

Congress of the United States

Washington, DC 20515

May 10, 2024

The Honorable Bob Conrad
Secretary of the Judicial Conference
One Columbus Circle, NE
Washington, DC 20544

Dear Judge Conrad:

We write to share our profound concern about egregious conflicts of interests undermining the integrity of the judiciary – and how the Judicial Conference of the United States (“the Conference”) is allowing judges with these conflicts to rule on cases affecting the financial well-being of millions of Americans. In particular, we are troubled that the Judicial Conference has blessed the participation of a federal appellate judge with a significant conflict of interest in a case that affects the financial security of Americans.

The case, *Chamber of Commerce v. Consumer Financial Protection Bureau*, is pending before the U.S. Court of Appeals for the Fifth Circuit.¹ The case involves a lawsuit by the U.S. Chamber of Commerce’s (“the Chamber”) and allied Wall Street trade associations seeking to block an important new rule by the Consumer Financial Protection Bureau (CFPB) that would protect consumers by limiting late fees charged by credit card companies.

This lawsuit is without merit and represents an obvious case of judge shopping by the Chamber.² But equally troubling are recent reports that a judge on the panel hearing the case, Judge Don Willett, “reported stock holdings in [Citigroup,] one of the nation’s largest credit card companies....The annual disclosure report that Willett signed in May 2023 shows two separate accounts in which he or a member of his family owned Citi shares in 2022.”³ The disclosure indicated that the two holdings together could be worth \$30,000.⁴

These stock holdings create a clear conflict of interest. Citigroup is an influential member of several of the trade groups that filed the lawsuit, including the Chamber, the American Bankers Association, and the Consumer Bankers Association.⁵ Citigroup, which is the nation’s second-

¹ Chamber of Commerce of the United States of America, et al., v. Consumer Financial Protection Bureau, No. 24-10248 (5th Circuit, 2024).

² Letter from Senators Elizabeth Warren and Sheldon Whitehouse to U.S. Chamber of Commerce CEO Suzanne Clark, April 14, 2024, https://www.warren.senate.gov/imo/media/doc/letter_to_chamber_of_commerce_recreditcardlatefeerule.pdf.

³ Politico, “Judge overseeing suit over Biden’s cap on credit card fees disclosed Citi shares,” Michael Stratford, April 8, 2024, <https://subscriber.politicopro.com/article/2024/04/judge-overseeing-suit-over-bidens-cap-on-credit-card-fees-disclosed-citi-shares-00151161>.

⁴ *Id.*

⁵ Politico, “Judge overseeing suit over Biden’s cap on credit card fees disclosed Citi shares,” Michael Stratford, April 8, 2024, <https://subscriber.politicopro.com/article/2024/04/judge-overseeing-suit-over-bidens-cap-on-credit>

largest credit card issuer by loans, told shareholders in February 2024 that the CFPB rule “would reduce credit card fee revenues.”⁶ And, as *Politico* reported, an analysis by Goldman Sachs found that the CFPB rule would affect Citigroup most of all the big banks, leading to an estimated 6.4% impact on its 2025 earnings per share.⁷

Judge Willet has refused to recuse himself from the case despite this clear conflict of interest.⁸ To make matters worse, the Judicial Conference’s Committee on Codes of Conduct, in an April 16, 2024 letter to Judge Willett,⁹ all but gave its blessing to this ethically troubling decision. Indeed, the Committee seemed to encourage Judge Willet to adjudicate the case, suggesting that recusal could “needlessly delay[] the judicial process” and “create the appearance of a biased tribunal.”¹⁰

Federal ethics law and judicial ethics guidance require Judge Willet to recuse himself here; to the extent they do not in the Committee’s view, revisions of those laws and guidance are urgently needed.

The federal statute governing judicial disqualification provides that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”¹¹ Specifically, recusal is required when a judge “knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.”¹²

Ethics guidance issued by the judiciary echoes and expands upon this standard. The Code of Conduct for United States Judges repeats the statutory standard and adds that “‘financial interest’ means ownership of a legal or equitable interest, however small.”¹³ The Committee on Codes of Conduct provides additional guidance on the rightly stringent standards that should apply to conflicts of interest. The Committee has explained in an advisory opinion that “a judge must recuse if the company in which the judge owns stock could be substantially affected by the outcome of the proceeding.”¹⁴ This limitation applies even if a case might affect an industry

[card-fees-disclosed-citi-shares-00151161](#).

⁶ *Id.*

⁷ PYMTNTS, “Goldman: CFPB Late Fee Rules Will Hurt Citigroup the Most,” March 6, 2024, <https://www.pymnts.com/news/cfpb/2024/goldman-cfpb-late-fee-rules-will-hurt-citigroup-the-most/>.

⁸ Reuters, “CFPB loses new bid to get credit card fee rule case out of Texas,” May 3, 2024, <https://www.reuters.com/legal/transactional/cfpb-loses-new-bid-get-credit-card-fee-rule-case-out-texas-2024-05-03/>.

⁹ Letter from the Honorable Gerald Austin McHugh to the Honorable Don Willet, April 16, 2024, https://fingfx.thomsonreuters.com/gfx/legaldocs/dwvkebxnm/04172024cfpb_ethics.pdf.

¹⁰ *Id.*

¹¹ 28 U.S.C. 455.

¹² 28 U.S.C. 455(b)(4).

¹³ United States Courts, “Code of Conduct for United States Judges, Canon 3(C)(3)(c),” March 12, 2019, <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#c>.

¹⁴ United States Courts, “The Judicial Conference of the United States Published Advisory Opinion: Advisory Opinion 57,” February 2024 <https://www.uscourts.gov/file/78341/>. In a separate advisory opinion, the Committee explained that a judge’s “ownership interest in an *amicus* could result in disqualification . . . when the *amicus* is in the same industry as the party and the value of the industry stock generally could be substantially affected by the decision in the pending case.” United States Courts, “The Judicial Conference of the United States Published Advisory Opinion: Advisory Opinion 63, February 2024, <https://www.uscourts.gov/file/78341/> ; Immediately before

more generally. Indeed, a “judge who invests in a ‘sector’ or ‘industry’ fund . . . must recuse from a case involving that particular sector or industry if the outcome of the proceeding could substantially affect the value of the judge’s interest in the fund.”¹⁵ Even in the context of mutual funds, which are generally not considered to create an ownership interest in underlying stock, recusal may still be necessary where “the outcome of the litigation might affect the value of non-party companies in the same industry, whose stock the fund also holds.”¹⁶

Judge Willet’s financial interest in Citigroup meets the standards for mandatory recusal. As noted, analysts have labeled Citigroup as the bank that would be “hardest hit” by the CFPB’s rule, estimating the rule would reduce the company’s earnings per share by 6.4%.¹⁷ Citigroup has already disclosed to shareholders and the public, subject to criminal prosecution under SEC rules, that the CFPB proposal “would reduce credit card fee revenues.”¹⁸ It is clear that Judge Willet’s financial interest in Citigroup could be substantially affected by the outcome of this case.

Although the Committee’s letter recognized that recusal is required where “the outcome of the proceeding could substantially affect the value of the company’s stock owned by the judge or the judge’s family in the non-party,”¹⁹ it casts about excuses for not recusing, including saying that judges have “a duty to sit and hear assigned cases to completion, absent a legitimate basis for disqualification.”²⁰ The letter failed to mention that judges also have an “obligation to avoid investments that might result in frequent recusal,” including “narrow industry or sector funds.”²¹ No reasonable observer can deny that Judge Willet has a financial interest that could be substantially affected by the outcome of the CFPB case. Federal ethics law and judicial ethics guidance ought to bar him from adjudicating this case.

The Committee’s approval of Judge Willet’s role in the case suggests that significant judicial ethics reform is necessary. We have introduced legislation, the *Judicial Ethics and Anti-Corruption Act*,²² that would strengthen federal judicial ethics. That legislation would bar federal judges from owning individual stocks, radically reducing the likelihood of conflicts of interest

this quote, the Committee explained that the relevant “restriction applies to an ownership interest in *any* corporation, whether or not the corporation appears as an *amicus*.” *Id.*

¹⁵ *Id.*

¹⁶ United States Courts, “The Judicial Conference of the United States Published Advisory Opinion: Advisory, Opinion 106, March 2011, <https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02.pdf>.

¹⁷ PYMTNTS, “Goldman: CFPB Late Fee Rules Will Hurt Citigroup the Most,” March 6, 2024, <https://www.pymnts.com/news/cfpb/2024/goldman-cfpb-late-fee-rules-will-hurt-citigroup-the-most/>.

¹⁸ Citigroup, 2023 Annual Report, form 10-k, <https://www.citigroup.com/rcs/citigpa/storage/public/Citi-2023-Annual-Report.pdf>.

¹⁹ See Letter from the Honorable Gerald Austin McHugh to the Honorable Don Willet, p. 2, April 16, 2024, https://fingfx.thomsonreuters.com/gfx/legaldocs/dwvkebzxnvm/04172024cfpb_ethics.pdf.

²⁰ *Id.* This so-called “duty to sit” is not codified in federal law and does not trump the conflicts of interest and recusal requirements in 28 U.S.C. 455. While Chief Justice John Roberts has referenced a “duty to sit” in the context of the U.S. Supreme Court, no such argument for a duty can be made in a lower court where one judge can be freely substituted for another. See U.S. Supreme Court, “2011 Year-End Report on the Federal Judiciary,” report, December 31, 2011, <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

²¹ United States Courts, “The Judicial Conference of the United States Published Advisory Opinion: Advisory, Opinion 106, March 2011, <https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02.pdf>.

²² Judicial Ethics and Anti-Corruption Act of 2023, S. 1908, <https://www.congress.gov/bill/118th-congress/senate-bill/1908>.

without requiring recusal proceedings. It would also overhaul the recusal system, enhance judicial transparency, and establish real consequences for violations of federal ethics laws, including civil penalties, prohibitory injunctions, and expedited disqualification and impeachment processes.

While Congress should act swiftly to pass this legislation, the Judicial Conference should also reform its guidance on the conflicts of interest raised by judicial stock ownership, including by requiring judges to divest individual stock holdings. Senator Warren and Representative Jayapal wrote to Chief Justice John Roberts in October 2021, after reports that dozens of federal judges violated federal law and the Code of Conduct by “overseeing court cases involving companies in which they or their family owned [individual] stock,” raising concerns about the judgment and integrity of these judges and the effect of conflicts of interest on public confidence in the justice system. That letter also asked whether the Conference had done enough to establish and enforce ethics rules and uphold the integrity of the federal judiciary.²³ It plainly had not.

This case demonstrates that very little has changed in the years since. Judge Willett’s refusal - despite an obvious conflict of interest - to recuse himself from a case that affects the financial well-being of millions of Americans, and the role of the Judicial Conference in aiding and abetting this behavior – represent ongoing threats to the integrity of the judicial system.

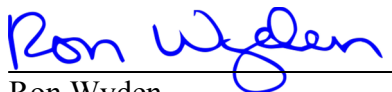
Sincerely,



Elizabeth Warren
United States Senator



Pramila Jayapal
Member of Congress



Ron Wyden
United States Senator



Jeffrey A. Merkley
United States Senator

²³ Letter from Senator Elizabeth Warren to Chief Justice John Roberts, October 14, 2021, <https://www.warren.senate.gov/imo/media/doc/2021.10.14%20Letter%20to%20Chief%20Justice%20on%20Judicial%20Ethics.pdf>.



Adam B. Schiff
Member of Congress



Katie Porter
Member of Congress