



January 26, 2019

Office of the Circuit Clerk
United States Courts for the Tenth Circuit
c/o Office of the Circuit Executive
1823 Stout Street
Denver, Colorado 80257

To the Office of the Circuit Clerk for the Tenth Circuit United States Court of Appeals:

I hereby petition the judicial council for review of the Order issued by the Judicial Council of the 10th Circuit Court of Appeals in response to complaints Nos. 10-18-90038 through 10-18-90067, 10-18-90069 through 10-18-90107, and 10-18-900109 through 10-18-900122. Hereafter, I refer to this order as “the Order.”

I submit this petition as the complainant who filed complaint No. 10-18-90089. I intend to submit this petition as instructed in the Rules for Judicial-Conduct and Judicial-Disability Proceedings (hereafter referred to as the “Rules”), Rules 18 and 19, and in accordance of the stipulations in US Code Title 28, Part I, Chapter 16 (hereafter referred to as the “Act”).

I believe the Order was issued with numerous faulty premises, assumptions, and misinterpretations of the Rules and the Act. I summarize the reasons to review and reconsider the Order in the following five points:

1. The Rules and the Act do not require a complaint be considered while a subject judge remains on a court within the jurisdiction of a Judicial Council.
2. The Rules and the Act does not forbid a Judicial Council from considering complaints after a judge has left courts within the jurisdiction of a Judicial Council and calls on the Judicial Council to focus on “actions”, not judges.
3. The Law places no time limitations on complaints, and Rule 9 only justifies dismissal if addressing a complaint is “impracticable”, which is not the case in this matter.
4. A subject judge being elevated to the Supreme Court constitutes an “exceptional circumstance” as defined by Rule 2(b) and thereby justifies the Judicial Council using their discretion in regards to the Rules while considering these complaints.
5. A subject judge leaving a circuit court to join the Supreme Court of the United States does not constitute an “intervening event” as defined by Rule 11(e).

I will expand on these reasons in the remainder of this petition and then offer some concluding remarks, which I hope can be read and taken as seriously as my specific reasons for

review. If the Judicial Council chooses to deny my petition, I request that they provide an explanation for objecting to the reasons and correct my understanding of the Rules and the Act.

If the Judicial Council grants my petition, I request that the Judicial Council consider the other complaints that the order dismissed. Although I only submitted one of these complaints, in reading the others, I am disturbed by the detailed level of evidence supporting accusations of perjury; in my opinion, these complaints must also be adjudicated.

Should review be granted, I ask that the Judicial Council take one of the two following actions:

- A. Return this matter to the chief judge with directions to appoint a special committee under Rule 11(f).
- B. Given the exceptional circumstances of this case, the number and variety of complaints submitted against subject judge Brett Kavanaugh, and the overwhelming strength of evidence indicating misconduct, publicly issue a determination of misconduct that accomplishes as many of the following as seen fit:
 - o Formally censure Justice Brett Kavanaugh (as permitted by 28 U.S. Code § 354(a)(2)(A)(iii) of the Law).
 - o Formally reprimand Justice Brett Kavanaugh (as permitted by 28 U.S. Code § 354(a)(2)(A)(iii) of the Law).
 - o Order no cases be assigned to Justice Brett Kavanaugh on the Supreme Court (as permitted by 28 U.S. Code § 354(a)(2)(A)(i) of the Law).
 - o Request Justice Brett Kavanaugh voluntarily retire from the Supreme Court (as permitted by 28 U.S. Code § 354(a)(2)(B)(ii) of the Act and the “exceptional circumstances” provisions stated in the Rules).
 - o Refer your findings of misconduct to the Judicial Conference with a certification of determination for grounds of impeachment of Justice Brett Kavanaugh by the United States House of Representatives on the basis of multiple counts of perjury (as permitted by 28 U.S. Code § 354(b)(2), as defined in numerous other complaints).

The following five sections expand on each of my five reasons for review. The final, sixth section contains my concluding remarks.

1. The Rules and the Act do not require a complaint be considered while a subject judge remains on a court within the jurisdiction of a Judicial Council.

Section 3 of the Order states, “The Judicial Conduct and Disability Act covers judicial misconduct and provides procedures for handling misconduct complaints” (5).

On this point, I agree with the Order. I am drawing attention to this language, however, because this sentence indicates an acknowledgement by the Order that the Act in question is the only procedure for handling misconduct complaints. Therefore, if these procedures are not pursued, then there is no means for misconduct in a case to be addressed.

The apparent intention of those who drafted the Act was to ensure misconduct, when identified, was addressed. Although there are clear exceptions detailed in the Rules (which my ensuing points will address, in particular, the question of “intervening events”), let us be clear that the intention in drafting this law was for Judicial Councils to seriously examine and address as many legitimate complaints of misconduct as possible, and to do so in a non-prejudicial manner.

Because of the desire to address as many complaints as possible, it seems the drafters of the Act did not explicitly require a complaint only be considered while a subject judge remains on a court within the jurisdiction of a Judicial Council. That is because those who wrote the Act had the clear intention that as many cases of misconduct be investigated as possible.

Therefore, when the Order states, “As a result, §351(a) effectively precludes action against an individual who is no longer a circuit, district, bankruptcy, or magistrate judge,” (6-7), it is making an incorrect assumption about both the intent of the law and the law as written. To be clear, §351(a) of the Act states the following:

“Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.”

The Law as written does not state “a judge currently serving on the bench.” It does not state “a judge still presiding on a court.” It merely requires that the judge have at some point engaged in prejudicial conduct that impacts court business.

Court business can still be impacted in numerous ways after a judge leaves the bench. Say, for example, a judge takes bribes while conducting court business and then leaves the bench. Some of the business which she or he oversaw may be appealed, and the appellate court may conduct their business without knowing that the judge in question had accepted bribes. Additionally, given the importance of precedence in determining decisions, this type of misconduct can impact future court business. This hypothetical judge’s misconduct therefore *still* has an impact on court business, even though the judge is no longer serving on the bench. Whether or not the Judicial Council addresses the issue of the bribe, should it become known, could impact the course of a case as it moves through the courts.

In this instance, because Justice Brett Kavanaugh has risen to a higher court, his prior misconduct while a subject judge *does* still impact court business under the jurisdiction of the Act. As a Supreme Court judge, Justice Kavanaugh oversees and hears cases appealed by the circuit courts, which could have heavy implications for circuit court business. Additionally, any ongoing court business that was partially conducted under his tenure has the potential to have been impacted by his misconduct going forward—in particular, by his seemingly partisan nature and by his willingness to commit perjury.

The Order cites numerous cases in the paragraph on page 7 beginning, “Decisions from this and other circuits are consistent with this conclusion.” However, all cited complaints appear to involve cases in which the judge both was no longer on the bench *and* had no clear means to impact ongoing court business. The only cited case in which this discrepancy is not clear is one in which the complainant him/herself decided that because the subject judge no longer applied to the jurisdiction of the Judicial Council (No. 10-17-90008). The 10th Circuit in this case therefore never seriously weighed the law and considered whether it applied to former judges. Therefore, this case cannot serve as precedence, regardless of the manner in which the judge left the bench.

The Order also notes the requirement from Rule 11(e) that the subject judge still “perform judicial duties” and then says “those judicial duties must still fall within the jurisdiction of the Act.” To support this assertion, it cites the Breyer Report on the Act. The section of the Breyer Report that discusses these issues is Appendix E. However, nowhere in this Appendix do the authors state that judges must currently serve within the jurisdiction of the court. As far as I can tell, the Order appears to have produced this interpretation out of thin air. However, Section 8 of Appendix E (which relates to “intervening events”) does state the following:

“The statute does not expressly call for dismissal of complaints that are untimely or moot, except that section 352(b)(2) permits the chief judge to ‘conclude the proceeding’ if ‘action on the complaint is no longer necessary because of intervening events. Illustrative Rule 4(c)(4) fills that gap by calling for “dismissal” if “the complaint is otherwise not appropriate for consideration.” The commentary to Illustrative Rule 4 explains that this ground for dismissal “is intended to accommodate dismissals of complaints for reasons such as untimeliness . . . or mootness.”

This language clarifies that dismissal due to intervening events are intended to relate to reasons of “untimeliness” or “mootness.” Neither of these stipulations necessitate the judge currently serve on the bench. Consider again my prior hypothetical scenario. If a judge conducted court business while accepting bribes and that court business is then appealed, the misconduct remains both timely and relevant—not “moot.” Similarly, a judge rising to the Supreme Court does not render the misconduct moot or irrelevant, as her or his actions still have a bearing on the business of lower courts by overseeing their decisions. His past actions while a circuit judge also may impact the outcomes of cases partially litigated under her or his tenure. If anything, an elevation to the Supreme Court makes the past misconduct more timely and relevant—certainly not “moot.”

It is also clear that the authors of the Breyer Report simply never considered a scenario in which a judge with ongoing complaints was elevated to the Supreme Court while those complaints were being adjudicated. The Report reads as follows:

“The 1993 study found no significant issues surrounding untimeliness or mootness, and it is unlikely that any significant issue has arisen since then. . . Occasionally a complaint is dismissed as moot—because the judge complained against is no longer a judge—but this has yet to raise controversy.”

Clearly, all prior cases of a judge leaving the bench were not controversial, largely because those judges had not been promoted and had no apparent impact on the business of the court going forward. However, given the large number of complaints filed against Justice Kavanaugh despite many of us recognizing he may soon no longer qualify as a subject judge, many individuals *do* view this particularly situation as controversial. In fact, I would argue that it is a controversy unlike which the courts or any Judicial Council has ever seen. The authors of the Breyer Report simply did not conceive of this situation as a possibility and therefore failed to take the possibility into account while drafting their report. A report whose interpretations of the law failed to consider the most foundational circumstances of a complaint cannot and should not be used to dismiss that complaint. The Breyer Report therefore cannot apply to this situation, and the Order is mistaken for citing the report to make the determination of a dismissal.

For these reasons, the Order is incorrect in assuming that any individual who leaves the bench is precluded from the procedures laid out in the Act. The Order employs faulty reasoning and inappropriate sources to make its conclusion. Therefore, the Order must be reconsidered.

2. The Rules and the Act does not forbid a Judicial Council from considering complaints after a judge has left courts within the jurisdiction of a Judicial Council and calls on the Judicial Council to focus on “actions”, not judges.

Related to my prior point, nowhere in the Rules or the Act is the Judicial Council explicitly forbidden from considering a complaint after a judge has left courts within the jurisdiction. I cite many of the same reasons raised in Section 1 to justify this point—that the Act only stipulates a necessity for the misconduct to affect the business of the courts, that the authors of the Breyer Report could not even conceive of the current scenario surrounding these complaints.

However, I want to also draw attention to a provision of the Rules that the Order cites itself, Rule 4. Rule 4 reads as follows:

“A complaint under these Rules may concern the actions or capacity only of judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 USC § 363.”

Very clearly, Rule 4 says actions *or* the capacity of judges. In other words, *the actions* serve as the determinant for the validity and jurisdiction of a complaint. Because Justice Brett Kavanaugh committed these actions while still serving as a circuit judge, and because many of these complaints (including mine) were filed before his elevation to the Supreme Court, these actions remain well within the jurisdiction of the Judicial Council. It is therefore clear that the Judicial Council has the authority to still investigate and make determinations about the actions referenced in these complaints.

To be clear: Rule 4 does not say “actions or capacity only of current judges of the United States court of appeals...” and if it did, that distinction would serve of importance. Rather, Rule

4 asks that the complaint concern the actions, and the actions took place within the jurisdiction of the Judicial Council.

The Order therefore is incorrect in assuming the Judicial Council “no longer has the power or jurisdiction under the Act to review [Kavanaugh’s] conduct” for there simply is no language stipulating a limitation of reviewing complaints to current judges, nor that complaints must be disregarded once a judge leaves the circuit court. The Judicial Council, in fact, does possess that power.

The failure of the Judicial Council to act on such power leaves no clear recourse to address the misconduct in question, for the actions took place within their jurisdiction alone. The failure to act thereby renders misconduct permissible. As noted in the first paragraphs of Section 1, making misconduct permissible through unforeseen loopholes is not the intention of the Act. The intention of the Act was to review as many credible accusations of misconduct by judges serving on a circuit court as possible. Based on that intention alone, any reasonable person can expect a review and determination to be issued by the Judicial Council on prior actions of a former judge, assuming the misconduct still can impact the business of the courts within the jurisdiction (which, as noted in Section 1, in these circumstances, it can).

The Order misinterpreted Rule 4 of the Rules and decided that judges determine jurisdiction, not “actions”, even though Rule 4 clearly cites “actions” as the matter the Judicial Council can rule on. Therefore, the Order employs faulty reasoning and must be reconsidered.

3. The Law places no time limitations on complaints, and Rule 9 only justifies dismissal if addressing a complaint is “impracticable”, which is not the case in this matter.

The Order appears to assume that the Act has time limitations on complaints. Although it does not explicitly raise this concern, it suggests it by noting the date that Justice Kavanaugh was elevated to the Supreme Court.

However, nowhere in the Act does it state that a complaint be filed within a particular timeframe—for example, no mentioning of reviewing within 1 year of service on a court within jurisdiction of the Judicial Council. Congress did not impose such a requirement because of an apparent intention to adjudicate as many cases of misconduct as possible. In the case of my complaint and others, complaints were filed while Justice Kavanaugh was on a circuit court. These complaints therefore are within the jurisdiction of a Judicial Council, for complaints were filed while he was on the circuit court for misconduct he committed while on the circuit court.

The Rules offer nothing resembling a time limitation on the Judicial Council’s ability to review a complaint, except when it is “impracticable.” Impracticable in this context relates to whether or not a ruling could be “accurate or fair” and makes no mentioning of jurisdictional concerns. Because both the misconduct and the complaint filing occurred while Justice Kavanaugh remained under the jurisdiction of a Judicial Council, it remains practicable to conduct a review in an accurate and fair manner. Justice Kavanaugh remains alive, well, and capable of defending himself, so he can be offered the opportunity to do so if needed.

The Order was issued with the faulty assumption that the passage of time prevents the Judicial Council from following procedures. Therefore, the Order must be reconsidered.

- 4. A subject judge being elevated to the Supreme Court constitutes an “exceptional circumstance” as defined by Rule 2(b) and thereby justifies the Judicial Council using their discretion in regards to the Rules while considering these complaints.**

The Rules that the Order cites states the following in section 2(b):

“(b) Exception. A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Committee on Judicial Conduct and Disability, or the Judicial Conference expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.”

To be clear: the purposes of the Act include adjudicating as many legitimate complaints of misconduct as possible.

In the commentary on this rule, it states the following:

“Rule 2(b) recognizes that unforeseen and exceptional circumstances may call for a different approach in particular cases.”

The possibility of a scenario in which a circuit judge conducts misconduct, receives complaints filed against him, and then rises to the Supreme Court was totally unimaginable to the public servants who drafted and have since interpreted these rules. This point is most clearly supported by the aforementioned Breyer Report (discussed under Section 1) which, need I remind you, stated the following:

“Occasionally a complaint is dismissed as moot—because the judge complained against is no longer a judge—but this has yet to raise controversy.”

This has yet to raise controversy! I repeat: “This has yet to raise controversy!” Well, right now, we are in the midst of quite a controversy, wouldn’t you say?

I hope you can appreciate my change of tone. That’s because, frankly, when reviewing the Rules and the Act related to this matter, Rule 2(b) should have jumped out at those issuing this Order. There quite possibly has never been a controversy of this magnitude brought before a Judicial Council. There has never been an instance in which a circuit judge was accused of perjury and partisanship, and then subsequently elevated to the Supreme Court.

I do not believe the Rules as written prevent a Judicial Council from reviewing, issuing a determination, and taking action on these complaints. However, because of Rule 2(b), the Judicial Council had the liberty to disregard any Rules they perceived or still perceive as preventing them from considering these complaints. They themselves note in their Order that the

accusations in these complaints are “serious” (9). In fact, they viewed these complaints as “serious” enough to still refer them to Congress. That alone indicates an exceptional quality to these complaints. I would argue that therefore, by its own admission, the Judicial Council can rely on Rule 2(b) to claim these circumstances as exceptional, unprecedented, and unforeseen. Therefore, it does have the authority to take action, regardless of whatever Rules it may perceives as limitations.

It is worth noting that the Judicial Council already seems to have used this measure, without referencing it directly. It notes in footnote number 5 on page 6 of the Order that it accepted all complaints through December 13, 2018, while simultaneously citing that Rule 4 requires the clerk to only accept complaints about a person holding an office (an interpretation with which I disagree; see Sections 1 and 2). The Order justifies the acceptance of these complaints merely because of “significant public interest” but offers no explanation for why that “significant public interest” could not serve as justification for disregarding the perceived limitations of the Rules and making a determination on the merits of these complaints. If “significant public interest” alone can justify an exception to the rules, then surely the remarkably unprecedented controversy of a circuit court judge committing perjury and displaying partisanship, then joining the Supreme Court, can justify the Judicial Council reviewing the complaints in question and taking action as necessary. Surely it would see that addressing these complaints falls well within the purposes of the Act, for the misconduct took place within the jurisdiction of the Judicial Council and the Act wanted such misconduct addressed. The Judicial Council, in this way, offers grossly inconsistent logic in its decision.

The Order incorrectly assumed the Judicial Council could not invoke Rule 2(b) to disregard or reinterpret perceived limitations laid out by the Rules, such as the perceived limitations resulting from its (in my opinion incorrect) interpretations of Rule 4 and Rule 11(e). The Order failed to fully account for the wildly exceptional circumstances surrounding these complaints. Therefore, the Order must be reconsidered.

5. A subject judge leaving a circuit court to join the Supreme Court of the United States does not constitute an “intervening event” as defined by Rule 11(e).

In dismissing the complaints, the Order states, “...the Act and Rules provide that a misconduct proceeding can be concluded because of ‘intervening events,’ namely, circumstances where an individual is no longer a covered judge. *See id* § 352 (b)(2); Rule 11(e) & cmt. As a result, § 351 (a) effectively precludes action against an individual who is no longer a circuit, district, bankruptcy, or magistrate judge.” (6-7).

I previously addressed in Section 1 how the interpretation of § 351 (a) is incorrect. I also explained in Section 2 how *actions* are the basis for jurisdiction, not a judge’s present position on the bench. However, the Order’s interpretation of an “intervening event” is fundamentally incorrect as well, as shown by the Act and the Rules that the Order cites. The cited provision of the Act says the chief judge of a Judicial Council may:

“...conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.”

Corrective action has clearly not been taken, as there has been no sign of correction or admission of wrongdoing by Justice Brett Kavanaugh for the accusations of perjury or partisanship noted in the complaints. “Intervening events” is intentionally left up to interpretation, but its adjacency to “corrective action” suggests there being no need to address the complaints any further, as the complaints hold no consequences for anyone any longer. In this situation, however, the need to address these complaints has arguably increased, as Justice Brett Kavanaugh has been elevated to a court that oversees the circuit courts and can impact their business. Therefore, the Order’s interpretation of “intervening events” fails to take into account the full context of § 352 (b)(2).

Rule 11(e) also fails to support the Order’s interpretation of “intervening events.” 11(e) states as follows:

“The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.”

The allegations are not moot, as noted in Section 1, and if anything have greater bearing on the courts now that Justice Kavanaugh oversees circuit court appeals and other business.

More importantly, however, remedial action is certainly not impossible. It is still possible for the Judicial Council to perform any of the actions that I called for in the introduction of this letter—such as censuring, reprimanding, ordering no cases be assigned to, calling for him to retire, or calling for the impeachment of Justice Brett Kavanaugh. It is true that such actions would “rock the boat” of standard protocol for the Judicial Council—that they may not be actions a chief judge would want to pursue—but Rule 11(e) specifically uses the term “impossible.” Remedial action, in this case, is not “impossible” even if it is viewed as unorthodox. The Order even acknowledges the possibility of remedial action still being possible, as it chose to refer the complaints to “any relevant Congressional committees,” suggesting the possibility of remedial action by another body.

Since remedial action remains possible and the allegations are not moot, the Judicial Council absolutely cannot consider the elevation of a judge to the Supreme Court to be an “intervening event.” The decision to take these interpretations serves to directly violate the stipulations of an intervening event described in Rule 11(e). While commentary for Rule 11(e) does include “resignation from judicial office” as a potential intervening event, it does so assuming the individual no longer performs any judicial duties. Its citation of the Breyer Report supports that assertion—as discussed in Section 1, the Breyer Report failed to consider the circumstances of these complaints. I also address in Section 1 the meaning of “perform judicial duties.” It is my contention that duties performed on a court superior to the circuit courts do still constitute applicable judicial duties.

The Order states, “Although the commentary to Rule 11(e) states that a judge remains subject to the Act as long as he or she ‘performs judicial duties,’ those judicial duties must still fall within the jurisdiction of the Act; that is, they must be the duties of a covered circuit, district,

bankruptcy or magistrate judge. See Judicial Conduct & Disability Act Study Comm., Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice, 239 F.R.D. 116, app. E at 245 (West 2006) ('Breyer Report')..." However, as explained in Section 1, Appendix E simply does not impose this requirement. Even if it did, the report itself reveals it never even considered the possibility of the unprecedented circumstances surrounding this case when it says a complaint ending after the judge left the bench never was a matter of "controversy." The Breyer Report therefore cannot be used to justify the Order's self-imposed limitation on the definition of an intervening event.

The Order incorrectly interpreted the meaning and the intention of an "intervening event" and relied on sources whose authors could not even conceive of the circumstances surrounding these complaints. Therefore, the Order must be reconsidered.

6. Concluding Remarks

Thank you for reading this far. If I were to summarize the basis for my petition for review in one sentence, it would be as such:

The Order incorrectly determined that the Act only applies to current judges; that jurisdiction is determined by current disposition rather than the timing of an act of misconduct; that the circumstances of these complaints were not exceptional enough to invoke Rule 2(b); that a Report which failed to even conceive of certain exceptional circumstances can still offer relevant interpretations of the Act; and that a judge being elevated to the Supreme Court can constitute an "intervening event", all mistakes that render the Order fundamentally misguided and requiring its reconsideration.

Okay, that was a run-on sentence. It's a challenge to concisely articulate the interrelated errors made by the Order. I hope you can appreciate my effort. However, there is another matter overshadowing this entire petition for review that I must address: the politics of this Order.

I understand that the federal judiciary attempts to remain apolitical—after all, outward partisanship was the basis for my particular complaint against Justice Kavanaugh. However, I must recognize the reality that all of us as American citizens living in a democracy operate in political environments. Due to the political nature of the matters that come before the federal judiciary, the decisions made by judges become politicized. In addition to partisan politics, I imagine personnel matters can be influenced by non-partisan politics—that is, the politics of people and colleagues, of operating within a bureaucracy, an entirely separate matter from the partisan politics of governance.

I fear that the Order made the aforementioned errors not because the Judicial Council failed to perform due diligence but, rather, because it sought a particular outcome for reasons of political convenience. Dismissing complaints against a newly appointed Supreme Court justice allows members of the Judicial Council to avoid a potential political firestorm. By referring the matter to congressional committees, the Judicial Council has allowed the political matters to remain in outwardly political realms and, therefore, need not rock the boat.

If this speculation on my part is true, then all my prior arguments objecting to the Order don't really matter. Regardless of the validity of those arguments, the Judicial Council will still prefer to circumvent a tough decision and, therefore, will reject this petition for review and uphold the Order's dismissal. With that in mind, I would like to spend a few paragraphs addressing the political matters of this case and why they necessitate action by the Judicial Council on these complaints.

The sad truth is that our political system in the last few years has gone off the rails. I assume you all follow the news. I don't need to rehash the gory details. This unfortunate reality means that if the Judicial Council merely dismisses the complaints and refers them to congressional committees, one of two things will happen:

1. The congressional committees will choose not to pursue or even acknowledge the concerns raised by the complaints, causing them to go nowhere.
2. The congressional committees will choose to act on the information contained in the complaints, but will choose to do so in a politically advantageous manner, with the real risk of undermining the credibility of the complaints.

Are either of these outcomes suitable for complaints that the Order deems "serious"?

If the concerns raised by these complaints are truly serious, then the Judicial Council must rise to the occasion and take action. My petition has clearly laid out a justification and a course for taking action within the confines of the Act and the Rules. Arguably, the Judicial Council is the only non-partisan body that can take action. If the Judicial Council does not take action, these complaints will either languish or befall partisanship and politics, and justice will never be served.

A desire for justice is the only reason why I have taken the time to engage in this process. I witnessed a man break the rules for judges flagrantly and publicly. I saw a judge act as though he was above the law. How can we be a nation of laws and legal norms if a member of our Supreme Court appears to have contempt for those very laws and legal norms? The credibility of our judiciary itself is at stake in this process. Yes, I have some disagreements with Justice Brett Kavanaugh's judicial philosophy, but that is not what inspired me to on my own time, without any help from anyone, file a complaint. After all, how many complaints did you receive about Justice Neil Gorsuch during his confirmation hearing? Or Justice Samuel Alito? Or Chief Justice John Roberts? The sole reason for the surge of complaints was the seemingly blatant misconduct committed by Justice Brett Kavanaugh.

And I can tell you, I did not spend hours researching the Act and the Rules and the Breyer Report just for fun, or for partisan reasons, or to make trouble. I did so because something seemed fundamentally off about the logic laid out by the Order. And over the course of my research, I started to discover inconsistency upon inconsistency in the logic of the Order. My sole motivation has been a desire to see some semblance of action taken—some kind of acknowledgement that something egregious happened during Justice Kavanaugh's confirmation hearings that goes against our most core American values. So now, we're here.

I want to believe that the Judicial Council is capable of seeing that they do have the power and the jurisdiction to take action. However, I still fear the possibility that some may be reluctant to do so for more overtly partisan political reasons—that they have perceived the confirmation of Justice Kavanaugh as some kind of partisan political game in which Kavanaugh’s appointment was a point for the conservative “team”, if you will. Such an individual might see any attempt at pointing out the transgressions of Justice Kavanaugh as somehow hurting or delegitimizing that point.

If, by any chance, a reader of this petition for review has such a cynical perspective, let first me be clear: No. This matter is not about scoring partisan points. Not even close. After all, if, somehow, the actions of the Judicial Council resulted in the removal of Justice Kavanaugh from the Supreme Court—a dramatic outcome that seems unlikely—our conservative President and our solidly conservative majority in the United States Senate would have the power to swiftly appoint a new Justice with a similar judicial philosophy. The conservative team would still score a point. Yes, it would mean the conservative team might have to withstand an embarrassing news cycle, but news cycles come and go like the wind. Supreme Court Justices, meanwhile, last a lifetime, and having a new appointment without controversy would increase the legitimacy of the Supreme Court and its future decisions.

But as I noted, removal from office is an unlikely outcome. So you, as a reader, may now be asking yourself, “If an action by the Judicial Council has no clear, tangible, practical outcome on the makeup of the Supreme Court, and may just cause a bunch of trouble, then why bother going through such an official, formal process? Why bother adjudicating these complaints?”

The answer to these questions is simple: because that is justice. Reviewing the complaints and acknowledging the misconduct in itself is a form of justice. Taking action creates a clear record that a nonpartisan body determined some form of misconduct occurred, and the creation of that record is the first step toward making sure such misconduct does not happen again.

I hope it isn’t pedantic of me to remind you, reader, that the opposite of justice is injustice. Injustice means allowing valid claims of misconduct to quietly vanish. Injustice means enabling the bad behavior of those with power and inspiring others to mimic their misconduct. Injustice means eroding the perceived legitimacy of our democratic institutions, until a nation’s citizenry no longer believes we live in a democratic society anymore and has no regard for values of fairness, equality, liberty, or justice. Injustice can cause a society to descend into chaos.

I implore all readers: please, choose justice.

Sincerely

