

Congress of the United States

Washington, DC 20515

May 21, 2024

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

Dear Justice Alito:

Today, we are compelled to request that you recuse yourself from any further participation in the cases of *Trump v. United States*, *Fischer v. United States*, and any other cases that may arise from the events surrounding January 6 or the 2020 election. A *New York Times* report revealed that on and around January 17, 2021, between the January 6 insurrection and the inauguration of President Biden, an inverted United States flag was photographed flying from the front lawn of your personal residence. You have acknowledged that the photograph is accurate, and the inverted flag was hung at your house in response to a political statement from a neighbor.¹

It is incontrovertible that at the time the upside down flag flew from your front lawn, “Stop the Steal” activists had adopted the inverted flag as their symbol of protest. Their belief that widespread election fraud had thrown the election from former President Trump to then President-Elect Biden has never been supported by any evidence.

United States Code Title 4 Section 8(a) mandates that “The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.”² No such dire distress was in existence at the time the inverted flag flew from your front yard. Indeed, your own public statement attempts to pass responsibility to your wife, but you nonetheless acknowledge that it was a political statement in support of Donald Trump’s effort to overturn the 2020 election.³ Even if you had “no involvement” in the display yourself, the fact of such a political statement at your home creates, at minimum, the appearance of improper political bias. According to Canon 5 of the recently promulgated, non-binding, non-enforceable U.S. Supreme Court ethics guidelines, on which you are listed as a signatory, a Justice “should refrain from political activity.”⁴ In fact, the Court’s own employee guidelines explicitly prohibit public displays of political views – including yard signs and bumper stickers — because they create an appearance of a conflict of interest.⁵

¹ Jodi Cantor, *At Justice Alito’s House, a ‘Stop the Steal’ Symbol on Display*, N.Y. Times (May. 16, 2024), <https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html>; Shannon Bream (@ShannonBream), X (May 17, 2024, 10:58 AM), <https://x.com/ShannonBream/status/1791483561675022624>.

² 4 U.S.C. § 8(a)(2012).

³ Jodi Cantor, *At Justice Alito’s House, a ‘Stop the Steal’ Symbol on Display*, N.Y. Times (May. 16, 2024), <https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html>; Shannon Bream (@ShannonBream), X (May 17, 2024, 10:58 AM), <https://x.com/ShannonBream/status/1791483561675022624>.

⁴ Code of Conduct for Justice of the Supreme Court of the United States, Canon 5, p.8, https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

⁵ Jodi Cantor, *At Justice Alito’s House, a ‘Stop the Steal’ Symbol on Display*, N.Y. Times (May. 16, 2024), <https://www.nytimes.com/2024/05/16/us/justice-alito-upside-down-flag.html>.

Canon 2 of the Court’s ethics guidelines states that “a Justice should avoid impropriety and the appearance of impropriety in all activities.”⁶ More prescriptively, in Canon 3B, the guidelines declare that “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.”⁷ The guidelines detail such instances, including those in which “The Justice has a personal bias or prejudice concerning a party.”⁸

Currently, there are two cases before the Court involving January 6 rioters and the felony charge of obstructing an official proceeding: the former president’s claim that a president of the United States has absolute criminal immunity for any official acts (*Trump v. United States*), and another case involving January 6 rioters (*Fischer v. United States*). Reasonable people will doubt that you can be impartial in deciding whether Mr. Trump should face criminal prosecution for his actions arising from the “Stop the Steal” movement. Accordingly, this indisputable appearance of a conflict of interest requires that you recuse yourself from these two cases.

Sadly, you are now the second justice who has demonstrated at least an appearance of a conflict of interest related to the events surrounding the January 6 insurrection. In the aftermath of the 2020 election, text messages revealed that Virginia ‘Ginni’ Thomas, the wife of Justice Clarence Thomas, was actively strategizing with the White House chief of staff about how to overturn the election results and attending the January 6 “Stop the Steal” rally — precisely the same underlying conduct charged in *Trump* and *Fischer*. Although Justice Thomas seemingly acknowledged this conflict of interest by recusing himself from the Court’s case related to Trump attorney John Eastman, he has shockingly refused to recuse himself from *Trump* and *Fischer*.⁹

Undoubtedly, public trust and confidence in the Supreme Court is in shambles, which jeopardizes our democracy and the Rule of Law upon which it is based. And given that your decisions in *Trump* and *Fischer* will profoundly affect the future of a past and potentially future President, and of democracy itself, it is essential that the Court attempt to bolster the public’s trust in the integrity of the Court. Thus, given your voluntary agreement to comply with the U.S. Supreme Court’s ethics guidelines, and most importantly, in order to protect the legitimacy of the Court’s ultimate decision in these historic cases, it is clear that both you and Justice Thomas must recuse yourselves from participating any further in these, or any other cases, related to January 6 or the 2020 election.

Sincerely,

⁶ Code of Conduct for Justice of the Supreme Court of the United States, Canon 2, p.1, https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

⁷ Code of Conduct for Justice of the Supreme Court of the United States, Canon 3(B), p.2, https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

⁸ Code of Conduct for Justice of the Supreme Court of the United States, Canon 3(B)(2), p.2, https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

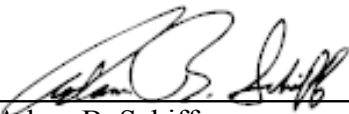
⁹ Ryan Nobles, Annie Grayer, *Zachary Cohen and Jamie Gangel, January 6 committee has text messages between Ginni Thomas and Mark Meadows*, CNN.com, (Mar. 25, 2023), <https://www.cnn.com/2022/03/24/politics/ginnithomas-mark-meadows-text-messages/index.html>.



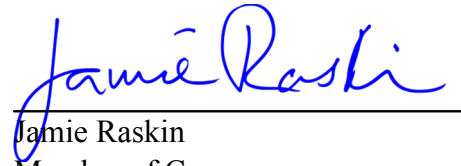
Henry C. "Hank" Johnson, Jr.
Member of Congress



Dan Goldman
Member of Congress



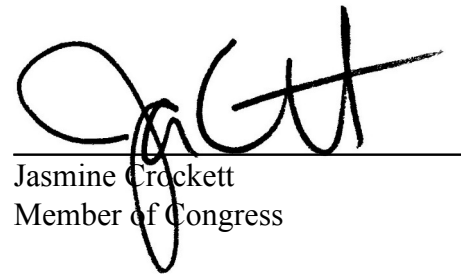
Adam B. Schiff
Member of Congress



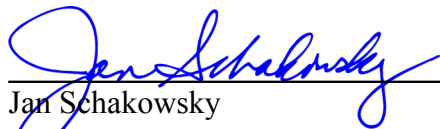
Jamie Raskin
Member of Congress



Madeleine Dean
Member of Congress



Jasmine Crockett
Member of Congress



Jan Schakowsky
Member of Congress



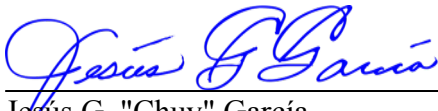
Bonnie Watson Coleman
Member of Congress



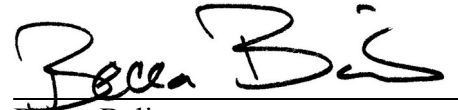
Eric Swalwell
Member of Congress



Raúl M. Grijalva
Member of Congress



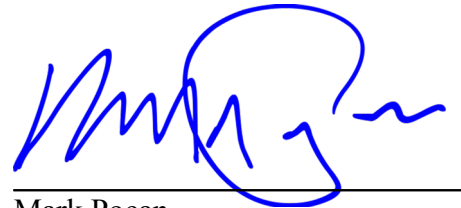
Jesus G. "Chuy" Garcia
Member of Congress



Becca Balint
Member of Congress



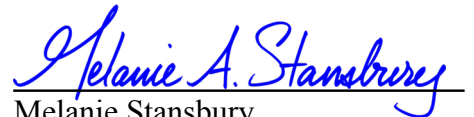
Nikema Williams
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Mark Pocan
Member of Congress



Eleanor Holmes Norton
Member of Congress



Melanie Stansbury
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Sean Casten
Member of Congress



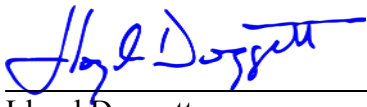
Ayanna Pressley
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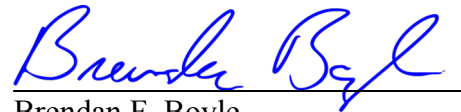
Adriano Espaillat
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Deborah K. Ross
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Lloyd Doggett
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Brendan F. Boyle
Member of Congress



Veronica Escobar
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Andrea Salinas
Member of Congress



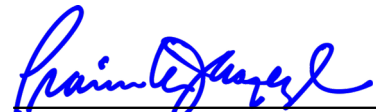
Sylvia R. Garcia
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Ted W. Lieu
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Cori Bush
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Pramila Jayapal
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Daniel T. Kildee
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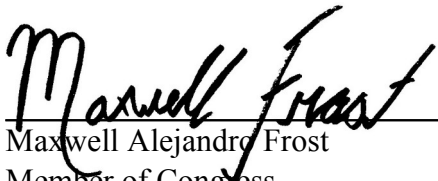
Rashida Tlaib
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Paul Tonko
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Chellie Pingree
Member of Congress



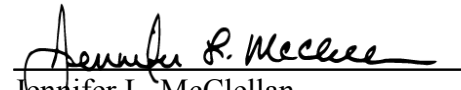
Maxwell Alejandro Frost
Member of Congress



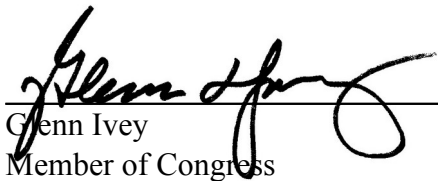
Steve Cohen
Member of Congress



Jim Tokuda
Member of Congress



Jennifer L. McClellan
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Glenn Ivey
Member of Congress



Sheila Jackson Lee
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Mikie Sherrill
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Mark DeSaulnier
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Frederica S. Wilson

Frederica S. Wilson
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Barbara Lee

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Delia C. Ramirez

Delia C. Ramirez
Member of Congress

Nanette Diaz Barragán

Nanette Diaz Barragán
Member of Congress

Danny K. Davis

Danny K. Davis
Member of Congress

CC: Chief Justice John Roberts

Associate Justice Clarence Thomas