

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SAMUEL A. ALITO, JR.

May 29, 2024

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Dear Members:

This is in response to your letters of May 21 and May 24, 2024, requesting that I recuse in two pending cases—*Trump v. United States*, No. 23-939; and *Fischer v. United States*, No. 23-5572—as well as certain other cases that might come before the Court. In those letters, 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 the 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 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 facts 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. She 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 patriotic and religious message. I was not aware of any connection between that 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 this event does not meet the applicable standard for recusal. I am therefore duty-bound to reject your recusal request.

Sincerely yours,

