



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

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

July 23, 2024

Dear Justice Alito:

I am writing on behalf of Citizens for Responsibility and Ethics in Washington (CREW) to raise with you the grave crisis of institutional legitimacy currently facing the Supreme Court. The judiciary is supposed to stand as a guardian of the Constitution and protector of the rule of law. But it can only fulfill its constitutional role if the public accepts its legitimacy. Your actions over the past several years, in particular stretching back to the January 6th insurrection, have contributed to the shattering of that legitimacy. For the sake of the Court and for the sake of our democracy, we urge you to resign from office.

This is a position that CREW reaches with great reluctance and after much reflection. According to reporting by the *New York Times* which has not been disputed by you, an inverted American flag—a public symbol of the “Stop the Steal” movement—flew at your home just days after the violent insurrection at the U.S. Capitol building, and while the Court was considering whether to hear a 2020 election-related case. You have not denied knowing that the flag was flown nor in your statements to the *New York Times* or your May 29th letter to Senators Durbin and Whitehouse have you denied knowing that the flag conveyed a partisan political message. Instead, seemingly as a way to deflect blame, you have repeatedly suggested that your wife was responsible for the choice to fly the flag following a political dispute with a neighbor. While the choice to fly the flag may have been your wife’s, the fact that the flag was displayed amidst the fallout from an unprecedented attack on our Capitol is a damning fact, not a legitimate excuse.

Photographs also indicate that a second partisan flag flew on at least four different occasions at your vacation home in New Jersey—including as recently as September 2023, during the time when *Fischer v. United States*, an insurrection-related case, was coming before the Court. This flag, known as the “Appeal to Heaven” flag, was a symbol carried by insurrectionists on January 6th and has been associated with a far-right religious element of the “Stop the Steal” movement which aims to remake our democratic system in Christian

[CITIZENSFORETHICS.ORG](https://citizensforethics.org)

info@citizensforethics.org 202.408.5565

terms. It is a flag that was carried by people who were attempting to tear our republic down by invading the Capitol building, assaulting police officers and interrupting the peaceful transfer of presidential power.

These flags flying at your homes—a phenomenon of which you were well aware and which was publicly known before the Court decided major cases related to the effort to overturn the 2020 election and the January 6th insurrection—would lead any reasonable person to question your impartiality as to those cases. Despite these facts, you ignored public calls for your recusal from several cases on the subject this term including *Fischer v. United States* and *Trump v. United States* and did not respond to criticism that you should have recused from the Court’s earlier consideration of *Trump v. Anderson*, litigated by CREW. As objectionable as your conduct was prior to when the flying of those flags came to light publicly, calls for your recusal from January 6th-related cases once the flags became publicly known gave you an opportunity to recommit to the principles of judicial ethics and the credibility of the Supreme Court. You did not. Your actions demonstrate unmistakable political bias, and your participation in these cases violates federal law regarding the disqualification of justices and the Supreme Court Code of Conduct.

Since Roman times, the law has admonished judges not to decide cases where they have personal bias, or, in Roman law, “*nemo iudex in sua causa*.” This precept, originally codified in the Code of Justinian in CE 529,¹ has endured through the centuries, appearing in Martin Luther’s seminal 1526 book, *Whether Soldiers, Too, Can Be Saved*,² in Thomas Hobbes’ important 1651 work of political theory, *Leviathan*,³ in Alexander Hamilton’s Federalist 80,⁴ and in this Court’s own jurisprudence including in the seminal 1798 case *Calder v. Bull*.⁵ Over time, this principle became codified in American law in 28 U.S.C. § 455, which requires disqualification of a judge or justice, “in any proceeding in which his impartiality might reasonably be questioned.” As a Supreme Court justice, you were obligated to adhere to 28 U.S.C. § 455, yet you repeatedly failed to do so, as evidenced by your refusal to recuse from cases involving the January 6th insurrection including the aforementioned *Trump v. United States*, *Trump v. Anderson*, and *Fischer v. United States*.

¹ See Code Just. 3.5.1 (Valens, Gratian, & Valentinian 376) (rendering the principle as “*ne quis in sua causa iudicet vel sibi ius dicat*”),

<http://www.uwyo.edu/lawlib/blume-justinian/files/docs/book-3pdf/book%203-5.pdf>.

² Martin Luther, *Whether Soldiers, Too, Can Be Saved* 24 (1526),

<https://www.wolfmueller.co/wp-content/uploads/2018/02/WhetherSoldiersDigestCover.pdf>.

³ Thomas Hobbes, *Leviathan* ch. 13-15, at 14 (1651),

<https://www2.econ.iastate.edu/classes/econ362/hallam/Readings/LeviathanXiiiXv.pdf>.

⁴ The Federalist No. 80 (Alexander Hamilton) (noting that, “No man ought certainly to be a judge in ... any cause in respect to which he has the least interest or bias”).

⁵ *Calder v. Bull*, 3 U.S. 386, 388 (1798) (identifying “a law that makes a man a Judge in his own cause” as an example of an act “contrary to the great first principles of the social compact”).

Additionally, your actions run directly contrary to several canons contained in the recently promulgated Supreme Court Code of Conduct.⁶ Canon 1 of the Code provides that justices of the Supreme Court “should maintain and observe high standards of conduct in order to preserve the integrity and independence of the federal judiciary.” It goes on to state in Canon 2 that a justice should respect the law and act at all times “in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Furthermore, Canon 3B outlines the situations in which a justice should disqualify himself, including those where the “Justice’s impartiality might reasonably be questioned,” including situations where the justice has a “personal bias or prejudice concerning a party” to the proceedings.

Partiality, and the appearance of partiality, is so fundamental to judicial conduct that it is a common precept amongst all federal judicial officers and employees—including justices—that a justice should refrain from political activity entirely. This is precisely why Canon 5 provides both specific situations that justices should avoid, as well as the catchall cautioning that a justice “should not engage in *other* political activity.” (Emphasis added.) To that end, the Court goes so far as to caution its employees against all political displays, including signs, bumper stickers and social media posts.

All of these structures and rearticulations of the principle of impartiality in the judiciary are designed to prevent the precise situation in which we find ourselves—where large swaths of the American public are unable to trust your decisions, and by extension the Court’s decisions, because they appear to have been prejudged. Whether they are prejudged or not is irrelevant to the law. It is the mere appearance that is disqualifying and detrimental to our democracy.

The judiciary does not have the power of the purse nor the power to enforce the laws it interprets. It is entirely dependent on public faith and institutional legitimacy. Your actions have so damaged that legitimacy that the only course of action that remains if you want to truly fulfill your oath of office to “support and defend the Constitution” is to resign and, in so doing, start the process of restoring the Court’s institutional legitimacy. We fear that if you fail to resign, the integrity of the Court and the legitimacy of its constitutional role will be tarnished beyond repair.

Sincerely,



Noah Bookbinder

⁶ *Code of Conduct for Justices of the Sup. Ct. of the U.S.* (2023), https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.