

118TH CONGRESS
2D SESSION

H. RES. 1244

Censuring Associate Justice Samuel Alito, Jr., for knowingly violating the Federal recusal statute and binding ethics standards.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2024

Mr. COHEN (for himself, Mrs. RAMIREZ, Ms. BALINT, Ms. SCHAKOWSKY, Ms. TLAIB, Ms. NORTON, Mr. MULLIN, Mr. BOYLE of Pennsylvania, and Mr. ESPAILLAT) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Censuring Associate Justice Samuel Alito, Jr., for knowingly violating the Federal recusal statute and binding ethics standards.

Whereas the Constitution establishes three coequal branches of government—legislative, executive, and judicial—each with its own powers and responsibilities;

Whereas every person who appears before a United States court should have confidence that his or her case will be heard fairly and judged solely on the facts before the court and a thorough and thoughtful application of law;

Whereas the words “Equal Justice Under Law” are carved above the entrance of the Supreme Court, declaring the core value of the Federal judiciary;

Whereas judicial impartiality is foundational to our system of justice and essential to uphold the Constitution’s guarantee of due process and equal protection of the laws;

Whereas judicial independence and impartiality is essential to the fair administration of justice and the legitimacy of the courts;

Whereas Congress has established binding ethics requirements and standards for the Federal judiciary;

Whereas the Federal recusal statute, section 455 of title 28, United States Code, requires a justice “[to]...disqualify himself in any proceeding in which his impartiality might reasonably be questioned” or “where he has a personal bias or prejudice concerning a party”;

Whereas, on November 13, 2023, the Supreme Court, with all nine Justices acting unanimously, promulgated a Code of Conduct for the Justices of the Supreme Court of the United States;

Whereas the preface to the Code includes the statement: “For the most part these rules and principles are not new: The Court has long had the equivalent of common law ethics rules, that is, a body of rules derived from a variety of sources, including statutory provisions, the code that applies to other members of the Federal judiciary, ethics advisory opinions issued by the Judicial Conference Committee on Codes of Conduct, and historic practice”;

Whereas the Code preface also suggests that the code was promulgated to “dispel” “the misunderstanding that the Justices of this Court, unlike all other jurists in this country, regard themselves as unrestricted by any ethics rules this misunderstanding”;

Whereas Canon 2(A) of the Code provides that a “Justice should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”;

Whereas Canon 3(B) of the Code incorporates the Federal recusal statute, providing 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”;

Whereas Canon 5 of the Code provides that a Justice should not “publicly endorse or oppose a candidate for public office” or “engage in other political activity”;

Whereas, on May 16, 2024, the New York Times published a photograph taken on January 17, 2021, of an American flag being flown upside-down in front of the residence of Associate Justice Samuel Alito, Jr.;

Whereas the upside-down flag is a widely understood symbol of the so-called “Stop the Steal” effort which falsely and without evidence espoused that the 2020 Presidential election was stolen and that former President Donald J. Trump, not President Joe Biden, was actually elected as President of the United States;

Whereas, on January 6, 2021, just a few days before the upside-down American flag flew in front of Justice Alito’s home, rioters who similarly carried the American flag upside-down stormed the United States Capitol in a violent effort to prevent Congress from certifying the results of the 2020 election;

Whereas the United States Flag Code, codified in section 8 of title 4 of the United States Code, provides, “No disrespect should be shown to the flag of the United States of America;...(a) 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”;

Whereas by flying the flag upside-down in front of his residence during the period between the certification of the election and the inauguration in 2021, at a time when former President Trump and his political allies were actively disputing the validity of the election results, there was a reasonable perception that Justice Alito was supporting former President Trump’s efforts to overturn the election results or signaling that President Biden’s election posed “extreme danger to life or property”;

Whereas, despite acting in a matter that creates a public perception of bias, Justice Alito continued to hear and participate in cases directly related to the 2020 election and the January 6, 2021, insurrection; and

Whereas Justice Alito’s actions violate the principles of judicial independence, impartial administration of justice, and the rule of law: Now, therefore, be it

- 1 *Resolved*, That the House of Representatives—
- 2 (1) censures Associate Justice Samuel Alito,
- 3 Jr., for knowingly violating the Federal recusal statute and binding ethics standards and calling the impartiality of the Supreme Court of the United States
- 4 into question by continuing to participate in cases in
- 5 which his prior public conduct could be reasonably
- 6 interpreted to demonstrate bias; and
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1 (2) demands Associate Justice Samuel Alito,
2 Jr., recuse himself from all litigation related to the
3 2020 election or the insurrection on January 6,
4 2021.

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