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December 20, 2023

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

Dear Chief Justice Roberts:

The Supreme Court is currently weighing whether to decide a critical question in *United States v. Trump*, a criminal case arising from former President Trump's role in the January 6th insurrection. Last week, the United States urged the Court to fast-track its consideration of "a fundamental question at the heart of our democracy": whether former President Trump is immune from charges of conspiring to obstruct the certification of the 2020 electoral vote and overturn the results of the election.¹ The Court has asked former President Trump to respond on an expedited basis—by today at 4:00 PM.

I write to urge you to take appropriate steps to ensure that Justice Clarence Thomas recuses himself from consideration of the petition for certiorari and any future proceedings in *United States v. Trump*, or otherwise provides the public an "explanation of [his] recusal decision"² showing how his participation comports with judicial ethics and federal law.

The federal recusal statute requires that any "justice, judge, or magistrate judge ... shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."³ In addition, recusal is required when a Justice "or his spouse ... is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; [or i]s to the judge's knowledge likely to be a material witness in the proceeding."⁴

¹ Petition for Writ of Certiorari at 2, *United States v. Trump* (No. 23-3228).

² See Letter from Supreme Court Justices to Richard J. Durbin at 2 (Apr. 25, 2023), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20Chairman%20Durbin%2004.25.2023.pdf>.

³ 28 U.S.C. § 455(a).

⁴ 28 U.S.C. § 455(b)(5).

In October, Justice Thomas followed this statute in recusing himself from participating in *Eastman v. Thompson*.⁵ That case concerned whether attorney-client privilege shielded emails by defendant John Eastman regarding strategies to overturn the 2020 election results.⁶ Eastman was a personal lawyer to former President Trump who received correspondence from Justice Thomas’s wife, Virginia (“Ginni”) Thomas, about efforts to overturn the election.⁷ In fact, Mrs. Thomas has been deeply involved in former President Trump’s attempt to overturn the most recent presidential election, including by attending the January 6th rally whose other attendees later stormed the Capitol,⁸ sitting on the board of an organization that led the “Stop the Steal” movement,⁹ and sending dozens of text messages urging White House Chief of Staff Mark Meadows to prevent certification of the election results.¹⁰

Given Mrs. Thomas’s involvement in challenging the 2020 election results, Justice Thomas’s impartiality in a related case “might reasonably be questioned,” giving rise, at a minimum, to an appearance of a conflict of interest.¹¹ Justice Thomas’s recusal in *Eastman v. Thompson* was therefore proper.

The same is true in *United States v. Trump*. Mrs. Thomas’s close interactions with senior Trump administration officials about overturning the 2020 election results—the very subject of the litigation—certainly creates circumstances where Justice Thomas’s “impartiality might reasonably be questioned.”

The Supreme Court’s recent adoption of a Code of Conduct only underscores the importance of recusal.¹² Although the Code very unfortunately does not provide any enforcement mechanism, it mirrors the statutory standard for recusal. In lieu of an enforcement mechanism, the Code states that Justices themselves “must bear the primary responsibility for requiring [appropriate] judicial behavior.”¹³ With trust in the Supreme Court near historic lows,¹⁴ the need for this judicial responsibility has never been higher. As the Chief Justice, it is incumbent upon you to assure that the Code is followed to “dispel the misunderstanding” that “Justices ... regard themselves as unrestricted by any ethics rules.”¹⁵

⁵ *Eastman v. Thompson*, No. 22-1138, 2023 WL 6379015 (U.S. Oct. 2, 2023).

⁶ Jacqueline Alemany et al., *Trump Lawyers Saw Clarence Thomas as Key to Stop Biden Electoral Count, Emails Show*, WASH. POST (Nov. 2, 2022), <https://www.washingtonpost.com/politics/2022/11/02/trump-clarence-thomas-emails/>.

⁷ *Id.*

⁸ Danny Hakim & Jo Becker, *Ginni Thomas Says She Attended Jan. 6 Rally*, N.Y. TIMES (Mar. 14, 2022), <https://www.nytimes.com/2022/03/14/us/politics/ginni-thomas-jan-6-rally.html>.

⁹ *Id.*

¹⁰ Bob Woodward & Robert Costa, *Virginia Thomas Urged White House Chief to Pursue Unrelenting Efforts to Overturn the 2020 Election, Texts Show*, WASH. POST (Mar. 24, 2022), <https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts/>.

¹¹ 28 U.S.C. § 455(a).

¹² U.S. SUP. CT., CODE OF CONDUCT FOR JUSTICES OF THE SUPREME COURT OF THE UNITED STATES (hereinafter CODE OF CONDUCT) (2023), https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf

¹³ *Id.* at cmt.

¹⁴ Megan Brenan, *Views of Supreme Court Remain Near Record Lows*, GALLUP (Sept. 29, 2023), <https://news.gallup.com/poll/511820/views-supreme-court-remain-near-record-lows.aspx>.

¹⁵ U.S. SUP. CT., CODE OF CONDUCT, *supra* note 12, at statement.

I urge you to ensure that Justice Thomas abides by federal statute and the Court's own Code of Conduct and recuses himself from participating in *United States v. Trump*. No proceeding could be graver than the prosecution of an attempt to undermine our sacred electoral process. Justice will be done only if such a case is heard by judges whose impartiality cannot reasonably be questioned.

Sincerely,

A handwritten signature in blue ink that reads "Richard Blumenthal". The signature is fluid and cursive, with the first name "Richard" being the most prominent part.

Richard Blumenthal
United States Senate