

Supreme Court's Struggle to Identify Conflict Exposed During Alito Trip



Justice Samuel Alito's 2008 fishing trip with billionaire Paul Singer in Alaska has raised concerns about conflicts of interest within the Supreme Court. It was discovered that Alito did not recuse himself in a 2014 case involving Singer. The revelation has ignited a discussion on the court's ability to identify conflicts, particularly personal ones that existing disclosure rules may not capture.

While corporate disclosure rules aim to address financial conflicts of interest among parties involved in an appeal, they are not specifically designed to uncover personal conflicts like the alleged association between Alito and Singer. Hogan Lovells, explained that the disclosure rules are primarily focused on financial conflicts, and recent amendments have not completely addressed the issue at hand.

Responding to the allegations, Alito stated in a Wall Street Journal op-ed that he was unaware of Singer's involvement in the 2014 case due to the limited information in the mandated corporate disclosures. He also highlighted the difficulty for clerks in tracking down such information, stating that it would be "utterly impossible" for them to do so.

See also: [Supreme Court Justice Alito Clarifies Controversial Private Jet Trip in Op-Ed](#)

Legal scholars have weighed in on the court's ability to identify potential conflicts, noting that conflict checks are typically conducted within individual chambers by clerks and staff who handle various court-related matters. John Garvey, a professor at the University of California, Berkeley, and former clerk for Justice Clarence Thomas, explained that the main responsibility of a Supreme Court clerk is to assist the justices in research, case analysis, and opinion drafting. He noted that identifying potential conflicts may not be their primary focus.

Moreover, the issue of identifying business ownership and potential conflicts extends beyond the purview of Supreme Court clerks and staff. Current federal court regulations require nongovernmental corporations to disclose any publicly held company owning 10% or more of their stock. However, a December 2022 report from the judiciary's Advisory Committee on Civil Rules highlighted that this may not capture all relevant parties involved. For example, a company like Orange Julius might only disclose its ownership by International Dairy Queen without revealing that Dairy Queen is wholly owned by Berkshire Hathaway, a massive holding company led by Warren Buffett. This limitation alerts the judge to potential conflicts if they hold investments in Berkshire Hathaway.

Limited liability entities present an even more complex challenge, as their ownership may not need to be disclosed in court filings. These entities are central to the allegations surrounding Alito's case. Alito emphasized the difficulty for other Supreme Court employees in searching filings with the Securities and Exchange Commission (SEC) or other government bodies to uncover the names of individuals with a financial interest in such entities named as parties in cases brought to the court each year.

The Supreme Court justices recuse themselves in only about 3% of the thousands of appeals they consider each term, as per an analysis by Bloomberg Law. Even if court clerks were to check state and SEC filings, identifying stakeholder interests might not be immediately apparent.

Legal scholars and experts have proposed potential solutions to address these ethical concerns. John Barrett, a professor at St. John's University School of Law, suggested requesting individuals who give gifts to the justices to disclose their interests. He also suggested requiring limited liability companies (LLCs) and limited liability partnerships (LLPs) to provide better conflict checks. Sean Marotta proposed the establishment of a centralized office within the court specifically dedicated to conducting conflict checks, which he believed would be more effective than relying on individual chambers.

Some believe that the justices must take action to uphold the court's reputation and ensure ethical standards. Georgetown law professor Caroline Fredrickson emphasized the need for improvement, while Senate Judiciary Chair Dick Durbin stated that the committee will address Supreme Court legislation following the July 4 recess, stating that the highest court in the land should not have the lowest ethical standards.

In conclusion, recent revelations regarding conflicts of interest within the US Supreme Court have brought to light the challenges in identifying personal conflicts and the ongoing tension between impartiality and existing disclosure rules. The court continues to grapple with potential reforms and solutions to enhance its ability to address these ethical concerns and uphold its reputation as the apex of the US judicial system.