



Written by [Steve Byas](#) on April 17, 2024

## Justice Thomas Questions Selective Prosecution in J6 Case

All it took Tuesday was one reasonable question by Supreme Court Justice Clarence Thomas during oral arguments in a case involving a January 6 defendant to send many on the Left into a frenzy of indignation.

An “obstruction of official proceedings” law has been used by the Biden Justice Department in prosecutions against J6 protesters at the U.S. Capitol, including against alleged “rioter” Joseph Fischer, the defendant in the case before the Court. Thomas simply asked Solicitor General Elizabeth Prelogar whether the law had ever been used in any similar case. “There have been many violent protests that have interfered with proceedings,” Thomas noted. “Has the government applied this provision to other protests in the past?”



AP Images  
Clarence Thomas

Prelogar had no other examples to give Justice Thomas of the law’s use in such a situation. She argued that the January 6 episode was unique, as there were no other examples “where people have violently stormed a building in order to prevent an official proceeding, a specified one, from occurring with all of the elements like intent to obstruct, knowledge of the proceeding, having the corruptly mens rea, but that’s just because I’m not aware of that circumstance ever happening prior to January 6th.”

The defendant in this case is Joseph Fischer, and a ruling by the Court in his favor could create a precedent leading to the freeing of, or reduced sentences for, several other persons accused of participating in an “insurrection” in 2021. More than 300 other defendants have also been charged under the law. And, considering that former President Donald Trump has likewise been accused of somehow orchestrating the incursion into the Capitol on January 6 (although he explicitly pleaded for a peaceful protest concerning the outcome of the 2020 presidential election), the case has potentially significant ramifications in the case of the Biden Justice Department against Trump.

Since the case before the Supreme Court involves a legal question concerning due process under the U.S. Constitution, why did Thomas’ reasonable question set off such angry denunciations of the longest-serving member of the Supreme Court?

Thomas’ wife, Ginni, was active in the efforts to challenge the results of the controversial 2020 presidential election. She urged Trump’s White House chief of staff, Mark Meadows, to continue his efforts to challenge the results of the 2020 presidential election, which was marred by allegations of fraud in states such as Georgia, Pennsylvania, and Arizona.

Virginia Thomas attended the rally on January 6, at which then-President Trump spoke and encouraged the crowd to go to the Capitol and protest, letting the members of Congress know of their contention the election had been stolen, but to do so peacefully.



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Simply attending a rally led one columnist, Sophia Nelson, to contend that it was “totally inappropriate for Justice Thomas to be asking questions on this case,” because “his wife is an actor in the #January6 riot!” Of course, attending a rally is not the same as being an “actor” in a riot, but is rather a right explicitly protected under the First Amendment to the Constitution. Questioning the results of an election — whether one is correct or incorrect — is likewise a right (known as freedom of speech) protected by the First Amendment.

But the Constitution has failed to restrain critics of Thomas — who, perhaps along with fellow Justice Samuel Alito, the most constitutionally-minded member of the Court — from calling for his recusal from the case. Mark Jacob, a former editor at the *Chicago Tribune*, even wrote on X, “Clarence Thomas, spouse of a J6 co-conspirator, is participating in a J6 case. The Supreme Court is delegitimizing itself.”

Jeffrey Toobin, a former legal analyst for CNN, charged that Thomas was “minimizing the severity of the 1/6 insurrection at the Capitol. Perhaps that’s because his wife was part of the conspiracy. What a disgrace that he’s sitting on this case.”

Jacob and Toobin are, of course, conflating the perfectly legal efforts of Virginia Thomas to legally challenge the validity of the election results in some states and to attend a peaceful rally with unlawful entrance into the Capitol. While one can oppose some of the actions of some of the J6 protesters, it was hardly an “insurrection” against the U.S. government.

There is no reasonable inference that Justice Thomas, or his wife, are going to somehow personally “benefit” from the outcome of this case before the Supreme Court. Therefore, there is no reason for Thomas to recuse himself. Anyone who has been married any length of time also knows that husbands and wives do not always agree on every political or legal question.

The elephant in the room with this entire case is that the prosecution of Fischer and the other J6 defendants, especially former President Trump, is to the benefit of President Joe Biden, whose Justice Department is pursuing the case. The optics of the Biden Justice Department prosecuting Biden’s opponent in the 2024 presidential election are horrible.

Such actions are not unusual in banana republics and nations with despotic rulers. If anyone should recuse, it should be the Biden regime that has insisted these cases be continued. This should not be happening in America — and Justice Thomas is absolutely correct in asking the question he did.



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