

The case of Samuel Alito: Biden, Democrats shield pro-coup fascists on US Supreme Court

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“Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law.”

Supreme Court Justice John Paul Stevens, dissenting in Bush v. Gore (2000)

Recent revelations that Supreme Court Justice Samuel Alito flew flags associated with the fascist coup attempt of January 6, 2021 at his homes have confirmed what most Americans already knew: The Supreme Court is an illegitimate institution dominated by political appointees of the extreme right.

As in the years leading up to the American Civil War of 1861-65, the domination of an entire branch of government by the forces of extreme reaction is becoming a significant factor in the awakening of popular opposition to the entire political set up, controlled today not by the “Slave Power,” but by the Capitalist Power of the banks, the corporations and the military-industrial complex.

The comparison to the ante-bellum Supreme Court, which in 1857 issued the infamous Dred Scott decision, is inapt in one important way: Unlike the 1850s, a majority of today’s bench was appointed by presidents who lost the popular vote, including Alito (George W. Bush), Chief Justice John Roberts (George W. Bush), Brett Kavanaugh (Donald Trump), Amy Comey Barrett (Donald Trump) and Neil Gorsuch (Donald Trump).

The Court’s oldest and most senile justice, Clarence Thomas, is also the most corrupt, having brazenly accepted bribes from far-right billionaires, including Harlan Crow. Both Alito and Thomas have taken the pusillanimous route of blaming their wives for their own reactionary actions.

Alito, whose slouching, impertinent presence on the Court physically epitomizes his disdain for democratic principles, is being protected by the Democratic Party and the Biden administration, which fears that opposition to the corporate-controlled character of all three branches of government will explode and disrupt its plans for escalating the genocide in Gaza and the war against Russia in Ukraine.

The main concern of Biden and the Democrats is that nothing disturb their alliance with fascist Republicans in support of unlimited funding for Ukraine in Washington’s proxy war against Russia, summed up in the recent vote by House Democrats to block the removal of pro-coup Christian nationalist Mike Johnson from his post as House speaker.

“Biden has no plan to touch the Alito controversy, even with a 10-foot pole,” reads a headline from *Politico*, which notes that “top Democrats have no plans to investigate reports that Supreme Court Justice Samuel Alito flew an upside-down American flag outside his

home after the 2020 election.”

Politico notes:

Joe Biden has no desire to even talk about it. Amid growing demands from the base of the party to call out the actions of several conservative justices and embrace reforms of the court, both the president and the White House have stayed mum.

White House Press Secretary Karine Jean-Pierre said the administration did “not want to get into the business of the specific actions” about Alito, including whether he should recuse himself from two pending cases relating to the January 6 coup attempt itself. All the White House could muster was the belief that “the American flag should be respected.”

Leading Democrats on Capitol Hill have backed Biden’s “live and let live” attitude toward the fascist-dominated Supreme Court, with Senate Judiciary Chair Richard Durbin (D-IL) telling *Politico* the Democrats will not hold hearings on Alito’s role on January 6. “I don’t think that’s going to achieve anything,” he said.

Washington Post columnist Jennifer Rubin wrote on Sunday:

In response to Durbin’s empty words, constitutional scholar Laurence Tribe declared that the issue was no longer “just about the insurrection-abetting Sam Alito, [but] about the AWOL Senator Durbin.” Tribe added, “He has no excuse for not holding hearings about Alito now.”

On Friday, MSNBC moderator Katy Tur interviewed House Democratic Leader Hakeem Jeffries on the revelations surrounding Alito, resulting in the following exchange:

Tur: If the American public puts Democrats in control of the House, and say the American public allows Democrats to maintain control of the Senate, say the American public also allows Joe Biden to keep the White House, would you plan on doing something regarding Justice Samuel Alito, potentially trying to impeach him?

Jeffries: Well, let’s not put the cart before the horse.

The Democrats have made no reference to the fact that Franklin Delano Roosevelt attempted to stack the court with pro-administration officials when the conservative-led court blocked all efforts at social reform in the 1930s. Though the court-stacking effort was defeated by Congress, the court received Roosevelt's message and ceased blocking the administration's reforms, a recognition that the reforms were necessary to stave off social revolution.

Much press attention has been given to Alito's role in authoring and quickly assembling a right-wing majority for the Supreme Court's 2022 decision eliminating the right to abortion in *Dobbs v. Jackson Women's Health Organization*. Little attention, however, has been given to the role Alito played as a major conspirator in the January 6 coup plot itself. The flags Alito flew at his homes were not merely expressions of personal political beliefs. They were signals to the far-right that he was prepared to be their representative on the high court.

The details have been buried by the corporate media and the Democratic-controlled House January 6 Committee and are therefore worth reviewing.

On the morning of January 5, 2021, Trump lawyer Sidney Powell filed a request that Justice Alito issue an injunction halting the official counting of the Electoral College vote scheduled for the following day. This was a backup plan that became critical when Trump's vice president, Mike Pence, refused to support Trump's scheme to disrupt the tally by accepting alternate slates of electors from battleground states. Powell's request was filed as part of a lawsuit brought by leading Republican members of Congress over the certification of the election.

Though Powell's motion was docketed on January 6 and should have been immediately disposed of as legally baseless by Alito (who was the justice responsible for the federal court circuit in which the Republicans' suit had been brought), Alito refused to issue a ruling denying Powell's request for a delay in the certification.

Powell herself later acknowledged that Alito's delay forced Democratic House Speaker Nancy Pelosi to reconvene the joint session of Congress on the night of January 6. This was not merely a symbolic move, as was reported in the media. As Powell later told the far-right press, "She [Pelosi] got notice when we made our filing" through the Supreme Court's e-filing service. "She had to speed up reconvening Congress to get the vote going before Justice Alito might have issued an injunction."

It was not until the morning of January 7, after the coup had clearly failed, that Alito formally denied Powell's request. Alito's decision to allow Powell's request to remain pending is one of the best kept secrets of the January 6 coup plot.

Alito is himself an insignificant figure, a careerist whose 1972 college yearbook states that he aspired to "eventually warm a seat on the Supreme Court." He was not even George W. Bush's first choice for the Supreme Court seat vacated by the retirement of Sandra Day O'Connor, having been nominated only after Bush's effort to nominate Harriet Miers failed in 2005. Four Democrats voted to support Alito's nomination.

The naked character of the Supreme Court's role as a bastion of political reaction could not be clearer. According to a recent poll, the Court has the support of only 34 percent of the population, the lowest in history. In the coming weeks, it will consider whether Trump can be prosecuted for his efforts to remain in office through the January 6 coup attempt, as well as whether the government can prosecute participants in the coup attempt itself.

The Democratic Party has worked tirelessly to protect those

involved in the coup attempt, including Alito, Thomas and dozens of senators and congressmen who voted to delay the Electoral College tally three-and-a-half years ago. To the Democratic Party, maintaining the "legitimacy" of the institutions of American capitalism is of fundamental importance, regardless of the fact that the coup plotters are preparing again to intervene in the 2024 election.

The American ruling class has broken with bourgeois democracy. In December 2000, days before the Court issued its infamous decision in *Bush v. Gore*, which halted the counting of votes in Florida in order to steal the election for the loser of the popular vote, George W. Bush, David North, the chairman of the *World Socialist Web Site* International Editorial Board, told a meeting in Sydney, Australia:

What the decision of this court will reveal is how far the American ruling class is prepared to go in breaking with traditional bourgeois-democratic and constitutional norms. Is it prepared to sanction ballot fraud and the suppression of votes? Is it prepared to install in the White House a candidate who has attained that office through blatantly illegal and antidemocratic methods?

North continued:

The basic article of faith of all those who have doubted or denied the viability of Marxism is that, ultimately, no matter what problem capitalism faces in any part of the world, Uncle Sam will always bail it out... The events now taking place in America signify the end of that long period where the affairs of world capitalism could rest securely under the leadership of US imperialism. The United States will no longer be able to play that role. However protracted it proves to be, the 2000 presidential election marks a new stage in the crisis of American and, therefore, world capitalism.

The shameless character of Alito's public support for fascism, combined with the Democratic Party's efforts to protect Alito, Thomas and the rest of the pro-coup cabal, confirms the correctness of this analysis.



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