



November 5, 2019

United States Supreme Court
1 First Street NE
Washington, D.C. 20543

Justices Kavanaugh and Alito

Cc. Chief Justice Roberts:

I write today to request that you recuse yourself from three cases currently pending before the Court in light of serious concerns about your impartiality raised by your decision to pose for a photograph for social media with the leader of an organization that has filed amicus briefs in those cases.

On October 29, Brian Brown, the president of the National Organization for Marriage (NOM), [posted](#) on Twitter a photograph of himself standing alongside you in what appears to be a private meeting at the Supreme Court. Mr. Brown's organization has filed amicus briefs in three civil rights cases currently pending before the Court: *Bostock v. Clayton County* (17-1618), *Altitude Express v. Zarda* (17-1623) and *R.G. & G.R. Harris Funeral Homes v. EEOC* (18-107).

The Supreme Court has become deeply politicized in recent years, thanks to a series of rulings like *Shelby County v. Holder*, *Citizens United*, and *Rucho v. Common Cause* that have undermined basic tenets of our democracy for partisan advantage. The successful and unprecedented efforts by political branches to manipulate the size of the court for partisan purposes and your behavior, Justice Kavanaugh, during your confirmation hearings, have only deepened concerns about the politicization of the court. Your decision to meet privately with an activist who has filed amicus briefs with the court in three pending cases seems to confirm the worst fears of his critics.

As I'm sure you are aware from your previous service on lower courts, Canon 2(B) of the [Code of Conduct for Federal Judges](#) states that judges must take care to avoid the appearance of improper influence:

Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.



While the Code of Conduct unfortunately does not apply to the Supreme Court, each justice has an ethical duty to decide for themselves if recusal is necessary to avoid bias or the appearance of bias. In order to meet this duty, you must recuse yourselves from the three cases currently before the court for which the National Organization for Marriage has filed briefs. The fact that the Supreme Court does not have formal ethics rules is no excuse for behaving unethically.

The credibility and impartiality of the current Supreme Court is in tatters. Posing for photographs with the president of an advocacy organization that has filed briefs in matters pending before the court makes a mockery of Chief Justice Roberts' assertion that a judge's role is to impartially call balls and strikes. If you refuse to recuse yourselves, this incident will further illustrate the urgent need for structural reform of the Supreme Court in order to restore a Court that understands its role is to protect individual rights and our democracy.

A handwritten signature in cursive script that reads 'Aaron Belkin'. The signature is written in black ink and is positioned above a solid black horizontal line.

Aaron Belkin

Executive Director, Take Back the Court