

The legislative clerk read the nomination of Christopher T. Hanson, of Michigan, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2029. (Reappointment).

The ACTING PRESIDENT pro tempore. The senior Senator from Illinois.

U.S. SUPREME COURT

Mr. DURBIN. Madam President, when I went to college here in Washington, at Georgetown, I used to come into this Capitol Building and sit up there where the visitors are now sitting and watch what was going on on the Senate floor.

I can remember so many things, particularly the day that Bobby Kennedy gave a speech about Vietnam that was highly anticipated. He came walking through that door with his brother, Ted Kennedy—both of them Senators, one from New York, one from Massachusetts.

It was a historic moment, it was a magical moment. For a college student, it was just overwhelming to be a witness to that history and to realize what this Chamber has meant to this Nation, what this building has meant to this Nation throughout our history.

That is why I will never forget what happened in this Chamber on January 6, 2021. Violent extremists stormed the Capitol to prevent certification of the 2020 Presidential election. Donald Trump was engaged in the Big Lie.

For the first time really in the history of the United States, he questioned the legal outcome of an election.

Madam President, you and I both know that is fundamental to democracy—the belief that we can have the peaceful transition of the decision-makers guided by the people of this country without political interference.

As insurrectionists ransacked this building, many carried flags and banners to show their support for former President Trump in his effort to overturn the election—the Big Lie. Two of the more prominent symbols of the so-called “Stop the Steal” campaign on behalf of President Trump were on display that day. One was an American flag flown upside down and the other a so-called “Appeal to Heaven” flag.

While the events of January 6 were hard to imagine, reports that the same battle flags flew outside Supreme Court Justice Samuel Alito’s home were nearly as shocking. In January of 2021, less than 2 weeks after the insurrection at the Capitol, an upside-down American flag flew over Justice Alito’s front lawn in suburban Virginia. In the summer of 2023, the “Appeal to Heaven” flag flew on the flagpole of the Alitos’ beach home in New Jersey. While these flags may have once held other meanings, in the year 2021, they were closely associated with election deniers and extreme rightwing politicians. They are, in fact, the battle flags of Trump’s MAGA movement.

The Supreme Court’s authority ultimately rests on its reputation and pub-

lic confidence. The Supreme Court doesn’t own the Army. It doesn’t have a vast Treasury. It depends on people trusting the Justices to make honest, professional decisions. This reputation and public confidence is the strength of the Supreme Court. That is why the Supreme Court’s recently adopted code of conduct requires Justices to avoid impropriety and the appearance of impropriety in all activities. Both the code of conduct and Federal law require Justices to recuse themselves when their impartiality might reasonably be questioned.

The flying of these flags marks a new, disturbing chapter in the Supreme Court’s ongoing ethical crisis. It suggests that Justice Alito has not only chosen sides in an ongoing political dispute but that he has also announced his allegiance in pending legal disputes.

As we speak, the Supreme Court is considering two critical cases relating to the 2020 Presidential election and the January 6 insurrection. In *Trump v. United States*, the Supreme Court will decide whether former President Trump is immune from criminal prosecution for his efforts to overturn the election. In *Fischer v. United States*, the Court—again, the Supreme Court—will determine whether the Federal felony obstruction statute applies to the January 6 rioters who tried to stop Congress from exercising its constitutional duty to certify the election. The Court’s rulings on these issues will be critical to ensuring that those responsible for one of the darkest chapters in our history are held accountable.

Displaying the upside-down American flag and “Appeal to Heaven” flag creates the appearance that Justice Alito has already aligned himself with the “Stop the Steal” campaign. He cannot credibly claim to be an umpire—calling balls and strikes—in these cases. He has donned the jersey of his favorite team. That is why I called on Justice Alito to recuse himself and why I urged Chief Justice Roberts to finally step up and take the steps necessary to ensure that Justice Alito does not sit on those cases and, rather, that he recuse himself. Last week, Justice Alito refused my request.

I am going to keep this letter—the original version that was sent to me and sent to the White House by Justice Alito—in which he makes an argument that these flags should not be taken seriously; that it was his wife’s decision. There were complications in her decision. It is hard to accept this. It is hard, first, to believe that this man we are asking to recuse himself from these Supreme Court cases has somehow stood in judgment of himself and decided that he did nothing unethical and should not recuse himself. He refused our request to recuse himself from these cases. In doing so, he claimed he bears no responsibility for the January 6-related flags flying over his homes. Instead, he placed the blame solely on his wife.

He went on to downplay the significance of the upside-down American flag display, claiming it was part of a dispute with his neighbors, and he denied knowing about the connection between the “Appeal to Heaven” flag and the January 6 insurrection on the Capitol.

Chief Justice Roberts, likewise, refused my request to take action and simply deferred to Justice Alito’s decision. But Justice Alito’s refusal to recuse begs the question: Why should he have the sole power to decide whether his recusal from the case is necessary?

Additional reporting has already called into question his version of events with text messages and even a recording of a call to police suggesting the neighborhood dispute occurred after the upside-down American flag flew over the Alito residence. Whether Justice Alito raised these flags himself or stood idly by while his wife did so, the fact remains the same: A reasonable person would question Justice Alito’s impartiality to the cases relating to the 2020 election and January 6. Recusal is, therefore, necessary.

But the consequences of Justice Alito’s actions go far beyond this. He needs to recuse himself from these cases. By displaying two symbols of the MAGA Republican movement, Justice Alito presented himself to the world as a political actor and an ally of the far right. His actions suggest that no matter what arguments are made or what evidence is presented at the Supreme Court, his decisions will align with his personal beliefs and policy preferences.

And no matter what excuses or explanations he provides now or in the future, it will be hard for anybody before the Court to believe that Justice Alito approaches that case without bias.

We cannot afford the further erosion of public confidence in our courts. Our faith in the impartiality of judges is essential to the functioning of our legal system and our form of government. For more than a year, story after story has broken about ethical misconduct by sitting Justices of the Supreme Court. We have learned that some Justices, including Justice Alito again, accepted gifts and travel from billionaires with interests before the Court. The Senate and the American people deserve to know the full extent of how immense wealth is used to buy private access to the Justices. That is why the Senate Judiciary Committee is exercising its constitutional authority to investigate what has been provided to the Justices.

I will continue to push for legislation—a bill sponsored primarily by SHELDON WHITEHOUSE, but many of us have joined as cosponsors—to establish a binding code of conduct and recusal standards for the Justices.

Why in the world should the highest Court in our land have the lowest standard of ethics? If every other Federal judge is held to a standard of ethics to make certain that their reputations are intact, why would that not

apply to the Justices sitting on the highest Court of the land?

We will continue to push for legislation to create a binding code of conduct and recusal standards that the American people can see. Last year, the Judiciary Committee reported to the floor the Supreme Court Ethics, Recusal, and Transparency Act. Importantly, this legislation's ethical and recusal requirement would apply equally to every Justice of the Supreme Court regardless of the party or the President who appointed them. The Supreme Court has failed to act to address the ethical crisis that has engulfed it, and so the Senate must do so.

This is a simple fact: There is a Chief Justice of the Supreme Court, John Roberts. It is within his power to resolve this ethical issue tonight—to have it done by the morning—to make it clear that the Supreme Court is taking a different course, one that is credible to the American people.

Justice Alito cannot stand in judgment of himself. The fact that we have to come to the floor of the Senate to plead this case makes it clear that there are no avenues to be followed for ethical consideration for the Court today. That can change. The bill that is pending on the calendar is a step in the right direction, and I totally support it.

Madam President, I close by asking unanimous consent that the letter sent to me by Justice Alito be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUPREME COURT OF THE UNITED STATES,  
Washington, DC, May 29, 2024.

Hon. RICHARD J. DURBIN,  
Hon. SHELDON WHITEHOUSE,  
U.S. Senate, Washington, DC.

DEAR SENATORS DURBIN AND WHITEHOUSE: This is in response to your letter of May 23 to the Chief Justice requesting that he take steps to ensure that I recuse in *Trump v. United States*, No. 23-939, and any other cases “related to the 2020 presidential election” or “the January 6th attack on the Capitol.” As the Court has pointed out, “[i]ndividual Justices, rather than the Court, decide recusal issues.” I am therefore responding directly to your letter. In it, you claim that two incidents involving the flying of flags created an appearance of impropriety that requires my recusal.

The applicable provision of our Code of Conduct states as follows:

“B. DISQUALIFICATION.

(1) A Justice is presumed impartial and has an obligation to sit unless disqualified.

(2) 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.” Code of Conduct for Justices of the Supreme Court of the United States, Canon 3(B)(1)–(2).

The two incidents you cite do not meet the conditions for recusal set out in (B)(2), and I therefore have an obligation to sit under (B)(1).

The first incident cited in your letter concerns the flying of an upside-down American flag outside the house in Virginia where my

wife and I reside. In considering whether this event requires recusal, an unbiased and reasonable person would take into account the following facts. As I have stated publicly, I had nothing whatsoever to do with the flying of that flag. I was not even aware of the upside-down flag until it was called to my attention. As soon as I saw it, I asked my wife to take it down, but for several days, she refused.

My wife and I own our Virginia home jointly. She therefore has the legal right to use the property as she sees fit, and there were no additional steps that I could have taken to have the flag taken down more promptly.

My wife's reasons for flying the flag are not relevant for present purposes, but I note that she was greatly distressed at the time due, in large part, to a very nasty neighborhood dispute in which I had no involvement. A house on the street displayed a sign attacking her personally, and a man who was living in the house at the time trailed her all the way down the street and berated her in my presence using foul language, including what I regard as the vilest epithet that can be addressed to a woman.

My wife is a private citizen, and she possesses the same First Amendment rights as every other American. She makes her own decisions, and I have always respected her right to do so. She has made many sacrifices to accommodate my service on the Supreme Court, including the insult of having to endure numerous, loud, obscene, and personally insulting protests in front of our home that continue to this day and now threaten to escalate.

I am confident that a reasonable person who is not motivated by political or ideological considerations or a desire to affect the outcome of Supreme Court cases would conclude that the events recounted above do not meet the applicable standard for recusal. I am therefore required to reject your request.

The second incident concerns a flag bearing the legend “An Appeal to Heaven” that flew in the backyard of our vacation home in the summer of 2023. I recall that my wife did fly that flag for some period of time, but I do not remember how long it flew. And what is most relevant here, I had no involvement in the decision to fly that flag.

My wife is fond of flying flags. I am not. My wife was solely responsible for having flagpoles put up at our residence and our vacation home and has flown a wide variety of flags over the years. In addition to the American flag, she has flown other patriotic flags (including a favorite flag thanking veterans), college flags, flags supporting sports teams, state and local flags, flags of nations from which the ancestors of family members came, flags of places we have visited, seasonal flags, and religious flags. I was not familiar with the “Appeal to Heaven” flag when my wife flew it. She may have mentioned that it dates back to the American Revolution, and I assumed she was flying it to express a religious and patriotic message. I was not aware of any connection between this historic flag and the “Stop the Steal Movement,” and neither was my wife. She did not fly it to associate herself with that or any other group, and the use of an old historic flag by a new group does not necessarily drain that flag of all other meanings.

As I said in reference to the other flag event, my wife is an independently minded private citizen. She makes her own decisions, and I honor her right to do so. Our vacation home was purchased with money she inherited from her parents and is titled in her name. It is a place, away from Washington, where she should be able to relax.

A reasonable person who is not motivated by political or ideological considerations or

a desire to affect the outcome of Supreme Court cases would conclude that this event does not meet the applicable standard for recusal. I am therefore duty-bound to reject your recusal request.

Sincerely yours,

SAMUEL A. ALITO, Jr.

Mr. DURBIN. I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### TEXAS STORMS

Mr. CORNYN. Madam President, here we are, back in the Nation's Capital, doing the people's work. But over the last couple of weeks, I have been traveling across the State of Texas, where our communities have been battered by extreme weather of one kind or another. From Houston up to the Metroplex and Valley View, and all the way over to Lubbock, storms have caused severe damage and widespread power outages.

A couple of weeks ago, 100-mile-per-hour winds ripped through Houston, toppling transmission lines, power lines, and trees, and ripping windows out of skyscrapers.

Last week's storms in West Texas brought hail so large that the National Weather Service issued a warning with a novel descriptor. They called the hail “DVD-sized.”

The Dallas area saw baseball-sized hail and 80-mile-an-hour winds, which led to several days without power for many of my constituents.

And five tornadoes touched down in North Texas during a 6-hour span last Saturday. One of those tornadoes, an EF3, traveled roughly 48 miles through three counties for over an hour, with speeds peaking at 140 miles an hour. Tragically, it led to 7 deaths and an estimated 100 injuries.

So far this year, the National Weather Service has recorded more than 1,300 heavy weather events in Texas, and more than 100 of those reports came on a single day last week.

Many of our communities are still clearing debris, restoring power, and assessing damage. I have spoken with leaders throughout these regions about the recovery process and offered a helping hand.

I appreciate everything that has been done and continues to be done to keep our communities safe and support those who have suffered the damage caused by this severe weather.

In many areas, the level of destruction far exceeds the capabilities of the city or county, and there is a need for Federal support. Governor Abbott has worked quickly to ensure Texas receives the resources and support it needs from the State, and he requested assistance from the Federal Government too. He has submitted major disaster declaration requests to President