



PO BOX 9576  
Washington, D.C. 20016  
[info@velvetrevolution.us](mailto:info@velvetrevolution.us)

February 8, 2011

**Office of Bar Counsel**

Board on Professional Responsibility  
District of Columbia Court of Appeals  
515 5th Street NW  
Building A, Suite 117  
Washington, DC 20001

Re: Justice Clarence Thomas

**NOTICE OF COMPLAINT**

I, Kevin Zeese Esquire, pursuant to Rule 8.3(b)—**Reporting Professional Misconduct**, on behalf of Protect Our Elections, a group of NGOs dedicated to clean government, transparency and accountability, herein lodge a disciplinary complaint against Clarence Thomas, 1 First Street, NE Washington, DC 20543, 202-479-3000, an Associate Justice of the Supreme Court, acting in his official capacity in Washington, D.C. We ask the *Board on Professional Responsibility, District of Columbia Court of Appeals* to take immediate disciplinary action against Justice Thomas for violations of the *D.C. Rules of Professional Conduct*, including disbarment.

**SUMMARY OF COMPLAINT**

Clarence Thomas breached his legal duty and violated the *D.C. Rules of Professional Conduct* by knowingly and willfully failing for 20 years to state truthfully on required AO 10 Financial Disclosure Forms that his wife Virginia earned non-investment income. Clarence Thomas further made rulings that his wife benefitted from financially and professionally, and by extension, that benefitted him. In short, this unethical and criminal conduct violates the Rules of Professional Conduct, and undermines the rule of law, respect for the law and confidence in the law.

## SPECIFIC VIOLATIONS

### 1. Filing 20 Years Of False Disclosure Forms

Common Cause disclosed on January 21, 2011 that Clarence Thomas did not report his wife's income from 2003-2009 as required by law.

[http://bradblog.com/Docs/ClarenceThomas\\_CommonCauseLetter\\_012111.pdf](http://bradblog.com/Docs/ClarenceThomas_CommonCauseLetter_012111.pdf) Exhibit 1.

In fact, he did not just fail to report the information, but rather, he checked the box "none" that asked if his spouse had any "non-investment" income."

<http://protectoureelections.org/index.php?q=node/105> Exhibits 2-8. The following day, Saturday, January 22, 2011, Justice Thomas filed amended disclosure reports for 1989-2009, including his nomination disclosure reports.

[http://www.velvetrevolution.us/images/clarence\\_Thomas-FD\\_amendments.pdf](http://www.velvetrevolution.us/images/clarence_Thomas-FD_amendments.pdf) Exhibit 9

On January 24, 2011, we wrote to the Attorney General requesting criminal prosecution.

[http://www.velvetrevolution.us/images/Clarence\\_Thomas\\_DOJ\\_Letter.pdf](http://www.velvetrevolution.us/images/Clarence_Thomas_DOJ_Letter.pdf) Exhibit 10

Virginia Thomas has received non-investment income since 1989, and she worked at the Heritage Foundation from 2003 through 2009, earning at least \$120,000 each year, according to the foundation's IRS Form 990s.

<http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/JUSTICE%20THOMAS%27%20FAILURE%20TO%20DISCLOSE%20INCOME%20OF%20SPOUSE.PDF> Exhibit 11

She then went to work for Liberty Central in a paid position.

<http://www.nytimes.com/2010/10/09/us/politics/09thomas.html> Exhibit 12

She has now launched a new consulting service called Liberty Consulting Inc.

<http://www.rawstory.com/rs/2011/02/justices-wife-ambassador-tea-party/> Exhibit 13.

Each of the AO 10 Financial Disclosure forms signed by Justice Thomas from 2003 through 2007 states in Section IX that it is certified under oath as follows:

*"I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure."* (Emphasis added.) Although we do not have copies of the 1989-2002 forms, we believe them to have similar language.

In bold capital letters under the signature box that Justice Thomas signed is the following:

**NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app section 104)**

According to 5 U.S.C. app section 104, people who knowingly and willfully violate this provision face up to one year in prison and a criminal fine for each false statement charge, and a civil fine of up to \$50,000.

Moreover, under the catchall false statement statute, 18 U.S.C. section 1001, violators could also face a felony charge for each false statement with a sentence of five years on each. *See United States v. Fraser Verrusio*, where a former Policy Director for the U.S. House of Representatives Committee on Transportation and Infrastructure, is awaiting trial under section 1001 for not reporting income on his "United States House of Representatives Financial Disclosure Statement for Calendar Year 2003." *See also United States v. Woodward*, 469 U.S. 105 (1985), a case decided by the Supreme Court, where the defendant, after checking the "no" box on a U.S. Customs form, was punished for both the false statement (18 USC section 1001) violation and the misdemeanor charge of failing to report the currency itself --- all as a result of checking the "no" box.

Justice Thomas acted knowingly and willfully. First, judges are presumed to know the law and at least four of Justice Thomas' colleagues on the Supreme Court --Justices Breyer, Ginsberg, Kennedy and Roberts -- knew well enough to disclose their spousal income during the same time frame that Justice Thomas did not. *See e.g.*, [http://www.velvetrevolution.us/images/Kennedy\\_2009\\_FD.pdf](http://www.velvetrevolution.us/images/Kennedy_2009_FD.pdf)  
[http://www.velvetrevolution.us/images/Roberts\\_2009\\_FD.pdf](http://www.velvetrevolution.us/images/Roberts_2009_FD.pdf)  
[http://www.velvetrevolution.us/images/Ginsberg\\_2009\\_FD.pdf](http://www.velvetrevolution.us/images/Ginsberg_2009_FD.pdf)  
[http://www.velvetrevolution.us/images/Breyer\\_2009\\_Disclosure.pdf](http://www.velvetrevolution.us/images/Breyer_2009_Disclosure.pdf) Exhibits 14-17.

Second, according to the Department of Justice Handbook on Prosecutions, a defendant's signature on a document is strong evidence of willfulness and knowledge. *See United States v. Tucker*, 133 F.3d 1208, 1218 n. 11 (9th Cir. 1998) (noting that signature proved knowledge of contents of return); *United States v. Mohney*, 949 F.2d 1397, 1407 (6th Cir. 1991) (holding that signature is prima facie evidence that the signer knows the contents of the return); *United States v. Drape*, 668 F.2d 22, 26 (1st Cir. 1982) (finding that defendant's signature is sufficient to establish knowledge once it has been shown that the return was false).

Third, as argued below, it appears that Justice Thomas had a reason for not disclosing that his wife was working for a conservative think tank and a conservative 501c(4) group; he did not want litigants who had cases pending before the Supreme Court to have information that could be used to disqualify him from hearing those cases, and he wanted his family to benefit financially from his decisions.

Hundreds of Americans have been federally prosecuted since 1989 for various types of false statements, many involving checking or not checking a box on a form. Many of those prosecutions involved a single form, and most defendants were not given the opportunity to amend their forms before being prosecuted. Many were found guilty, fined and sent to prison. And some even appealed their cases to the Supreme Court where Justice Thomas sat in judgment of them, upholding their sentences.

## **2: Depriving Litigants Of Accurate Information To Disqualify Justice Thomas**

One of the fundamental reasons for Judicial Financial Disclosure Statements is to provide information to litigants appearing before a judge about the judge's possible bias or

conflict of interest so they can file a motion to disqualify the judge on those grounds. However, litigants who appeared before Justice Thomas as far back as 1989 were deprived of such information, thereby denying them due process and possibly undermining the fairness of their cases. See Caperton v. AT Massey Coal Co., Inc., 129 S. Ct. 2252 (2009), where the Court overturned a case because the judge failed to recuse himself for financial bias. Would those litigants have moved for disqualification of Justice Thomas? We cannot answer that but we can say that without the disclosure of his wife's employers, litigants were unable to avail themselves to that fundamental due process protection.

A prime example of a case where litigants may have moved to disqualify Justice Thomas for bias and conflict of interest is the case of Citizens United v Federal Election Commission, 130 S.Ct. 876 (2010), where the Court ruled that corporations could spend unlimited amounts of money in federal elections. This case was decided by a five to four decision with Justice Thomas in the majority. On January 19, 2011, Common Cause addressed the conflict facing Justice Thomas in a six-page complaint with the Department of Justice requesting, *inter alia*, that it investigate whether Justice Thomas should have recused himself from the *Citizens United* case under 28 U.S.C. 455(b) "based on financial conflicts of interest...."

*"The Supreme Court's decision in Citizens United, issued on January 21, 2010, provided a substantial benefit to Liberty Central while Ms. Thomas was its CEO by enabling it to raise and spend corporate funds directly advocating the defeat or election of political candidates for the first time in more than 60 years. According to a story in the Los Angeles Times, Ms. Thomas stated that Liberty Central 'would accept donations from various sources – including corporations – as allowed under campaign finance rules recently loosened by the Supreme Court.'*

*Federal law requires a justice to recuse himself when:*

*He knows that...his spouse...has a financial interest in the subject matter in controversy...or any other interest that could be substantially affected by the outcome of the proceeding.*

28 U.S.C. § 455(b)(4). As CEO of Liberty Central, Ms. Thomas clearly had an interest that was substantially affected by the Supreme Court's decision in Citizens United. Although the law requires knowledge on the part of the judge, it also states that '[a] judge should...make a reasonable effort to inform himself about the personal financial interests of his spouse.' § 455(c). Given the high public profile of Ms. Thomas and Liberty Central, it would strain credulity for Justice Thomas to claim that he was not aware of this interest." See Exhibit 18.

<http://www.commoncause.org/site/apps/nlnet/content2.aspx?c=dkLNK1MQIwG&b=4773617&ct=9039331>

Virginia Thomas raised money from secret donors, including over half million in seed money, to launch Liberty Central. *Id.* According to Liberty Central CEO Sarah Field in

a New York Times article, Ms. Thomas was paid by Liberty Central. <http://www.nytimes.com/2010/10/09/us/politics/09thomas.html> Exhibit 12 In February 2011, Ms. Thomas announced that she was launching another group, Liberty Consulting Inc, to, *inter alia*, “offer[] advice on optimizing political investments for charitable giving in the non-profit world or political causes.” Exhibit 19 <http://libertyinc.co/site/services>

Clearly, Ms. Thomas is financially benefitting from Justice Thomas’s decision in *Citizens United*, and, since they are married and filing jointly as a married couple with the IRS, Justice Thomas is also personally benefitting from his own decision.

## Conclusion

D.C. Rules of Professional Conduct Rule 8.4—Misconduct, states in pertinent part:

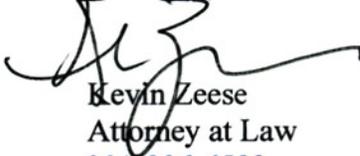
*“It is professional misconduct for a lawyer to:*

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;*
- (b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;*
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;*
- (d) Engage in conduct that seriously interferes with the administration of justice; ....”*

A lawyer who commits a crime is subject to disbarment. A lawyer who fails to disclose important financial information as require by law is subject to disbarment. A lawyer who makes rulings on cases that will benefit himself and his wife is subject to disbarment. A Judge who commits 20 crimes by falsifying 20 disclosure forms in order to enrich himself and his family, as did Justice Thomas, is subject to disbarment.

Justice Thomas violated the Rules of Professional Conduct: he committed crimes that carry serious jail time if prosecuted, he acted in a untrustworthy manner, his conduct involved dishonesty, deceit and misrepresentation, and he engaged in conduct that seriously interfered with the administration of justice.

Sincerely,



Kevin Zeese  
Attorney at Law  
301-996-6582