

June 10, 2024



Dear Senator,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the rights of all persons in the United States, and the 63 undersigned national organizations, we write in response to the most recent revelations of unethical and deeply compromising behavior by Supreme Court Justice Samuel Alito. We urge you to use the full power of the Senate Judiciary Committee to investigate and respond swiftly to these newest developments in the ongoing ethics crisis at the U.S. Supreme Court. We appreciate your ongoing work on this issue and reiterate our calls for expeditious passage of robust ethics reform legislation, including an enforceable Code of Conduct for Supreme Court justices and other needed transparency measures. Furthermore, we urge immediate and sustained oversight and investigation into the new reports identifying disturbing patterns of ethics violations by Justice Alito.

Our federal judiciary was created to be an impartial branch of government that does not engage in partisan or political behavior, and the U.S. Constitution grants lifetime tenure to judges and justices for this very reason — to immunize our judiciary from the influence of politics. The decisions our judges and justices make determine whether our civil and human rights are respected and protected, whether our Constitution is impartially enforced, and whether the rule of law is upheld.

The justices on our nation’s highest court must hold themselves to the highest ethical standards, yet we have witnessed time and time again that certain justices have repeatedly failed to meet that foundational duty. Many of us wrote to you in April 2023 after the disturbing reports about Justice Clarence Thomas’ failure to disclose lavish gifts, and we called on Congress to pass an enforceable Code of Conduct for Supreme Court justices as well as to conduct sustained oversight and investigation into the disturbing patterns of ethics violations by Supreme Court justices.<sup>1</sup> Media reports have continued to identify deeply concerning patterns of Supreme Court justices refusing to hold themselves to basic ethical standards. Recent reporting reveals that an inverted American flag — a symbol of the anti-democratic “Stop the Steal” movement to overturn the results of the 2020 election — was flown outside Justice Alito’s home in January 2021, at a volatile time in the weeks following the January 6 insurrection.<sup>2</sup> Additional reports have revealed the flying of an “Appeal to Heaven” flag — a symbol carried by insurrectionists and those supporting extremist ideologies aimed at undermining secular government — outside Justice Alito’s vacation home as recently as the summer of 2023.<sup>3</sup>

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<sup>1</sup> [Letter](#) to Senate from The Leadership Conference on Civil and Human Rights (April 18, 2023) (We reiterate our call for an investigation of Justice Thomas’ failed disclosures as well.)

<sup>2</sup> Jodi Kantor, [At Justice Alito’s House, a ‘Stop the Steal’ Symbol on Display](#), THE NEW YORK TIMES (May 16, 2024).

<sup>3</sup> Jodi Kantor, Aric Toler, Julie Tate, [Another Provocative Flag Was Flown at Another Alito Home](#), THE NEW YORK TIMES (May 22, 2024).

This behavior, as well as Justice Alito’s refusal to heed the calls to recuse himself,<sup>4</sup> is unacceptable. At a minimum, it creates an appearance of impropriety that violates the letter and spirit of the Supreme Court’s own code of conduct,<sup>5</sup> and possibly federal law.<sup>6</sup> In particular, with respect to the code of conduct:

- Canon 1 clearly states that justices “should maintain and observe high standards of conduct in order to preserve the integrity and independence of the federal judiciary.”<sup>7</sup>
- Canon 2 calls on justices to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”<sup>8</sup>
- Canon 3 notes that “a Justice should disqualify himself... in a proceeding in which the Justice’s impartiality might reasonably be questioned” and “not knowingly make public comment on the merits of a matter pending or impending in any court.”<sup>9</sup>
- Canon 5 of the Court’s code clearly states that justices should not engage in political activity.<sup>10</sup>

The display of flags affiliated with political extremists calling for rejection of the 2020 presidential election results, as well as his refusal to recuse himself from cases that directly relate to the 2020 presidential election, erode confidence that justices will comport themselves with integrity and impartiality, further degrading the public’s esteem for our Supreme Court.

Through both word and action, Justice Alito has given the appearance that he cannot be impartial in cases related to the 2020 election. We call upon him, and urge others to call upon him, to recuse himself from these cases. Justice Alito’s explanation for refusing to recuse himself — that his wife displayed the flags — does nothing to dispel the appearance of impropriety. The houses at which the flags were flown are *his* residences that he both owns and occupies, and a reasonable observer would conclude that he approved of the message prominently displayed at his homes. His response fails to engage with the core problem that the flags were displayed at his residences and the appearance of bias created. As Senate Judiciary Committee Chair Dick Durbin noted in response to the reporting on Justice Alito, “This is not a chance indiscretion. This is a conscious decision.”<sup>11</sup> Ranking Member Lindsey Graham also commented that “it’s not good judgment to do that... he’s still a Supreme Court justice, and people have to realize that [at] moments like that to think it through.”<sup>12</sup> These patterns of behavior, coming on the heels of earlier reporting that Justice Clarence Thomas has, for decades, failed to disclose lavish gifts he has received from billionaire partisan donors, raise serious questions about the impartiality and integrity of our nation’s most powerful court and the justices who make decisions impacting our civil and human rights.<sup>13</sup>

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<sup>4</sup> Jan Crawford, [Alito tells congressional Democrats he won't recuse over flags](#), CBS NEWS (May 29, 2024).

<sup>5</sup> U.S. Supreme Court, [Code of Conduct for Justices](#) (November 2023).

<sup>6</sup> See e.g., 28 U.S. Code § 455.

<sup>7</sup> U.S. Supreme Court, [Code of Conduct for Justices](#) (November 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Alexander Bolton, [Democrats see Supreme Court crisis in second Alito flag controversy](#), THE HILL (May 24, 2024).

<sup>12</sup> Filip Timotija, [Graham on upside-down flag at Alito home: 'Not good judgment'](#), THE HILL (May 21, 2024).

<sup>13</sup> See e.g., Justin Kaplan, Joshua Elliott, Alex Mierjeski, [Clarence Thomas and the Billionaire](#), PROPUBLICA (April 6, 2023); Justin Kaplan, Joshua Elliott, Alex Mierjeski, [Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn't Disclose the Deal](#), PROPUBLICA (April 13, 2023); Justin Kaplan, Joshua Elliott, Alex

It has once again become clear that there is a desperate need for an enforceable code of conduct for Supreme Court justices, as the unenforceable code released in November 2023 has been insufficient to prevent justices from engaging in behaviors that violate it. The need for serious and immediate action on judicial ethics has been proven repeatedly in recent years. The unethical behavior of justices and judges is unacceptable and cannot continue unchecked, especially as the public's confidence in the Supreme Court continues to decline.<sup>14</sup>

We are grateful to see Chair Durbin's and Senator Sheldon Whitehouse's calls for Justice Alito to recuse himself from cases related to the January 6 insurrection and attempts to overturn the 2020 election, as well as the letter from the Chair and Senator Whitehouse to Chief Justice John Roberts requesting a meeting with him to address the ethics crisis.<sup>15</sup> We also appreciate Senator Richard Blumenthal's letter urging Chief Justice Roberts to convince Justices Alito and Thomas to recuse themselves from these cases.<sup>16</sup> Still, much more must be done.

Given Justice Alito's dismissive and combative response and his refusal to recuse, as well as Justice Thomas' ongoing ethics failures, further action is needed to protect our democracy, prevent future violations of this nature, and restore public confidence in the judiciary. In addition to promptly passing robust judicial ethics reform legislation that includes an enforceable Code of Conduct for Supreme Court justices and other needed recusal and transparency measures, we urge you to immediately launch an investigation into the latest issues surrounding Justice Alito's behavior and issue findings into any potential violations of the Code of Conduct for Supreme Court justices and 28 U.S.C. 455. With the Supreme Court to date either unwilling or unable to address this ongoing crisis, we need Congress, and the Senate Judiciary Committee in particular, to act. These abuses of power, left unchecked, have already become more frequent and more severe, further corroding the public's faith in our judicial system and weakening our democracy. Without immediate and public investigatory action, this crisis will only deepen.

Our communities depend on federal jurists to fairly administer justice for all of us without the appearance of impropriety. We implore you to use the full power of the Senate Judiciary Committee to address this emergency for our democracy, including investigating the latest ethics crisis, to ensure that our Supreme Court can live up to its promise of equal justice under law.

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Mierjeski, [Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition](#), PROPUBLICA (May 4, 2023); Justin Kaplan, Joshua Elliott, Alex Mierjeski, [Justice Samuel Alito Took Luxury Fishing Vacation with GOP Billionaire Who Later Had Cases Before the Court](#), PROPUBLICA (June 20, 2023); Brett Murphy and Alex Mierjeski, [Clarence Thomas' 38 Vacations: The Other Billionaires Who Have Treated the Supreme Court Justice to Luxury Travel](#), PROPUBLICA (August 10, 2023).

<sup>14</sup> See [New Marquette Law School Poll National Survey Finds Approval of U.S. Supreme Court Falls to 39%, Second Lowest Since 2020](#), MARQUETTE UNIVERSITY LAW SCHOOL (May 22, 2024).

<sup>15</sup> Ann Marimow and Justin Jouvenal, [Democrats press Chief Justice Roberts to address ethics at Supreme Court](#), WASHINGTON POST (May 24, 2024).

<sup>16</sup> Alexander Bolton, [Senate Democrat urges Roberts to pressure Alito, Thomas on recusals](#), THE HILL (May 30, 2024).

Sincerely,

The Leadership Conference on Civil and Human Rights  
A. Philip Randolph Institute  
Abortion Access Front  
AFL-CIO  
Alliance For Justice  
American Atheists  
American Constitution Society  
American Federation of State County and Municipal Employees (AFSCME)  
American Federation of Teachers (AFT)  
Americans for Financial Reform Education Fund  
American Humanist Association  
Americans United for Separation of Church and State  
Autistic Self Advocacy Network (ASAN)  
Bend the Arc: Jewish Action  
Black Women's Health Imperative  
Brennan Center for Justice at NYU Law School  
Citizens for Responsibility and Ethics in Washington (CREW)  
Clearinghouse on Women's Issues  
Collective Power for Reproductive Justice  
End Citizens United // Let America Vote Action Fund  
Equal Rights Advocates  
Feminist Majority Foundation  
Free Speech For People  
Freedom From Religion Foundation  
FFRF Action Fund  
Government Information Watch  
Hispanic Federation  
Human Rights Campaign  
Japanese American Citizens League (JACL)  
Jewish Council for Public Affairs  
Just Solutions  
Lambda Legal  
LatinoJustice PRLDEF  
The Lawyers' Committee for Civil Rights Under Law  
Lawyers for Good Government  
League of Conservation Voters  
Matthew Shepard Foundation  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
Nathaniel R. Jones Foundation  
National Association of Social Workers

National Birth Equity Collaborative  
National Council of Jewish Women  
National Education Association  
National Organization for Women  
National Women's Law Center  
National Urban League  
People For the American Way  
Planned Parenthood Federation of America  
Population Connection Action Fund  
Project on Government Oversight  
Religious Coalition for Reproductive Choice  
Reproaction  
Reproductive Freedom for All  
Service Employees International Union (SEIU)  
The Secular Coalition for America  
The Sikh Coalition  
Stand Up America  
Take Back the Court Action Fund  
Union of Concerned Scientists  
United Steelworkers  
Voices for Progress  
Women's March  
The Workers Circle