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

CHAMBERS OF
JUSTICE SAMUEL A. ALITO, JR.

May 29, 2024

Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
United States Senate
Washington, D. C. 20510

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."[1] As the Court has pointed out, "[i]ndividual Justices, rather than the Court, decide recusal issues."[2] 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

[1] Letter from R. Durbin & S. Whitehouse to C. J. Roberts (May 23, 2024).

[2] Attachment to letter from THE CHIEF JUSTICE to R. Durbin (Apr. 25, 2023); Commentary to Code of Conduct for Justices of the Supreme Court of the United States 11 (Nov. 13, 2023).

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,