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Left's Attack on Conservative Justices Is Attempt to Delegitimize Supreme Court

Mark Paoletta / May 06, 2022

The left's attacks on American institutions accelerated this week with the shocking leak of a draft Supreme Court opinion on Dobbs v. Jackson Women's Health Organization.

The substance of the draft opinion is an outstanding constitutional analysis by Justice Samuel Alito of why it is appropriate and necessary to overturn Roe v. Wade to be faithful to the Constitution. Roe was wrong the day it was issued. But the intent of the leaker appears clear: to intimidate and bully one of the five justices.

In the minutes and days that followed the leak, radical pro-abortion protesters stormed the steps of the U.S. Supreme Court. They didn't stop there. The justices themselves are now facing protests at their homes, putting their security at risk.

Recently, I had the opportunity to testify at a U.S. House of Representatives hearing, "Building Confidence in the Supreme Court Through Ethics and Recusal Reforms." In reality, the hearing wasn't about building confidence in the court.

If confidence is lacking, it is not due to issues of ethics or recusals. Rather, confidence in the court is undermined by the coordinated campaign by the corporate media and Democrats to smear conservative justices with the goal of delegitimizing the court.

Why now? Because liberals fear that the court finally has a working conservative majority that may sweep away a number of long-time liberal landmark cases that cannot stand up to more rigorous constitutional scrutiny. And in this effort, Democrats and the media are trying to threaten, intimidate, destroy, and remove any of the justices who may constitute this new majority.

If you think this is hyperbole, perhaps a brief reminder is in order. Sen. Chuck Schumer, D-N.Y., stood on the steps of the Supreme Court in March 2020 directly threatening Justices Brett Kavanaugh and Neil Gorsuch as the Supreme Court heard oral argument on an abortion case. He said:

> *I want to tell you, Gorsuch. I want to tell you, Kavanaugh. You have released the whirlwind and you will pay the price. You won't know what hit you if you go forward with these awful decisions.*

Less than a year earlier, Sen. Sheldon Whitehouse, D-R.I., the lead Senate sponsor of this proposed legislation, filed an amicus brief in a Second Amendment case pending at the Supreme Court, where he threatened that the court better drop the case or face the consequences. He wrote:

> *The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be 'restructured in order to reduce the influence of politics.'*

And now, we are now in the middle of the latest attack in the 40-year war on Justice Clarence Thomas, this time an all-out assault on the justice and his wife, Ginni, for so-called ethical transgressions, such as Thomas allegedly failing to recuse because of his wife's activities. It is a false and malicious attack on two good people.

The left hates Thomas because he is a black conservative who has never bowed to those who demand that he must think a certain way because of the color of his skin. Its racist attacks have repeatedly sought to portray Thomas as dependent on white people, from Judge Larry Silberman on the D.C. Circuit to Justice Antonin Scalia on the Supreme Court, and always his wife. It's despicable.

Thomas triggers the left, exposing its racism. But 30 years later, Thomas is still standing strong, considered by many to be our greatest justice.

But it appears that the left also really hates Ginni Thomas, because she is an outspoken, unapologetic conservative woman.

Thomas has acted ethically and honorably at all times. To date, he has had no reason to recuse himself from any case because of his wife's opinions or activities. The new recusal standards being applied to Thomas have no grounding in the law or in precedent.

Judge Stephen Reinhardt, a liberal icon from the 9th Circuit, did not recuse from a case challenging a ban on same-sex marriages, even though his wife, who was the head of an ACLU chapter, had spoken out against the ban, and her organization had joined two amicus briefs in the court below. Reinhardt wrote that his wife's "views are hers, not mine, and I do not in any way condition my opinions on the positions she takes regarding any issues."

Reinhardt concluded that a reasonable person would not believe he would be partial simply because of his wife's or her organization's views. Reinhardt also determined that his wife had no "interest" in the outcome of this case "beyond the interest of any American with a strong view concerning the social issues that confront this nation." Sound familiar?

When Reinhardt voted exactly as his wife and the ACLU of South Carolina had advocated, nobody accused him of being a puppet of his wife. In fact, Professor Stephen Gillers filed a brief defending Reinhardt, writing:

> *[A] spouse's views and actions, however passionately held and discharged, are not imputed to her spouse … A contrary outcome would deem a judge's spouse unable to hold most any position of advocacy, creating what amounts to a marriage penalty.*

Justice Ruth Bader Ginsburg's husband's law firm appeared before the Supreme Court several times, and Ginsburg never recused. In fact, she voted in favor of the client of her husband's colleague.

Based on the law and precedent, Reinhardt and Ginsburg properly did not recuse. But these and other examples in my written testimony prove that Thomas is correct in not recusing from any case to date because of his wife's activities.

More troubling, in 2016, Ginsburg directly attacked then-candidate Donald Trump. She called him a "faker," trashed him for not releasing his taxes, and opined that she feared living in America if Trump were elected. Talk about undermining the legitimacy of the court. She did not recuse from cases involving the Trump administration, including one where Trump challenged a subpoena to release his taxes. Of course, she voted against Trump.

But despite Ginsburg's dangerous foray into presidential politics to prevent Trump from being elected, no Democrat

called for hearings or talked of impeaching her for these partisan attacks or her refusal to recuse from cases involving Trump. For many on the left, she was a hero for attacking Trump.

There is nothing wrong with ethics and recusals at the Supreme Court. The justices are ethical and honorable public servants. Moreover, to support any reform legislation right now would be to validate this vicious political attack on the Supreme Court.

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