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The effort to implement a Supreme Court code of ethics

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NPR's Sarah McCammon speaks with Bloomberg Law's Madison Alder about a push by congressional Democrats to establish a formal code of ethics for the U.S. Supreme Court.

SARAH MCCAMMON, HOST:

As the country awaits a decision from the Supreme Court on abortion, the court has been at the heart of another conversation. This one about ethics. And that's because the U.S. Supreme Court is the only judicial body in the country not governed by a code of ethics. Congressional Democrats are pushing to change that with two new bills and hope to hold a hearing on the issue when they return from recess. Lawmakers from both parties have supported proposals to impose a code of ethics on the high court in previous years, but this new push is in response to demands that sitting Supreme Court Justice Clarence Thomas recuse himself from cases involving the January 6 attack on the U.S. Capitol. Recently released text messages show that Thomas's wife, conservative activist Virginia Thomas, urged a senior Trump White House official to take steps to overturn the 2020 election.

We wanted to understand how lawmakers may try to advance this legislation, so we called someone who's been reporting on it. Madison Alder is a judiciary reporter for

Bloomberg Law, and she joins us now. Madison Alder, welcome.

MADISON ALDER: Thanks so much for having me.

MCCAMMON: First, many of our listeners may be surprised to learn that the Supreme Court is not subject to a code of ethics. How does the court currently operate? Do justices have any official rules that they're accountable to?

ALDER: The justices aren't bound by the same code of conduct that lower court judges are bound by. But they aren't really allowed to act unethically. There is a statute that requires any justice or judge or magistrate to decline to hear cases where their impartiality might be questioned. But other than that, the justices don't have those same code of conduct rules that lower court judges have. The court does say that they reference those code of conduct rules, but they are not bound by them in the same manner.

MCCAMMON: Yeah. You mentioned that ethical expectation. Is there any mechanism for enforcing it currently when it comes to the Supreme Court?

ALDER: So the mechanism for enforcement for justices would be impeachment. But that's such a high bar that it is really difficult to be met, just like it is for other forms of impeachment. So right now, there's really not a rubric for justices in the way that there is a rubric for other lower court judges at the district court and appeals court level.

MCCAMMON: As we mentioned, lawmakers from both parties have in the past expressed support for a code of ethics or a code of conduct for the Supreme Court, but none of these proposals have actually become law. What's the history of this issue, and how controversial has it been in the past?

ALDER: So there have been pushes to require the Supreme Court to have a code of ethics, just like the other lower courts do in the past. There's even been bipartisan legislation. Representative Darrell Issa of California, a Republican, had this as part of a bill in 2018 that actually advanced out of the House Judiciary Committee. But that proposal didn't end up becoming law. And the proposals that we've seen, at least in recent years, have been sponsored and introduced by Democrats. So right now, there

are a couple of bills that would require the Supreme Court to have a code of ethics, but they are all sponsored by Democrats. And in the closely divided Senate, Democrats would need at least some Republican support, 10 Republicans, to get that legislation across the finish line.

MCCAMMON: Is there any bipartisan agreement on any of these kinds of ideas?

ALDER: There seems to be interest from at least one Republican lawmaker in the Senate. I spoke to Senator Lindsey Graham, and he told me that he is talking to Whitehouse - Senator Sheldon Whitehouse - about his legislation that was recently introduced that includes ethics, but it's a broader kind of judiciary reform bill. He said he was interested in Supreme Court ethics, but he's not a sponsor of the bill yet. And certainly Democrats would need more than one Republican.

Republicans so far have been fairly supportive of Justice Thomas as this news about his wife has come forward. Senator Mitch McConnell was recently speaking about this and was very supportive of Justice Thomas and kind of extended that support to the other justices on the court, saying, you know, I trust that they can make their own ethical decisions. And that doesn't really sound like there would be a lot of support for ethics legislation when they are so supportive of Thomas and kind of backing him throughout this scandal.

MCCAMMON: Democrats, of course, are arguing that Justice Thomas should recuse himself from cases involving January 6 because he can't be impartial, they say, due to the fact that his wife sent text messages to a former White House official seeking to overturn the 2020 election. You've reported that tying these bills, these ideas, to Justice Thomas is a risky move for Democrats. Why do you say that?

ALDER: Well, it's a risky move for Democrats because there has been Republican Party leadership - Mitch McConnell - that has been very supportive of Thomas. And if this becomes the anti-Thomas bill, that might be, especially in an election year, a - kind of a hard sell for Democrats to get more Republicans on board with.

MCCAMMON: There's been a lot of reporting in recent years about concerns by Chief Justice John Roberts about the reputation of the court. Is there a chance that the

Supreme Court might impose its own rules on itself without Congress having to act?

ALDER: When there's been pushes by Congress to create changes for the judiciary, the judiciary has sometimes acted. So that could happen here. If there is a large enough push by members of Congress, the judiciary might take interest in this issue. An issue that we saw that happen with was sexual harassment claims in the judiciary. The judiciary did take it upon themselves to act and to create changes. But those changes are often not seen as enough. They're not as far as lawmakers or activists would have gone if they had imposed those changes themselves. And that was certainly true of the response to harassment allegations in the judiciary. So if the judiciary does take that route and decides to create a code of ethics for the justices, there is a chance that that could be very different than what lawmakers would have done.

MCCAMMON: That was Madison Alder. She's a judiciary reporter for Bloomberg Law. Madison Alder, thank you so much for your time.

ALDER: Thank you.

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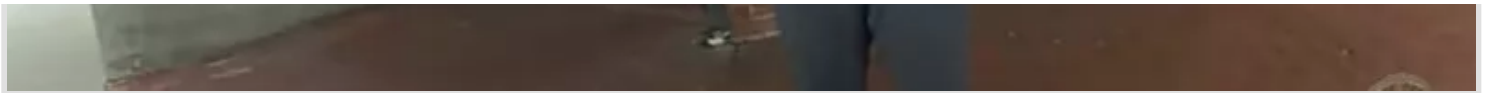
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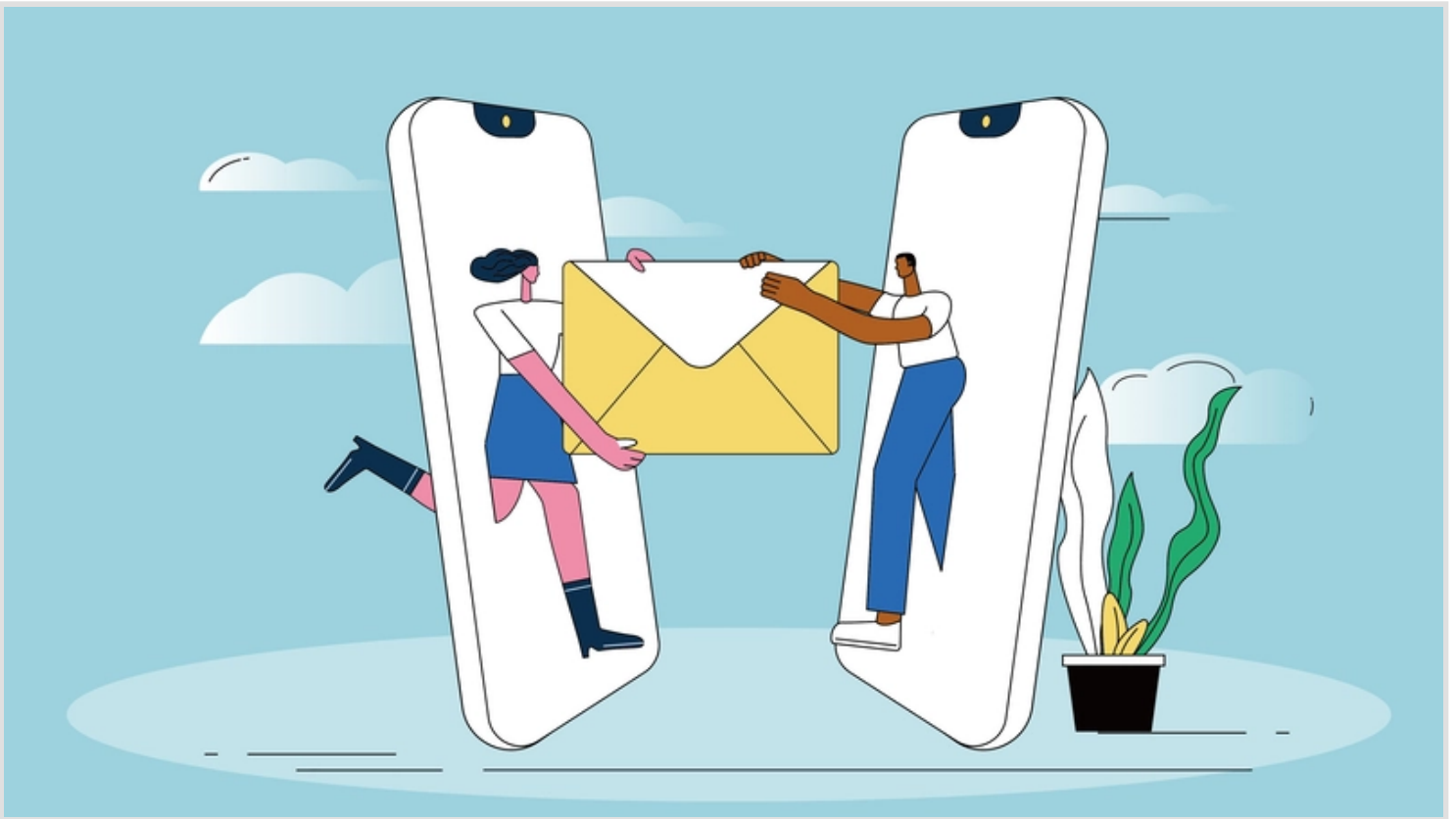
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