

Congress of the United States

Washington, DC 20515

May 24, 2024

The Honorable Samuel Alito
Associate Justice
Supreme Court of the United States
1 First Street NE
Washington, DC 20543

Dear Justice Alito:

New reporting compels us to write you a second time this week, once again urging that you recuse yourself from any further participation in *Trump v. United States*, *Fischer v. United States*, and any other cases that may arise involving Donald Trump, the January 6, 2021 attack on the Capitol, or attempts to overturn the 2020 election. Last week, we were appalled when a *New York Times* report revealed that you flew an inverted flag¹ outside your home before President Biden’s inauguration, a fact that you confirmed.² This week, the *New York Times* reported that at your beach house, you prominently flew an “Appeal to Heaven” flag at times during the months of July, August, and September of 2023, and possibly longer.³ This flag is a well-known symbol of support for (1) Donald Trump, (2) a religious arm of the “Stop the Steal” campaign, and (3) an organized movement to remake American government in Christian terms.⁴ In fact, a petition for writ of certiorari in *Fischer*—a case challenging whether the January 6 rioters could be charged with obstruction—was filed at the Supreme Court during the very same period of time you were flying this symbol of the “Stop the Steal” campaign. This revelation directly ties you with symbols of the attempted election subversion by Mr. Trump and the January 6 insurrectionists.

Canon 5 of the Court’s ethics guidelines states that “a Justice should refrain from political activity.”⁵ And in Canon 3B, the guidelines declare that “a Justice should disqualify himself or herself in a proceeding in which the Justice’s impartiality might reasonably be questioned, that is, where an unbiased and reasonable person who is aware of all relevant circumstances would doubt that the Justice could fairly discharge his or her duties.”⁶ The guidelines detail such instances, including those in which “[t]he Justice has a personal bias or prejudice concerning a party.”⁷

Currently, there are two cases before the Court involving January 6 rioters and the felony charge of obstructing an official proceeding: (1) the former president’s claim that a president of the United States has absolute criminal immunity for any official acts (*Trump v. United States*), and (2) a case involving January 6 rioters (*Fischer v. United States*). Unquestionably, any reasonable person would doubt that someone who has flown “Stop the Steal” symbols at two of his homes over the past few years can be impartial in deciding whether Mr. Trump and his supporters

¹The U.S. flag code states that an upside-down flag can only be displayed “as a signal of dire distress in instances of extreme danger to life or property.”

²Jodi Kantor, *At Justice Alito’s House, a ‘Stop the Steal’ Symbol on Display*, N.Y. Times (May. 16, 2024), <https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html>; Shannon Bream (@ShannonBream), X (May 17, 2024, 10:58 AM), <https://x.com/ShannonBream/status/1791483561675022624>.

³Jodie Kantor, Aric Toler, & Julie Tate, *Another Provocative Flag Was Flown at Another Alito Home*, N.Y. Times (May 22, 2024), <https://www.nytimes.com/2024/05/22/us/justice-alito-flag-appeal-to-heaven.html>.

⁴*Id.*

⁵Code of Conduct for Justices of the Supreme Court of the United States, Canon 5, at 8, https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

⁶*Id.*, Canon 3(B), at.2.

⁷*Id.*, Canon 3(B)(2), at.2.

should face criminal prosecution for their actions arising from the “Stop the Steal” movement. Accordingly, this indisputable appearance of a conflict of interest requires that you recuse yourself from such cases.

We note that flying this symbol of Christian nationalism outside your home has other serious implications for the stability of our democracy. While we may call for further action related to these concerns in the future, today we only ask that you recuse from cases involving Donald Trump, the January 6, 2021 insurrection, and the 2020 election.

The public is rapidly losing faith in the Supreme Court, which is dangerous to our very democracy. We fear for the Rule of Law when every day, it becomes more apparent that a Supreme Court justice has publicly advocated for a particular candidate and for the movement to overturn a lawful election. We urge you to fulfill your ethical obligations and recuse yourself from these historic cases.

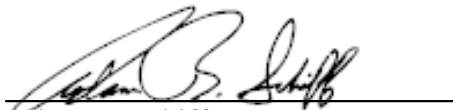
Sincerely,



Henry C. "Hank" Johnson, Jr.
Member of Congress



Dan Goldman
Member of Congress



Adam B. Schiff
Member of Congress



Jamie Raskin
Member of Congress




Madeleine Dean
Member of Congress



Jasmine Crockett
Member of Congress



Rashida Tlaib
Member of Congress



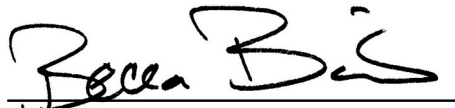
Deborah K. Ross
Member of Congress



Betty McCollum
Member of Congress




Sylvia R. Garcia
Member of Congress



Becca Balint
Member of Congress



Kevin Mullin
Member of Congress



Lloyd Doggett
Member of Congress



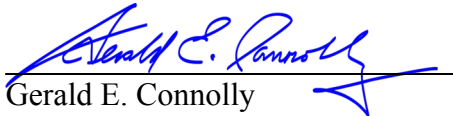
Eleanor Holmes Norton
Member of Congress



Mark DeSaulnier
Member of Congress




Frederica S. Wilson
Member of Congress




Gerald E. Connolly
Member of Congress



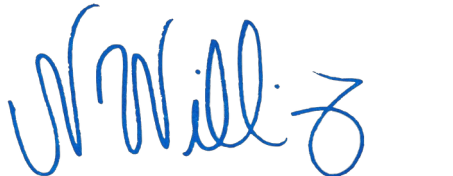
Sean Casten
Member of Congress




Daniel T. Kildee
Member of Congress




Ted W. Lieu
Member of Congress




Nikema Williams
Member of Congress




Earl Blumenauer
Member of Congress




Delia C. Ramirez
Member of Congress



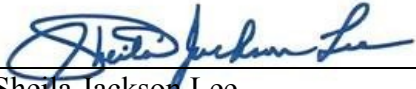
Mikie Sherrill
Member of Congress



Veronica Escobar
Member of Congress



Troy Carter
Member of Congress



Sherita Jackson Lee
Member of Congress



Cori Bush
Member of Congress

CC: Chief Justice John Roberts