



**FOR IMMEDIATE RELEASE – May 20, 2022**

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## **The Need for Supreme Court Recusals: Justice Thomas and Supreme Court Proceedings Related to Jan. 6 Statement by the New York City Bar Association**

The United States Supreme Court enjoys a unique position in our nation, and justly so. From the earliest days of our republic, it has not only been the court of last resort in interpreting federal laws but has also been the arbiter of the validity of federal and state governmental actions under our nation’s Constitution. To perform this role for more than two centuries in a complex and changing society, the Court has had to maintain the highest standards of judicial independence and integrity so that its judgments are respected by every American.

To ensure judicial independence, Article III of the Constitution provides that Supreme Court justices “shall hold their Offices during good Behavior,” so that they are not subject to the changing preferences of voters or other political influence. However, even with that guarantee of life tenure, public confidence in the integrity and impartiality of the judiciary also depends upon ensuring the independence of all justices from improper influence or bias in their decisions, or even the appearance of such bias.

In fact, this expectation of judicial impartiality is embodied in federal law. Under 28 U.S.C. section 455, “[a]ny justice, judge, or magistrate judge of the United States” is required “to disqualify himself in any proceeding in which his impartiality might reasonably be questioned,” or under circumstances in which their spouse is known by the judge or justice “to have an interest that could be substantially affected by the outcome of the proceeding.” In addition, the Code of Conduct for Federal Judges<sup>1</sup> sets forth binding standards for all judges of the federal District Courts and Courts of Appeals; however, the explicit standards embodied in this Code of Conduct do not apply to Supreme Court justices. As such, the nation must rely upon the good faith and judgment of each justice in deciding whether his or her impartiality “might reasonably be questioned” in connection with a pending Supreme Court proceeding.<sup>2</sup>

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<sup>1</sup> CODE OF CONDUCT FOR UNITED STATES JUDGES, [https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#:~:text=\(1\)%20A%20judge%20should%20be,decorum%20in%20all%20judicial%20proceedings](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#:~:text=(1)%20A%20judge%20should%20be,decorum%20in%20all%20judicial%20proceedings).

<sup>2</sup> Moreover, in relying on a justice’s good faith and judgment as to recusal decisions, the public has no right or ability to know why a justice did or did not recuse. See, e.g., SUPREME COURT ETHICS: THE NEED FOR

Recent disclosures relating to one particular justice, Associate Justice Clarence Thomas, have called into serious question the efficacy of this self-monitoring. The reported actions<sup>3</sup> of Virginia Thomas, the wife of Justice Thomas, in connection with efforts to delegitimize the 2020 presidential election, the events leading to the January 6<sup>th</sup> insurrection and the actions on that day make clear that Justice Thomas's impartiality might reasonably be questioned in matters relating to those events, regardless of his actual knowledge of his wife's communications or actions.

For this reason, we believe it was improper for Justice Thomas to participate in the Court's decision in *Trump v. Thompson*, 142 S. Ct. 680 (Jan. 19, 2022), relating to the production of White House records that included his wife's communications.<sup>4</sup> Similarly, it would be improper for Justice Thomas to participate in any future matter before the Court that relates to issues in which his wife was involved because his "impartiality might reasonably be questioned" under 28 U.S.C. section 455, regardless of his actual knowledge of his wife's actions.

For the reasons stated above, we urge Justice Thomas to promptly recuse himself from any participation in proceedings of the Supreme Court relating to the events of January 6 at the Capitol, any planning for those events or any other efforts to overturn the results of the 2020 Presidential election.

Sheila S. Boston  
President<sup>5</sup>

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GREATER TRANSPARENCY IN A JUSTICE'S DECISION TO HEAR A CASE at 35 (Sept. 2012), <https://www2.nycbar.org/pdf/report/uploads/20072211-SupremeCourtEthics--TheNeedforGreaterTransparencyinaRecusal.pdf> ("Congress has long been recognized as having the power under the law to decide when a Justice should withdraw, likewise, it ought to have the power to compel a statement of the reasons for a decision to withdraw or not.").

<sup>3</sup> Ryan Nobles, Annie Grayer, Zachary Cohen and Jamie Gangel, *First on CNN: January 6 committee has text messages between Ginni Thomas and Mark Meadows*, CNN (updated March 25, 2022), <https://www.cnn.com/2022/03/24/politics/ginni-thomas-mark-meadows-text-messages/>; Bob Woodward and Robert Costa, *Virginia Thomas urged White House chief to pursue unrelenting efforts to overturn the 2020 election, texts show*, Washington Post (March 24, 2022), <https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts/>.

<sup>4</sup> Erin Snodgrass and Oma Seddiq, *Clarence Thomas was the lone dissent in the Supreme Court's January order rejecting Trump's bid to withhold documents from the January 6 panel* (March 24, 2022), <https://www.businessinsider.com/clarence-thomas-only-justice-dissent-in-trump-january-6-bid-2022-3>

<sup>5</sup> Approved by President Boston on May 17, 2022, prior to the end of her term as City Bar President.