

Congress of the United States
Washington, DC 20515

February 24, 2023

Mr. Robert Bauer
Former Co-Chair, Commission on the Supreme Court of the United States
New York University School of Law
40 Washington Square South
New York, NY 10012

Dear Mr. Bauer:

The Committee on the Judiciary is conducting oversight of radical efforts to pack the Supreme Court and undermine judicial independence. On April 16, 2021, we wrote to you in your position as co-chair of President Biden's Commission on the Supreme Court of the United States asking that you retain documents and communications related to the efforts of the Commission on the Supreme Court of the United States. To date, we have not received acknowledgment that you have taken any steps in response to our letter. Accordingly, as we begin the 118th Congress, we write to you again to ask that you produce material related to the Commission's work.

Responding to progressive calls to pack the Court, President Biden created the Commission to provide "an analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform" and to explore various topics, including the "membership and size of the Court."¹ In December 2021, the Commission issued its nearly 300-page final report to President Biden.² While the Commission's final report to President Biden avoided a full-throated embrace of "packing" the Court, some Commission Members, such as Professor Caroline Frederickson, continued to publicly advocate for packing the Court.³

The Commission's work and ultimate report occurred during unprecedented and unrelenting attacks on the Court and its independence. For example, in 2019, Senate Democrats threatened the Supreme Court in an amicus brief to decide a case in the manner they preferred or be "restructured."⁴ In March 2020, the Senate Democratic Leader even went to the steps of the Court and threatened specific justices by name: "I want to tell you, Gorsuch; I want to tell you,

¹ Presidential Commission on the Supreme Court of the United States, The White House, <https://www.whitehouse.gov/prescous/> (last accessed Feb. 1, 2023).

² Presidential Commission on the Supreme Court of the United States, Final Report, The White House, Dec. 8, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf>.

³ Caroline Frederickson, *Expand the High Court to End its Tyranny*, N.Y. DAILY NEWS (Dec. 15, 2021).

⁴ Madison Gesiotto, *Democrats Want to Chip Away Our Cherished Freedoms and Liberties*, THE HILL (Aug. 19, 2019).

Kavanaugh: You have released the whirlwind, and you will pay the price. You won't know what hit you if you go forward with these awful decisions.”⁵

Direct attacks on the Court only intensified following the unprecedented leak of the draft opinion in *Dobbs v. Jackson Women's Health Organization* in May 2022. For example, left-wing groups engaged in harassment and intimidation campaigns outside Justices' homes,⁶ and some offered bounties for the “location of the six Supreme Court Justices who voted [in June] to overturn *Roe v. Wade*” following the issuance of the *Dobbs* opinion.⁷ In June 2022, a man showed up to Justice Kavanaugh's home with a handgun, a tactical knife, pepper spray, zip ties, a hammer, and other gear to “remove some people from the Supreme Court” in order to “stop *Roe v. Wade* from being overturned.”⁸ The man allegedly hoped to assassinate as many as three justices because, in the man's own words, if “there are more liberal than conservative judges, they will have the power.”⁹

While the Commission's work has concluded, questions remain about the Commission's work, deliberations, and true purpose. As such, we request that you produce the following material, which we asked you to preserve in April 2021:

1. All documents and communications between or among you and any Commission members or employees;
2. All documents and communications between or among you and any academic colleagues and research assistants referring or relating to the Commission on the Supreme Court of the United States;
3. All documents and communications between or among you and any Executive Office of the President officers or employees referring or relating to the Commission on the Supreme Court of the United States;
4. All documents and communications between or among you and Attorney General Merrick Garland, former Acting Attorney General Monty Wilkinson, Associate Attorney General Vanita Gupta, Assistant Attorney General Kristen Clarke, or any other Department of Justice officers or employees referring or relating to the Commission on the Supreme Court of the United States;

⁵ Orion Rummier, *Chief Justice Roberts laments Chuck Schumer's “dangerous” comments*, AXIOS (Mar. 4, 2020).

⁶ Han A. von Spakovsky, *Refusing to Prosecute Those Protesting at Supreme Court Justices' Homes is Inexcusable*, THE HERITAGE FOUND. (Jun. 1, 2022).

⁷ Rich Calder, *Lefty Group ShutDownDC offering 200 Bounty for Intel on SCOTUS Justices*, N.Y. POST (Jul. 9, 2022).

⁸ Brittany Bernstein, *Suspect in Kavanaugh Assassination Plot Planned to Target Two Other Justices: Report*, NAT. REV. (Jul. 27, 2022).

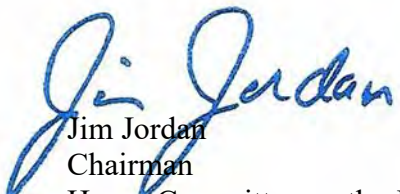
⁹ *Id.*

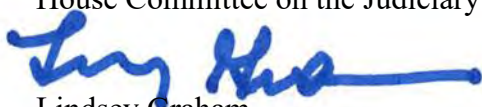
5. All documents and communications between or among you and any proposed or potential members of the Commission on the Supreme Court of the United States who, for any reason, were not appointed;
6. All documents and communications between or among you and any employees or members of Demand Justice referring or relating to the Commission on the Supreme Court of the United States;
7. All documents and communications between or among you and any employees or members of the American Constitution Society referring or relating to the Commission on the Supreme Court of the United States;
8. All documents and communications between or among you and any employees or members of Take Back the Court referring or relating to the Commission on the Supreme Court of the United States; and
9. All documents and communications between or among you and any individuals employed by or associated with the Unrig the Courts Coalition, Arabella Advisors, the New Venture Fund, the 1630 Fund, or the Open Society Institute referring or relating to the Commission on the Supreme Court of the United States.

We ask that you produce this material as soon as possible but no later than 5:00 p.m. on March 10, 2023.

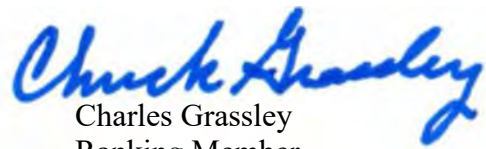
Both the House and Senate Committees on the Judiciary are authorized to conduct oversight of federal courts and judges, as well as judicial proceedings.¹⁰ If you have any questions about this request, please contact House Judiciary Committee staff at (202) 225-6906.

Thank you for your attention to this matter.


Jim Jordan
Chairman
House Committee on the Judiciary


Lindsey Graham
Ranking Member
Senate Committee on the Judiciary

Sincerely,


Charles Grassley
Ranking Member
Senate Committee on the Budget

¹⁰ The House and Senate Committees are authorized by Rule X of the Rules of the House of Representatives and Rule XXV of the Rules of the Senate, respectively, deriving oversight powers from the United States Constitution. See, e.g., *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

Mr. Robert Bauer
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cc: The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary

The Honorable Jerrold L. Nadler
Ranking Member
House Committee on the Judiciary