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May 30, 2024

The Honorable John G. Roberts, Jr.
Chief Justice
Supreme Court of the United States
1 First Street NE
Washington, DC 20543

Dear Chief Justice Roberts:

I wrote last December urging you to “ensure that Justice Clarence Thomas recuses himself” from participating in *United States v. Trump*.¹ Because of his wife’s close involvement in challenges to the 2020 election results, Justice Thomas’s impartiality in the case “might reasonably be questioned,”² making his recusal proper. However, Justice Thomas did not recuse. He did not explain his decision. And the Court’s ethical shortcomings have only grown.

It recently came to light that Justice Samuel Alito and his family flew two politically charged flags outside their homes: an upside-down American flag, a symbol adopted by Trump supporters who falsely reject the results of the 2020 election,³ and an “Appeal to Heaven” flag, recently associated with a theocratic ideology and carried by those who attacked the Capitol on January 6th, 2021.⁴ This “political activity”⁵ “reflect[s] adversely on the Justice’s impartiality”⁶ and merits recusal in cases related to former President Trump and the events of January 6th.

Yesterday, however, Justice Alito refused requests to recuse himself from cases relating to the 2020 presidential election and the January 6th attack on the Capitol.⁷ Justice Alito maintains that

¹ Letter from Sen. Richard Blumenthal to Chief Justice John G. Roberts, Jr. 1 (Dec. 20, 2023), <https://www.blumenthal.senate.gov/imo/media/doc/122023scotusthomasrecusalletter.pdf>.

² *Cf.* 28 U.S.C. § 455(a).

³ Jodi Kantor, *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>.

⁴ Jodi Kantor, Aric Toler & Julie Tate, *Another Provocative Flag Was Flown at Another Alito Home*, N.Y. TIMES (May 22, 2024), <https://www.nytimes.com/2024/05/22/us/justice-alito-flag-appeal-to-heaven.html>.

⁵ CODE OF CONDUCT FOR JS. OF THE SUP. CT. OF THE U.S. Canon 5 (SUP. CT. OF THE U.S. 2013).

⁶ *Id.* at Canon 4.

⁷ Letter from The Honorable Samuel Alito to Senator Richard J. Durbin and Senator Sheldon Whitehouse, THE WASHINGTON POST (May 29, 2024), https://www.washingtonpost.com/documents/ae3feb5a-13a4-4f0f-9046-b61a530c40fb.pdf?itid=lk_inline_manual_4.

he has not acted in a manner in which his “impartiality might reasonably be questioned.”⁸ Given the facts, it defies logic that Justice Alito could arrive at such a conclusion.

As Chief Justice, while your ability to compel your colleagues’ recusal may be limited, your position gives you substantial moral and persuasive authority to establish norms of behavior and to hold your colleagues to them. I urge you to use that authority to convince Justices Thomas and Alito to recuse themselves in these cases—critical to our democracy and the rule of law—where their “impartiality might reasonably be questioned.”

Additionally, as “first among equals,” you have more than just persuasive power to guide the Court and restore its institutional standing. In fact, there are at least two concrete ways in which you can determine which Justices speak with the authority of the Court should they fail to recuse when proper.

First, Court procedures dictate that you, as Chief Justice, choose which Justice will draft the Court’s opinion in cases where you join the majority.⁹ Last term, you voted with the majority in 86 percent of nonunanimous cases, giving you the power to assign opinions in the vast majority of cases.¹⁰ You do not determine who sits on the Court, but you often decide who speaks for it.

Second, you allot Justices to serve as circuit justices among the judicial circuits.¹¹ Circuit justices consider emergency motions and applications from their assigned circuit. In this role, they act as individuals, but their actions are vested with the authority of the Court.

I urge you to use these powers to restore the institutional integrity and standing of the Court. In particular, I urge you not to assign opinions or circuit justiceships to Justices Alito and Thomas if they fail to recuse themselves from further participation in *United States v. Trump* and other cases relating to January 6th and the “Stop the Steal” movement.

As opinion-writers and circuit justices, individual Justices’ voices are imbued with the Court’s authority—and their integrity in turn reflects the character of the Court. When a Justice openly flies flags closely associated with one political candidate, then fails to recuse himself once that candidate becomes a litigant, it contributes to the Court’s plummeting public trust.¹² And each time you ask that Justice to author an opinion of the Court—especially in a case about the allocation of electoral power¹³—you sanction that Justice’s ethical lapses. Not merely a bystander to your colleagues’ misbehavior, you become a validator of their conduct.

⁸ *Id.*

⁹ *Supreme Court Procedures*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1>.

¹⁰ Adam Liptak, *Along with Conservative Triumphs, Signs of New Caution at Supreme Court*, N.Y. Times (July 1, 2023), <https://www.nytimes.com/2023/07/01/us/supreme-court-liberal-conservative.html>.

¹¹ 28 U.S.C. § 42.

¹² Megan Brenan, *Views of Supreme Court Remain Near Record Lows*, GALLUP (Sept. 29, 2023), <https://news.gallup.com/poll/511820/views-supreme-court-remain-near-record-lows.aspx>.

¹³ *Alexander v. South Carolina NAACP*, 602 U.S. ___ (2024) (slip op.).

During your confirmation hearings, you said that you would not use opinion-writing assignments “to promote a particular view or agenda.”¹⁴ But judicial ethics are not a particular agenda. They are the cornerstone of the Court’s credibility and the necessary foundation of our rule of law.

As Chief Justice, you have a responsibility to restore the credibility of the Court and a unique set of powers to do so. I urge you to exercise these powers accordingly.

Sincerely,

A handwritten signature in blue ink that reads "Richard Blumenthal". The signature is written in a cursive style with a large, stylized initial "R".

Richard Blumenthal
United States Senate

¹⁴ *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to Be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 435 (2005) (statement of J. John G. Roberts, Jr.).