

May 29, 2024

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Chairman Durbin:

It is imperative as Chairman of the Senate Judiciary Committee that you swiftly conduct investigations and make findings regarding (a) Justice Alito's recent conduct and, perhaps even more important for the public's long-term faith in the rule of law, (b) the handling of this matter by Chief Justice John Roberts.

This is now even more critical in the face of Justice Alito's letter today in which he refused to recuse himself in cases where the public has a clear reason to doubt his impartiality.¹

As you know, a well-known symbol of support for former President Trump's efforts to contest the validity of the 2020 election and which appeared prominently during the January 6, 2021 insurrection was publicly displayed on Justice Alito's residential property in January of 2021, while the US Supreme Court was considering whether to hear a case contesting the validity of the election.² And, just last year, another flag also closely linked to the January 6 attack was flown at Justice Alito's vacation home in New Jersey.³

We agree with you that Justice Alito must recuse himself and that Congress should pass a law that places binding ethics requirements on Supreme Court justices. Justice Alito's clear lapses in judgment call into serious question his ability to fairly judge cases concerning the 2020 election and later attack on the U.S. Capitol as well as his basic loyalty to our nation and its laws. We know you recently reached out to request a meeting with Chief Justice Roberts—but the American people deserve swift, transparent action to begin to address this state of affairs.⁴

¹ "Alito rejects calls to step aside from Supreme Court cases because of flag controversies," The AP, May 29, 2024, available at <https://apnews.com/article/alito-flag-supreme-court-roberts-justice-senate-e53c1d1fef7b81f9dc87fa31b1622c4c>.

² Jodi Kantor, "At Justice Alito's House, a 'Stop the Steal' Symbol on Display," The New York Times, May 16, 2024, available at <https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html>.

³ Jodi Kantor, "Another Provocative Flag Was Flown at Another Alito Home" The New York Times, May 22, 2024, available at <https://www.nytimes.com/2024/05/22/us/justice-alito-flag-appeal-to-heaven.html>.

⁴ Sens. Richard J. Durbin & Sheldon Whitehouse, Letter to The Honorable The Honorable John G. Roberts, Jr., May 23, 2024, available at <https://www.whitehouse.senate.gov/wp-content/uploads/2024/05/2024-05-23-Letter-to-CJ-Roberts.pdf>.

Investigations are critical to showing the American people that their elected leaders are committed to a judiciary worthy of our trust.

Specifically, we request that as Chairman you investigate and issue findings on Justice Alito's conduct as it relates to existing federal law, ethical standards, and the integrity of our judicial system, including but not limited to:

- ❖ The ways in which Justice Alito's conduct implicates longstanding federal law codified at 28 U.S. Code § 455, which requires that judges disqualify themselves in proceedings in which their "impartiality might reasonably be questioned," and specifically considers personal interest, bias, and spousal interests, especially as it relates to cases before the Court regarding former President Trump's claim to immunity regarding his election interference charges as well as cases concerning the legal liability of former President Trump's supporters who attacked the US Capitol;
- ❖ The ways in which Justice Alito's conduct implicates The Statement on Ethics Principles and Practices as well as the sources referenced therein, which was appended to April 25, 2023 correspondence to you from the Chief Justice;⁵ and
- ❖ The ways in which Justice Alito's conduct implicates the 2023 Code of Conduct for Justices of the Supreme Court of the United States,⁶ including, but not limited to, the Code's requirements that justices embody high standards of ethical conduct, preserve the integrity and independence of the federal judiciary, disqualify themselves from matters where they cannot be impartial, and refrain from endorsement or opposition of a candidate for public office.
- ❖ In addition, the current silence of the Chief Justice and from the Judicial Conference of the United States on this matter also implicates the 2023 Code of Conduct. If the judiciary does not take swift action to demonstrate their commitment to their own ethics standards, the American people will have cause to believe bias may very well be rampant across the entire Court as a whole.

While the report of Justice Alito's property flying a symbol of election denialism is profoundly concerning and unprecedented, we would be remiss not to note that these revelations occur amidst a long train of highly irregular actions by the Court, including but not limited to with respect to Justice Alito himself.

⁵ Chief Justice John G. Roberts Jr. Letter to The Honorable Richard J. Durbin, April 25, 2023, available at <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20Chairman%20Durbin%2004.25.2023.pdf>.

⁶ Supreme Court of the United States, *Statement of the Court Regarding the Code of Conduct*, November 13, 2023, available at https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

Just some of these examples include Justice Alito's collaboration with the *Wall Street Journal* to deflect scrutiny from other media outlets regarding his travels via private jet provided by a hedge fund billionaire who has business before the Court, his refusal to recuse from a tax case (*Moore v. United States*) involving lawyer David Rivkin who had authored some of the aforementioned fawning press coverage of Alito while having direct access to the Justice while the case was before the Court,⁷ a leaked opinion drafted by Justice Alito overturning decades of constitutional protection for the right to abortion, and politically charged remarks Justice Alito has made while serving in his role on the Court such as his speech before the Federalist Society in 2020 when he decried "liberals" just days after the general election and as Donald Trump was beginning to wage his media campaign against the election results that would eventually result in the events of January 6, 2021.⁸

The American people deserve meaningful action. We appreciate your prompt attention to this matter.

Thank you,

Accountable.US
Alliance for Justice
American Humanist Association
Center for American Progress
Climate Hawks Vote
Court Accountability Action
Demand Justice
Enough of Gun Violence
Free Speech For People
Freedom From Religion Foundation
Get Money Out - Maryland
Indivisible Santa Fe
Kentucky Alliance Against Racist And Political Repression
MoveOn
National Women's Law Center
People For the American Way
People Power United

⁷ Office of U.S. Senator Dick Durbin of Illinois, *Durbin Statement On Justice Alito's Refusal To Rescue Himself In Moore V. U.S.*, Press Release, September 8, 2023, available at <https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-justice-alitos-refusal-to-rescue-himself-in-moore-v-us>.

⁸ Adam Liptak, "In Unusually Political Speech, Alito Says Liberals Pose Threat to Liberties," *The New York Times*, November 13, 2020, available at <https://www.nytimes.com/2020/11/13/us/samuel-alito-religious-liberty-free-speech.html>.

People's Parity Project
Reproductive Freedom for All
Revolving Door Project
Secure Elections Network
Stand Up America
Take Back the Court Action Fund
The Workers Circle
United For Democracy