

118TH CONGRESS  
1ST SESSION

# H. RES. 402

Expressing the sense of the House of Representatives that the Justices of the Supreme Court should make themselves subject to the existing and operative ethics guidelines set out in the Code of Conduct for United States Judges, or should promulgate their own code of conduct.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2023

Ms. NORTON submitted the following resolution; which was referred to the Committee on the Judiciary

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## RESOLUTION

Expressing the sense of the House of Representatives that the Justices of the Supreme Court should make themselves subject to the existing and operative ethics guidelines set out in the Code of Conduct for United States Judges, or should promulgate their own code of conduct.

Whereas section 455 of title 28, United States Code, establishes the circumstances under which Justices, judges, or magistrate judges of the United States shall disqualify themselves from a case;

Whereas under chapter 16 of title 28, United States Code (relating to complaints against judges and judicial discipline), the judicial circuits may prescribe rules and procedures for the conduct of proceedings under that chapter, including regarding complaint, investigative, and re-

view procedures for certain decisions of judges and magistrate judges of the United States not to recuse themselves from cases;

Whereas litigants can seek legal recourse through the United States courts to enforce section 455 of title 28, United States Code, and challenge the disposition of the underlying case, and complainants have administrative procedures under chapter 16 of title 28, United States Code, against a judge or magistrate judge of the United States, but there are no comparable enforcement mechanisms against the Justices of the United States;

Whereas the Judicial Conference of the United States adopted a Code of Conduct for United States Judges, which uses language identical to the relevant portion of section 455 of title 28, United States Code, that judges or magistrate judges of the United States must abide by when deciding whether to recuse themselves from a case, but the Code does not apply to Justices of the United States;

Whereas Justices of the United States are not bound by any written code of conduct;

Whereas Justices of the United States each have unreviewable authority to determine whether there is an appearance of bias, conflict of interest, or other ethical justification sufficient for withdrawal from hearing, partaking in deliberations in, or joining in the resolution of, a case or controversy;

Whereas the Federal Judicial Center has concluded that “balancing the duty to decide” with “the duty to disqualify” precludes judges from using recusal as an excuse to shirk their duties by avoiding difficult or unpleasant cases;

Whereas the Constitution vests judicial power in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish;

Whereas the separation of powers of the coordinate branches of government, as well as the independence of the judiciary, or the appearance of independence, may be compromised by extensive legislative or executive interference into that branch's functions;

Whereas James Madison argued in Federalist Paper Number 10 that “[n]o man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity”; and

Whereas the Supreme Court has acknowledged in *Republican Party of Minnesota v. White*, and reiterated in *Caperton v. A.T. Massey Coal Co.*, that “[t]he citizen’s respect for judgments depends . . . upon the issuing court’s absolute probity” and that “[j]udicial integrity is, in consequence, a state interest of the highest order”: Now, therefore, be it

1       *Resolved*, That it is the sense of the House of Rep-  
 2       resentatives that the Justices of the United States should  
 3       make themselves subject to the existing and operative eth-  
 4       ics guidelines set out in the Code of Conduct for United  
 5       States Judges, or should promulgate their own code of  
 6       conduct.

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