Upholding the rule of law:
 - The proposed constitutional amendment on presidential immunity aims to reinforce the principle that no one, including former presidents, is above the law.
 7. Addressing specific ethical concerns:
 - The reforms respond to recent controversies involving undisclosed gifts and potential conflicts of interest among some justices.
 8. Modernizing the Court:
 - The proposals aim to update the Court's practices to better reflect contemporary ethical standards and democratic principles.

These arguments reflect Biden's stated goal of strengthening American democracy and protecting the rule of law by reforming what he sees as problematic aspects of the current Supreme Court system.

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[How The Supreme Court Is Destroying Its Own Legitimacy - Alliance for Justice \(afj.org\)](#)

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[Supreme Court Sees New Call for Reform From Prominent Bar ...](#)

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[Supreme Court Ethics Controversies: All The Scandals That Led Biden To Endorse Code Of Conduct](#)

[Biden is backing major Supreme Court reforms. Here's what they ...](#)

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