

United States Senate  
WASHINGTON, DC 20510-3905

June 7, 2024

The Honorable Samuel Alito  
Associate Justice  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

Dear Justice Alito:

Given your informative response to the letter I sent with Chairman Durbin on May 23, 2024, I wonder if you might be able to provide some information regarding your interview that appeared in the Wall Street Journal's editorial page on July 28, 2023. In that interview, you opined on questions related to Congress's authority over judicial, and more specifically Supreme Court, ethics concerns. The interview raised several problems.

The first problem I noted with that interview is that you were opining about a question that might come before the Court. As a member of the Judiciary Committee, I have seen each of the justices confirmed during my tenure on the Committee tell us in their confirmation hearings that such opining would be wrong. You were confirmed before my election, but the record of your confirmation hearing shows you saying it would be "improper" and a "disservice to the judicial process" for a Supreme Court nominee to comment on issues that might come before the Court.

The second problem I noted was that you were not just generally opining on some random matter out in the juridical ecosystem that might someday come before the Court; you were opining on a matter related to a specific ongoing legal dispute. In effect, you were offering a legal theory supporting one side's argument against the other's in that ongoing dispute. Indeed, shortly after that interview, your words were quoted by attorneys involved in that ongoing dispute to buttress their side's arguments.


The third problem I noted was that the interview in the Wall Street Journal editorial page was conducted by an attorney actively representing a person on one side of that ongoing dispute. That lawyer had a separate case in front of you at the time, raising the danger of *ex parte* contact on that separate matter, but to this point the lawyer was then engaged in challenging our Committee's investigative work into the facts about right-wing billionaires funding justices' lifestyles. From the outside, it looks like the attorney recruited you to prop up his legal case against our investigation, using the interview to advance the argument he and several colleagues were making. I would add that the argument in question had not fared well at the Judiciary Committee's mark-up of our Supreme Court ethics bill, and your interview supporting the argument appeared within days. The interview seemed both solicited and timed for effect in the ongoing dispute.

The final problem I noted was that you seem to have a personal stake in the dispute upon which you were opining. As noted above, the Judiciary Committee is undertaking investigative work into the facts about right-wing billionaires funding certain Supreme Court justices' lifestyles. The interviewing lawyer's client is a subject of, and has been sought as a witness in, that Committee investigation. The lawyer's client is your friend and sometime traveling companion, Leonard Leo, which gives you a personal stake protecting your friend. More directly, the gravamen of the Committee's investigation is Leo's role in orchestrating undisclosed billionaire gifts to certain justices, including undisclosed gifts to yourself.

It thus appears that you offered an improper opinion regarding a question that might come before the Court; did so in the context of a known ongoing legal dispute involving that precise question; did so at the behest of an interviewer who as a lawyer represented a client in that ongoing dispute; and did so to the benefit of his client, your personal friend, and to the benefit of yourself, as a recipient of undisclosed gifts that are the subject of our investigation. Any information you would care to provide shedding light on this chain of events would be appreciated.

I understand you may find this letter temerarious, but I note that the Supreme Court is the only place in all of government where issues of this nature have no place or means of investigation or resolution; hence the direct approach. So far, my questions regarding these events seem to have disappeared into a black hole of indifference.

Respectfully,

  
Sheldon Whitehouse  
United States Senator