January 6 Committee Final Report downplays central role of Virginia Thomas, Supreme Court in Trump coup

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This is the second in a series of articles reviewing the January 6 Select Committee's Final Report issued last month. This article will focus on the role of the Supreme Court in Trump's failed coup.

In seeking to depict the failed coup of January 6, 2021 as the brainchild of the former president and a few "crazies," the Final Report issued December 22 by the now-dissolved House Select Committee necessarily downplays the critical role played by figures on the US Supreme Court in the conspiracy that culminated in the violent assault on the Capitol.

Marxists understand that the state is not a neutral arbiter, dispensing blind "justice," but an instrument of class domination. As inequality continues to widen, exacerbating social contradictions, the Supreme Court is increasingly controlled by right-wing justices whose decisions are more and more openly directed against the democratic rights and social conditions of the working class.

As this author noted in the WSWS' first article on the January 6 Committee's report, the names Virginia "Ginni" Thomas and Supreme Court Justice Clarence Thomas do not appear once in the report. This is not an innocent omission, but rather a calculated decision by the committee to protect the Supreme Court as an institution of class rule.

The anti-democratic, pseudo-legal theory advanced by Trump's coup lawyers, including John Eastman, a former law clerk for Clarence Thomas, which claimed that state legislatures can award Electoral College votes regardless of the popular vote, was first put forward in the 2000 Supreme Court decision *Bush v. Gore*.

That infamous ruling halted vote counting in Florida and handed the presidential election to George W. Bush, who had lost the national popular vote to Democrat Al Gore by 600,000 ballots. Chief Justice William Rehnquist wrote a concurring opinion, joined by Justices Antonin Scalia and Clarence Thomas, arguing that the US Constitution, under Article II, did not give citizens the right to vote for president of the United States.

Rehnquist wrote that "the state legislature's power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself."

He asserted that even after states had passed laws giving the power to choose presidential electors to the voters—which every state in the union did in the 19th century—the legislature could at any time rescind the voters' right to choose. "The state, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors," he wrote.

Thomas and Scalia concurred, agreeing that state legislatures, at any time, can decide to overrule the popular vote and appoint presidential electors as they see fit. This argument was not joined by the other conservative justices at the time, and a different legal concoction was conjured up to justify the theft of the election and the ascension of the future war criminal Bush to the White House.

In the January 6 Committee's final report, several chapters are dedicated to Trump and his allies' embrace of the "independent state legislature" theory. Chapter 2 of the report notes that "[M]ore than a month before the Presidential election… the Trump Campaign was already developing a fallback plan that would focus on overturning certain election results at the State level."

Citing an article in the *Atlantic*, the committee wrote: "With justification based on claims of rampant fraud, Trump would ask State legislators to set aside the popular vote and exercise their power to choose a slate of electors directly."

The committee adds that people "around President Trump were pushing this idea, and pushing it hard." Among those flooding Mark Meadows' phone before and after Trump lost the 2020 election with messages of support for the "state legislature strategy" were Donald Trump Jr. and Reps. Scott Perry (Pennsylvania) and Andy Biggs (Arizona).

Not named in the report, but one of the most avid promoters of this theory, was Virginia Thomas. As previously reported by the WSWS, while Trump was fighting to overturn the election, Virginia Thomas sent dozens of emails to Wisconsin and Arizona state legislators in November 2020 urging them to reject the popular vote and choose a pro-Trump "clean slate of Electors."

"Article II of the United States Constitution gives you an awesome responsibility to choose our state's electors," Thomas wrote to then-Arizona Speaker of the House Rusty Bowers and other lawmakers.

Rehashing her husband's arguments from 20 years earlier, Ginni Thomas wrote, "This means you have the power to fight back against fraud and ensure our elections are free, fair and honest."

The emails reveal that a core strategy of Trump and his Republican co-conspirators to overturn the election emanated not from Trump, but from Clarence Thomas and the Supreme Court.

With complete contempt for the law and basic principles of jurisprudence, Thomas refuses to recuse himself from cases that involve the activities of his wife, even where she is promoting the very theories he has advanced in court rulings.

Thomas was the only Supreme Court justice last year to vote to block the National Archives from turning over Trump administration documents to the House Select Committee. Among those documents were messages between Meadows and Ginni Thomas discussing not only sending the "Biden crime family" to the Guantanamo Bay torture facility, but also Ginni's admission that she was texting Meadows about discussions she was having with her "best friend," Clarence.

In addition to confirming that she was referring to her husband in texts with Meadows, in her interview with the House Select Committee in September 2022, Virginia Thomas admitted advancing the "independent state legislature" theory while being "very active" with the Trump campaign between November 2020 and January 2021.

"I was very active with Trump rallies, with the Trump campaign," Thomas said. She added that she was "generically involved" in efforts to advance the state legislature theory.

"What I was doing," Thomas said, "was seeing that it was the state legislators who had power to decide if there were problems in the election."

Speaking to the committee, she admitted to being a "leader" and "instigator" of several high-level right-wing groups such as Groundswell, Conservative Action Project, Frontliners and Council for National Policy, all of which coordinated Republican efforts to overturn the election in the courts.

As a "leader" of these groups, Thomas admitted to setting "agendas" and "helping them connect people, helping look for state leaders that were missing that I knew of."

The committee notes that by November 5, 2020, two days *before* the election was called for Joe Biden, right-wing election lawyer Cleta Mitchell was emailing "Dr. John Eastman of Chapman University."

The committee report states that in her email to Eastman, Mitchell asked Eastman to "write a memo justifying an idea that state legislatures 'reclaim' the power to pick electors."

Eastman in turn wrote a memo titled, "The Constitutional Authority of State Legislatures to Choose Electors."

In her interview with the Select Committee, Mitchell spelled out what was in Eastman's memo, and the fact that the same argument was used to justify handing the 2000 election to Bush.

"The Constitution of the United States," Mitchell told the committee, "grants plenary power to state legislatures to choose the electors of the state. Congress has enacted a statute which is an enabling law, which I happen to think is unconstitutional, because that power granted in the Constitution to state legislatures is complete and total. *There's nothing in the Constitution about allowing people, citizens, to vote on electors*." (Emphasis added).

Mitchell confirmed to the committee that she knows Virginia Thomas "very well. She's a very dear friend."