

Allegation of Supreme Court Breach Prompts Calls for Inquiry and Ethics Code

A minister's claim that a major contraception decision was prematurely disclosed through a secretive influence campaign underscores the court's lack of transparency and accountability.



By Jodi Kantor

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Lawmakers are demanding further investigation at the Supreme Court and renewing their calls for binding ethics rules for the justices, after allegations that a landmark 2014 contraception decision was prematurely disclosed through a secretive influence campaign by anti-abortion activists.

“The first step to recovery is to admit you have a problem,” Senator Sheldon Whitehouse, Democrat of Rhode Island, wrote on Twitter. “At SCOTUS, the problems run deep.”

A New York Times report published on Saturday chronicled yearslong efforts by the Rev. Robert L. Schenck, an evangelical minister and former anti-abortion leader, and donors to his nonprofit to reach conservative justices and reinforce anti-abortion views. In 2014, he said, he obtained advance word of the outcome and the author of the decision in *Burwell v. Hobby Lobby*, a major case about contraception and the religious rights of corporations.

That decision — like the one leaked this spring, overturning the right to abortion — was written by Justice Samuel A. Alito Jr. Mr. Schenck said he learned the Hobby Lobby details from a donor who had dined with Justice Alito and his wife. Both the justice and the donor denied sharing the information.

“We intend to get to the bottom of these serious allegations,” Mr. Whitehouse and Representative Hank Johnson of Georgia, who respectively lead the Senate and House Judiciary courts subcommittees, wrote in a joint statement.

The revelations underscored the lack of accountability mechanisms at the Supreme Court. Unlike other federal judges, the justices are not bound by a written code of ethics; legislation that would create one is pending in Congress.

“While there are many potential solutions, here’s one that the Court could adopt in one minute: OPERATE UNDER THE SAME ETHICS RULES AS EVERY OTHER FEDERAL JUDGE,” Senator Amy Klobuchar, the Minnesota Democrat and another member of the Judiciary Committee, tweeted in response to the Times report.

The new revelations came amid an investigation by the court’s marshal into the extraordinary leak of the draft opinion in *Dobbs v. Jackson Women’s Health Organization*, which overturned the constitutional right to an abortion, as well as uproar over the role of Ginni Thomas, the wife of Justice Clarence Thomas, in former President Donald J. Trump’s efforts to reverse the 2020 election results.

A month after Chief Justice John G. Roberts Jr. took the unusual step of ordering the leak investigation, Mr. Schenck sent him a letter saying he believed his information about the Hobby Lobby case was relevant to the *Dobbs* inquiry. Mr. Schenck said he had not gotten any response. When Mr. Whitehouse wrote to Chief Justice Roberts about Mr. Schenck’s organization, based on earlier reporting, the court sent a brief response that addressed few of the specifics.



The Rev. Robert L. Schenck, an evangelical minister and former anti-abortion leader, said he obtained advance word of the outcome and the author of the Supreme Court's 2014 decision in *Burwell v. Hobby Lobby*. Shuran Huang for The New York Times

Asked about the status of the leak investigation and why the court had not responded to Mr. Schenck, Patricia McCabe, a spokeswoman for the court, declined to comment.

Ed Whelan, the head of a conservative legal group who clerked for Justice Antonin Scalia, said on Twitter that, while the private breach alleged by Mr. Schenck was a different scenario, "It's long past time for Chief Justice to provide a report on what Dobbs leak investigation has uncovered."

Legal scholars say that how to regulate the Supreme Court is a riddle, because independence is part of its design. Even if both chambers of Congress agreed on legislation, and even if various separation-of-power debates were settled, the question of enforcement would remain because the court is by definition the highest authority.

"There's no oversight structure that creates rules for the justices and enforces the rules," Bruce A. Green, a law professor at Fordham University, said in an interview. "The fact that Roberts is the chief justice gives him certain administrative responsibilities, but he's not the boss of the other justices."

But other scholars and lawmakers said the Times investigation pointed to the need for new transparency rules. Mr. Schenck said that his "stealth missionary" operation was premised on the court's lack of firmly enforced rules. The court is more permeable than it looks, he said, describing how his group reached the justices, including through their faith, meals together and invitations to vacation homes.

Louis J. Virelli III, a professor at Stetson University College of Law, said in an interview that a law requiring the justices to disclose whom they meet with, especially parties who may have interests in a decision, would be constitutional, and it might restore some of the public's faith in the institution.

Though the nation's highest court is supposed to be self-policing, he said, "we're starting to see that the independence of the court is running up against public concern about its legitimacy."

He added, "When the public feels the justices aren't doing their part, the cost for the justices will be more transparency."

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