

118TH CONGRESS
2D SESSION

S. _____

To amend title 28, United States Code, to establish an Office of Ethics Counsel and an Office of Investigative Counsel within the Supreme Court of the United States.

IN THE SENATE OF THE UNITED STATES

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 28, United States Code, to establish an Office of Ethics Counsel and an Office of Investigative Counsel within the Supreme Court of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Supreme Court Ethics
5 and Investigations Act”.

1 **SEC. 2. ESTABLISHMENT OF THE OFFICE OF ETHICS COUN-**
2 **SEL WITHIN THE SUPREME COURT OF THE**
3 **UNITED STATES.**

4 (a) IN GENERAL.—Chapter 45 of title 28, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 678. Office of Ethics Counsel**

8 “(a) THE OFFICE OF ETHICS COUNSEL.—The Chief
9 Justice is authorized to establish an Office of Ethics
10 Counsel within the Supreme Court of the United States—

11 “(1) constituted by one chief ethics counsel who
12 may employ such officers and employees, subject to
13 the provisions of title 5, governing appointments in
14 the competitive service, and the provisions of chapter
15 51 and subchapter III of chapter 53 of such title re-
16 lating to classification and General Schedule pay
17 rates; and

18 “(2) to advise and provide guidance to justices
19 of the Supreme Court, and their spouses, on matters
20 of judicial ethics, including—

21 “(A) financial disclosure requirements;

22 “(B) the acceptance of gifts;

23 “(C) political activity;

24 “(D) conflicts of interest and recusal; and

25 “(E) the unauthorized disclosure of official
26 Court documents.

1 “(b) ETHICS COUNSELS.—

2 “(1) STAFFING AND COMPENSATION OF COUN-
3 SELS.—

4 “(A) CHIEF ETHICS COUNSEL.—The chief
5 ethics counsel within the Office of Ethics Coun-
6 sel—

7 “(i) may not be employed by the
8 Court on the date of enactment of this sec-
9 tion;

10 “(ii) shall be appointed by the Chief
11 Justice;

12 “(iii) shall serve not more than two 6-
13 year terms; and

14 “(iv) shall receive an annual rate of
15 pay of at least \$225,000.

16 “(B) OTHER COUNSELS.—Any counsel
17 other than the chief ethics counsel within the
18 Office of Ethics Counsel—

19 “(i) may not be employed by the
20 Court on the date of enactment of this sec-
21 tion;

22 “(ii) shall be appointed by the chief
23 ethics counsel;

24 “(iii) shall serve not more than two 6-
25 year terms; and

1 “(iv) shall receive an annual rate of
2 pay of at least \$180,000.

3 “(2) QUALIFICATIONS.—Each counsel of the
4 Office of Ethics Counsel shall—

5 “(A) be licensed to practice law in a State
6 or territory of the United States and a member
7 of the bar in good standing; and

8 “(B) possess at least 5 years of experience
9 as a practicing attorney.

10 “(3) EXPERTISE.—Each counsel shall be an in-
11 dividual of exceptional public standing who is specifi-
12 cally qualified to serve within the Office of Ethics
13 Counsel by virtue of the individual’s education,
14 training, and experience, as determined by the Chief
15 Justice.

16 “(4) TERMINATION OF COUNSELS.—The em-
17 ployment of a counsel may only be terminated by the
18 Chief Justice for cause.

19 “(c) TRAINING.—On a biannual basis, the Office of
20 Ethics Counsel shall provide, and each justice shall take,
21 a training course on the judicial ethics matters described
22 in subsection (a)(2).

23 “(d) REPORT.—On an annual basis, the chief ethics
24 counsel shall submit to the Committees on the Judiciary
25 of the House of Representatives and of the Senate a report

1 on the ethics advice given by the Office of Ethics Counsel
2 during the previous year, including—

3 “(1) the number of times advice was sought
4 and given;

5 “(2) whether the advice was sought by judicial
6 officers or by judicial employees;

7 “(3) information about the topics covered by
8 the advice given, including the number of questions
9 related to gifts, financial disclosures, nonpublic in-
10 formation, and political activity;

11 “(4) the number and types of mitigation meas-
12 ures that were recommended, including recusal, di-
13 vestiture, resignation; and

14 “(5) the number of times advice described in
15 this subsection was not followed by the individual to
16 whom it was given, if known by the Office.

17 “(e) DEFINITIONS.—In this section:

18 “(1) The term ‘gift’ means any gratuity, favor,
19 discount, entertainment, hospitality, loan, forbear-
20 ance, or other item having monetary value. The term
21 includes services as well as gifts of training, trans-
22 portation, local travel, lodgings and meals, whether
23 provided in-kind, by purchase of a ticket, payment in
24 advance, or reimbursement after the expense has
25 been incurred.

1 “(2) The term ‘political activity’ means political
2 engagements, such as paid speaking events, fund-
3 raisers, or donations to political parties, politicians,
4 political action groups, or endorsements of political
5 candidates.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
7 of chapter 45 of title 28, United States Code, is amended
8 by inserting after the item relating to section 678 the fol-
9 lowing:

 “678. Office of Ethics Counsel.”.

10 **SEC. 3. ESTABLISHMENT OF THE OFFICE OF INVESTIGA-**
11 **TIVE COUNSEL WITHIN THE SUPREME COURT**
12 **OF THE UNITED STATES.**

13 (a) IN GENERAL.—Chapter 45 of title 28, United
14 States Code, as amended by this Act, is further amended
15 by adding at the end the following:

16 **“§ 679. Office of Investigative Counsel**

17 “(a) OFFICE OF INVESTIGATIVE COUNSEL.—The
18 Chief Justice is authorized to establish an Office of Inves-
19 tigative Counsel within the Supreme Court of the United
20 States—

21 “(1) constituted by one Chief Investigative
22 Counsel and at least two additional investigative
23 counsels; and

1 “(2) to review and investigate ethics complaints
2 against justices arising from their actions or the ac-
3 tions of their spouses and dependents.

4 “(b) INVESTIGATIVE COUNSELS.—

5 “(1) STAFFING AND COMPENSATION OF COUN-
6 SELS.—

7 “(A) CHIEF INVESTIGATIVE COUNSEL.—
8 The Chief Investigative Counsel—

9 “(i) may not be employed by the court
10 on the date of enactment of this section;

11 “(ii) shall be appointed by the Chief
12 Justice;

13 “(iii) shall serve not more than one 6-
14 year term; and

15 “(iv) shall receive an annual rate of
16 pay of at least \$225,000.

17 “(B) ADDITIONAL INVESTIGATIVE COUN-
18 SELS.—The investigative counsels—

19 “(i) may not be employed by the court
20 on the date of enactment of this section;

21 “(ii) shall be appointed by the Chief
22 Investigative Counsel;

23 “(iii) shall serve at the pleasure of the
24 Chief Investigative Counsel; and

1 “(iv) shall receive an annual rate of
2 pay of at least \$180,000.

3 “(C) QUALIFICATIONS.—Each investigative
4 counsel of the Office of Investigative Counsel
5 shall—

6 “(i) be licensed to practice law in a
7 State or territory of the United States and
8 a member of the bar in good standing; and

9 “(ii) possess at least 7 years of experi-
10 ence as a practicing attorney.

11 “(D) EXPERTISE.—Each investigative
12 counsel and the Chief Investigative Counsel
13 shall be an individual of exceptional public
14 standing who is specifically qualified to serve
15 within the Office of Investigative Counsel by
16 virtue of the individual’s education, training,
17 and experience.

18 “(E) TERMINATION OF COUNSELS.—The
19 employment of the Chief Investigative Counsel
20 may only be terminated by the Chief Justice for
21 cause.

22 “(2) SUBPOENA POWER.—

23 “(A) IN GENERAL.—For the discharge of
24 their duties, the Chief Investigative Counsel
25 shall have the authority to issue subpoenas to

1 compel witnesses to appear and testify and to
2 produce books, papers, correspondence, memo-
3 randa, documents, or other relevant records.
4 The Chief Investigative Counsel may issue sub-
5 poenas requiring the attendance and testimony
6 of witnesses and the production of any evidence
7 relating to any matter under investigation by
8 the Office of Investigative Counsel, which the
9 Office is empowered to investigate by this sec-
10 tion. The attendance of witnesses and the pro-
11 duction of evidence may be required from any
12 place within the United States at any des-
13 ignated place of hearing within the United
14 States.

15 “(B) FAILURE TO OBEY A SUBPOENA.—If
16 a person refuses to obey a subpoena issued
17 under subparagraph (A), the Chief Investigative
18 Counsel may apply to a United States district
19 court for an order requiring that person to ap-
20 pear before the Office of Investigative Counsel
21 to give testimony, produce evidence, or both, re-
22 lating to the matter under investigation. The
23 application may be made within the judicial dis-
24 trict where the hearing is conducted or where
25 that person is found, resides, or transacts busi-

1 ness. Any failure to obey the order of the court
2 shall be punishable by contempt of court.

3 “(C) SERVICE OF SUBPOENAS.—The sub-
4 poenas of the Office of Investigative Counsel
5 shall be served in the manner provided for sub-
6 poenas issued by a United States district court
7 under the Federal Rules of Civil Procedure for
8 the United States district courts.

9 “(D) SERVICE OF PROCESS.—All process
10 of any court to which application is made under
11 subparagraph (B) may be served in the judicial
12 district in which the person required to be
13 served resides or may be found.

14 “(e) ETHICS COMPLAINTS.—

15 “(1) FILING.—An ethics complaint against a
16 justice may be filed with the Office of Investigate
17 Counsel by—

18 “(A) the chair or ranking minority member
19 of the Committee on the Judiciary of the House
20 of Representatives or of the Senate;

21 “(B) the Majority Leader or Minority
22 Leader of the Senate; or

23 “(C) the Speaker or the Minority Leader
24 of the House of Representatives.

1 “(2) REVIEW.—Not later than 60 days after an
2 ethics complaint is filed under paragraph (1), the
3 Office of Investigative Counsel shall review the com-
4 plaint and determine whether a full investigation is
5 appropriate. In making a determination under this
6 paragraph, the Office shall consider whether the al-
7 leged behavior of a justice violates the Code of Con-
8 duct of the Supreme Court, the Judicial Code of
9 Conduct, or any applicable law or regulation. Upon
10 making a determination under this paragraph, the
11 chief counsel shall respond to each ethics complaint
12 filed under paragraph (1), regardless of whether the
13 Office of Investigative Counsel determines that an
14 investigation is appropriate.

15 “(3) INVESTIGATION.—If the Office determines
16 that a full investigation is appropriate, it shall open
17 the investigation not later than 15 days after mak-
18 ing such determination.

19 “(4) REPORTING.—

20 “(A) IN GENERAL.—The Office of Inves-
21 tigative Counsel shall submit to the Chief Jus-
22 tice a report containing its findings and rec-
23 ommendations about an ethics complaint filed
24 under paragraph (2) (including in the case of a
25 complaint with respect to which the Office de-

1 termines that no violation has occurred), except
2 that in the case of an ethics complaint with re-
3 spect to which the Chief Justice is the subject,
4 the Office shall deliver such report to the most
5 senior associate justice.

6 “(B) CONTENTS.—A report under sub-
7 paragraph (A) shall include—

8 “(i) each violation of the Code of Con-
9 duct for the Supreme Court committed by
10 the justice who was the subject of the in-
11 vestigation under paragraph (3), including
12 any such violation that arose as a result of
13 the actions of a spouse or dependant of the
14 justice; and

15 “(ii) substantive and actionable rec-
16 ommendations from the Office of Inves-
17 tigative Counsel including recusal, divest-
18 ment and neutralization conflicts of inter-
19 est, and other remedies.

20 “(C) PUBLICATION.—

21 “(i) CHIEF JUSTICE.—The Chief Jus-
22 tice may, in his sole discretion, release to
23 the public a report received under subpara-
24 graph (A), but may not alter such a report
25 in any way, except to redact any classified

1 or personally identifiable information. In
2 the case of an ethics complaint with re-
3 spect to which the Chief Justice is the sub-
4 ject, the most senior associate justice is
5 authorized to carry out this clause.

6 “(ii) AVAILABILITY TO CONGRESS.—
7 Not later than 10 days after completing a
8 report under subparagraph (A), the Office
9 of Investigative Counsel shall make the re-
10 port available to—

11 “(I) the Committees on the Judi-
12 ciary of the House of Representatives
13 and of the Senate;

14 “(II) the Committee on Oversight
15 and Accountability of the House of
16 Representatives; and

17 “(III) the Committee on Home-
18 land Security and Governmental Af-
19 fairs of the Senate.

20 “(iii) DUTY TO INFORM THE ATTOR-
21 NEY GENERAL.—In carrying out the duties
22 of the Office, the Investigative Counsel
23 shall report expeditiously to the Attorney
24 General whenever the Investigative Counsel

1 has reasonable grounds to believe there has
2 been a violation of Federal criminal law.”.

3 (b) CLERICAL AMENDMENT.—The table of contents
4 of chapter 45 of title 28, United States Code, is amended
5 by inserting after the item relating to section 678, as
6 added by section 2, the following:

“679. Office of Investigative Counsel.”.

7 **SEC. 4. SEVERABILITY.**

8 If any provision of this Act, or any application of such
9 provision to any person or circumstance, is held to be un-
10 constitutional, the remainder of this Act and the applica-
11 tion of this Act to any other person or circumstance shall
12 not be affected.