

US Supreme Court Justice Clarence Thomas violated conflict of interest law

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Over the course of 21 years, Supreme Court Justice Clarence Thomas repeatedly broke a government ethics law requiring that federal employees disclose their spouse's income and employers, an open government advocacy group, Common Cause, reported last week.

In response, Thomas on Monday filed papers admitting his wife, Virginia "Ginnie" Thomas, was gainfully employed by right-wing and pro-corporate lobbying groups. Thomas sought to alter financial disclosure forms going as far back as 1989, two years before he joined the high court.

The revelations illustrate the advanced rot of the American judicial system and the control that corporate money wields over the highest court in the land. Thomas and another right-wing justice, Antonin Scalia, trample upon basic precepts of the judicial system—non-partisanship, court impartiality and the rule of law—with impunity, safe in the knowledge they will be shielded by the Obama administration and the court's liberal wing.

Virginia Thomas, an outspoken Republican and widely regarded as the most partisan Supreme Court spouse in the institution's history, was paid \$686,589 from 2003 to 2007 by the right-wing Heritage Foundation, according to Internal Revenue Service tax filings. It is not yet known how much she was paid between 1998, when she was first hired by Heritage Foundation, and 2002. It is also not known how much she was paid in 2008 by right-wing Hillsdale College of Michigan for heading up its Washington D.C. constitutional law program. She earlier worked as a lobbyist for the US Chamber of Commerce and as a congressional aid to former Texas Republican Dick Arme, who is now a leading figure in the Tea Party movement.

In 2009 Virginia Thomas launched Liberty Central,

another right-wing lobbying group closely linked to the Tea Party, the supposedly "grass roots" political movement funded with tens of millions from billionaires Charles and David Koch. Liberty Central was endowed by an undisclosed donor with \$550,000, and a Koch Industries lobbyist, Matt Schlapp, was installed on its five-member board of directors.

In October 2010, it was revealed that Clarence Thomas and Scalia each spoke at secretive political strategy sessions hosted by Koch Industries, the second largest privately-held corporation in the US. According to a letter describing the events, entitled "Understanding and Addressing Threats to American Free Enterprise and Prosperity," "participants committed [themselves] to an unprecedented level of support" in order for Republicans to win in the midterm elections. Scalia and Thomas have admitted their presence at these events but not when they attended, which could have had a bearing on then-pending Supreme Court cases.

Clarence Thomas continues to insist that his wife was not paid anything for this work at Liberty Central, according to the revised conflict-of-interest forms he filed Monday. He brazenly claims that the falsification of his wife's employment status on the conflict-of-interest forms was an innocent mistake, saying it was "inadvertently omitted due to a misunderstanding of the filing instructions," in a letter to the Supreme Court office that submits the financial disclosure forms.

The claim that Thomas could have made such an error—which required him to fill in with pencil a specific box claiming his wife had no income over \$1,000—is absurd on its face. Under a section of the form entitled "spousal noninvestment income," each year for more than a decade Thomas checked a box labeled "none." This is not "omission," but an out-and-

out lie.

"Justice Thomas sits on the highest court of the land, is called upon daily to understand and interpret the most complicated legal issues of our day and makes decisions that affect millions," said Common Cause president Bob Edgar. "It is hard to see how he could have misunderstood the simple directions of a federal disclosure form. We find his excuse is implausible."

"It wasn't a miscalculation; he simply omitted his wife's source of income for six years, which is a rather dramatic omission," said Stephen Gillers of New York University law school. "It could not have been an oversight."

The fact that Thomas could be paid, through his wife, hundreds of thousands, and perhaps millions, of dollars by Republican-affiliated pro-corporate lobbying groups delegitimizes hundreds of important cases argued before the Supreme Court. Many of these decisions were ultimately decided in the right wing's favor by 5-4 margins, including the infamous *Bush vs. Gore* decision stopping vote-counting in Florida and handing the 2000 presidential election to George W. Bush, and last year's *Citizens United vs. Federal Election Commission* case, which overturned decades of campaign finance law and opened the floodgates to secret corporate donations to political candidates.

According to Common Cause, as a result of *Citizens United*, "Outside groups spent more than \$296 million on the 2010 Congressional midterms—a 330 percent increase over 2006—with more than \$135 million of that coming from undisclosed donors." Among those most active in supporting the *Citizens United* lawsuit were several right-wing groups funded by the Koch brothers.

Common Cause filed a complaint with Attorney General Eric Holder on Friday arguing that the *Citizens United* case should be vacated because both Thomas and Scalia were obligated to recuse themselves from the proceedings. Had they done so, the plaintiffs in the case would very likely have lost in a 4-3 decision

Thomas' actions in leaving out from his conflict-of-interest filings his wife's income and employer identity is a violation of the Ethics in Government Act of 1978, a law that allows the Attorney General to "bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required

to report." The law defines such falsification as "unlawful" and punishable by a prison sentence of up to one year, or, if it is prosecuted under the Title 18 US Code 1001 injunction against making false statements or entries, by up to five years imprisonment.

In appealing to Holder to petition for a retrial in the *Citizens United* case, Common Cause points to the US Code's Title 28, Section 455, which stipulates, "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," including cases in which a judge's spouse "is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding."

In fact Virginia Thomas openly celebrated the decision, telling the *Los Angeles Times* in March, 2010, that Liberty Central could now "accept donations from various sources—including corporations—as allowed under campaign finance rules recently loosened by the Supreme Court."

There has so far been no comment from the White House or the Attorney General's office. With the Obama administration attempting to outdo the Republicans in the courtship of big business, there is no desire to retry the *Citizens United* case.



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