

Twitter Thread by Seth Abramson



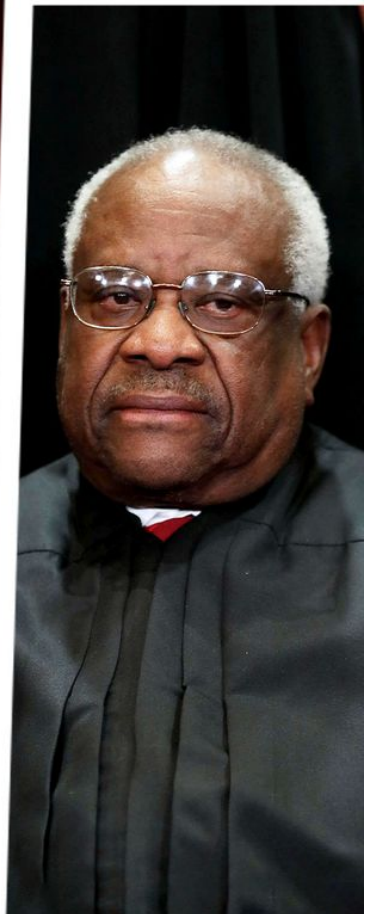
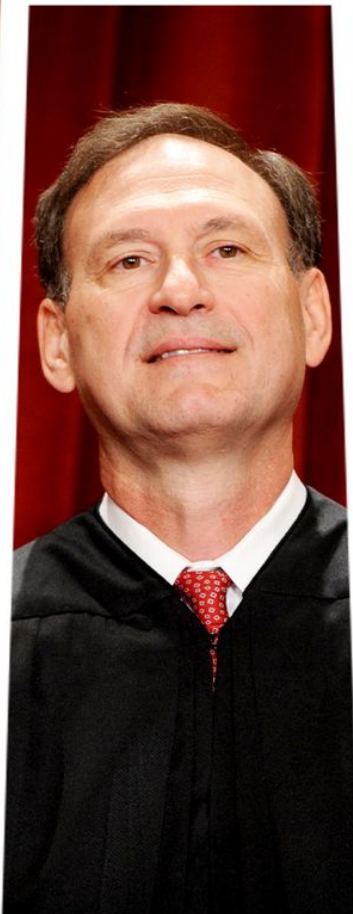
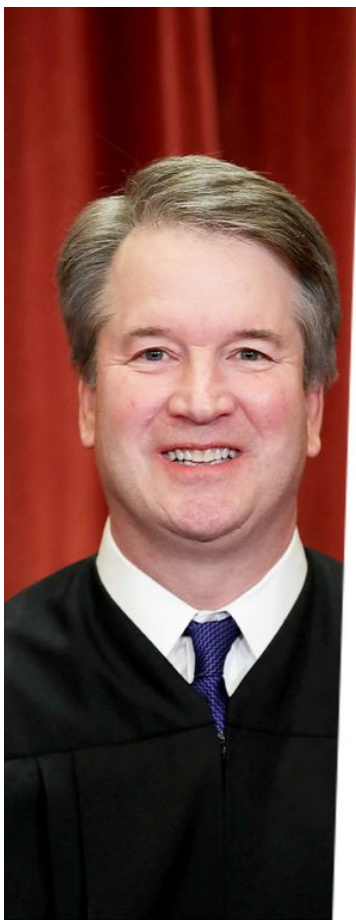
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Either John Roberts is in the majority on the MS abortion case and passed over Clarence Thomas to assign the opinion to Alito, or Thomas is the senior Justice in the majority and chose not to assign the opinion to himself.

Either way, there's a story here media must investigate.



My two preliminary thoughts:

(1) Thomas understands there's heat on him and his wife over January 6, and moreover is in a position to know if that heat is *justified*. That in this context he passed up the chance to write the most important opinion of his life is *very* telling.

(2) There's reasoned speculation from a Yale prof who was a former SCOTUS clerk—see link in my feed—that this opinion was leaked by a conservative clerk (with Thomas's clerks the top suspects) to strongarm either Kavanaugh or Gorsuch into joining an opinion they were wavering on.

Remember that “Thomas Clerk World”—the private listserv for Thomas clerks past and present *and* insurrectionist Ginni Thomas—has been under scrutiny over January 6. These are the most radical clerks in America. *If* there was a far-right leak, they would be the leading suspects.

In fact, John Roberts' investigation might well think to *start* with “Thomas Clerk World,” as it's the one known digital venue for the sharing of information where Supreme Court clerks interact with insurrectionists who we *know* do not believe in rule of law: like Ginni Thomas.

So in this context, Clarence Thomas inexplicably excusing himself from the scrutiny writing the MS abortion case opinion would've drawn on him and his wife—when he had the authority to assign the opinion to himself and normally would have—*is* a suspicious fact for investigators.

This said, so far it looks like Roberts *may* be a “concurring in part, dissenting in part” vote on the MS abortion case—which would see him writing a solo opinion—and I'm not sure if him being in the majority in this attenuated way keeps him in control of assigning the opinion.

But my understanding is that if Roberts isn't going to join the majority opinion himself, he *doesn't* pick who gets to write it, in which case Thomas had that authority and elected *not* to take for himself what would've been the most historic piece of writing of his whole life.

This is my way of saying the *strangest* decision made by a judge in this affair appears to have been made by Thomas, even as the chief suspects for a far-right leak of Alito's opinion would be Thomas's clerks and Thomas's wife. I think it's a thread investigators should pull on.

Even in an “innocuous” scenario—Roberts passing over Thomas to give the opinion to Alito—it'd be a stunning concession by Roberts that Thomas is tainted by scandal. You can't tell me Thomas wouldn't have wanted to write this opinion (Roberts couldn't; he wasn't going to join it).

In that “innocuous” scenario, Thomas's clerks—and wife—would've been livid over the slight, and even more furious at the loss of *control* it signified.

If Kavanaugh or Gorsuch were wavering on joining Alito's opinion, a leak would be a way for Thomas's camp to reassert control.

It's reasonable for media to write on this, as a) a federal probe is ongoing; b) the leak was to conservatives' advantage; c) Roberts is not a suspect; d) Thomas and his wife/clerks were *already* facing a scandal over whether they respect US electoral/jurisprudential traditions.

Consider: on February 23, around the time the Alito opinion was written, the NYT came out with a *damning* piece on Clarence and his wife. The Court would've been aware this piece was being written *many* weeks earlier, likely November

or December of 2021. <https://t.co/Ycofb7TeyU>

For that matter, the first PROOF article on Ginni Thomas's insidious role in January 6, 2021—which went viral and was read by many in the federal government (as I know because I know who follows the PROOF project)—was published in late January of 2022. <https://t.co/ewu3Feovpv>

But the *first* shot over the bow of Clarence Thomas and his wife came a week earlier, on January 21, 2022, which means the Court *definitely* would've known it was being written back in November or December 2021, when the MS abortion opinion was assigned. <https://t.co/ESwi1DuMka>

In fact there's ample evidence Ginni was on Thomas Clerk World notifying Thomas clerks past and present that—as she saw it—a “hit piece” was coming back in late 2021. It's at this moment her husband apparently declined to write the most important opinion of his professional life.

To think like the federal criminal investigator I once briefly was, if Thomas felt there was *nothing* to the scrutiny of him and his wife, he takes the abortion opinion himself. If he doesn't want additional heat on him and his wife, he doesn't. That'd be a starting presumption.

But I've done enough research on Ginni Thomas—and read enough major-media investigation of Ginni Thomas—to know that she would've been absolutely *livid* at the idea that media attention on *her* caused her husband to miss out on writing an opinion she's dreamed of for *decades*.

So now we have a historic leak of the opinion Thomas was passed over for writing—or was forced to excuse himself from writing, *against his will*—that appears to benefit the far right and almost certainly would have had to come from a cadre of clerks. So who are the key suspects?

Federal investigators will be asking *precisely* that question at a time when Thomas, his wife, *and* his *former* clerks at a minimum (e.g., Eastman) are under federal scrutiny for possible ethics violations. I'm sorry, but this does make them *initial* chief suspects, at least.

Another fact worth considering: how quickly the far right used this leak—which secretly may have been a far-right leak—to say, almost with *one voice*, that *this* was the “real insurrection.” How bizarre to think this story should take the heat off the January 6 insurrectionists!

So while it's a minor point to be sure, that there was such a quick response from the insurrectionist community to tie this leak story to the January 6 insurrection in a way that sought to *exculpate* January 6 insurrectionists like Ginni Thomas and John Eastman is.... *curious*.

Having said this, I'll underscore that the sharpest instrument federal investigators have is Occam's Razor—which would here suggest the MS abortion opinion was leaked by a clerk deeply troubled by the opinion's lawlessness and the congressional perjury by two Justices it implies.

But if federal investigators get even the slightest indication that there was an orchestrated political motive behind the leak *besides* a lone-wolf actor attempting to be a federal whistleblower, I candidly can't imagine going *anywhere else first* but to Clarence Thomas's camp.

To pull out to a 10,000-foot view: everyone knows the GOP literally stole two Supreme Court seats (some would say three, but I say two), so if a federal investigation were to lead to the Thomas camp—at a time any impeachment of Thomas will be impossible—it adds to the argument...

...that not only should Biden increase the size of the Court to compensate for Republican theft and malfeasance—with one *additional*.Justice added as a punitive measure—but that the appropriate number of additions would therefore be 4 rather than 3 (if you follow the math here).

I understand that a POTUS not willing to ditch the filibuster is not going to increase the size of the Supreme Court, either, but keep in mind the effect of the stolen seats is this abortion opinion—and we haven't yet even begun to imagine the destruction this opinion will cause.

Ginni Thomas has been asked to testify to the January 6 committee, confirming—with media reports and federal investigations—a long shadow is being cast over her and Clarence. And we don't know where the leak probe will go.

My point: pressure to augment SCOTUS will only increase.

As that pressure increases—and particularly with the nationwide destruction this abortion opinion will clearly create—activists will be trying to settle on a number of justices Biden should appoint. This leak investigation could add “1” to that number, and that makes it historic.

PS/ To those speculating Thomas wanted to avoid writing this opinion because of its implications for *Loving v. Virginia*: those implications exist *whether or not* Thomas writes or just signs the opinion; writing it would've given him *greater* control over its downstream effects.

PS2/ A reader notes—cannily—that perhaps Thomas is not writing the majority opinion because he wants to write a concurring one (which is indeed his style). Yet it's hard to imagine his views diverging from Alito's, and he'd certainly try to write the majority opinion if he could.

PS3/ That is to say, it's difficult to read Alito's draft opinion on abortion and see anything in it that Clarence Thomas would so strongly object to that he would decide he couldn't write the majority opinion himself—and would need instead to write a separate concurring opinion.

PS4/ I'll reiterate what I said throughout this thread: this is all speculation. But it's speculation urging the media to do a thorough investigation and aiming to circumscribe where the federal probe might seek to begin searching. At the start of an investigation, all is theory.

PS5/ Those who haven't conducted criminal investigations or practiced law don't realize that all cases begin with limited info giving rise to a “theory of the case”—that then prompts more investigation.

Developing a dynamic theory of the case is *critical*, not a mere amusement.