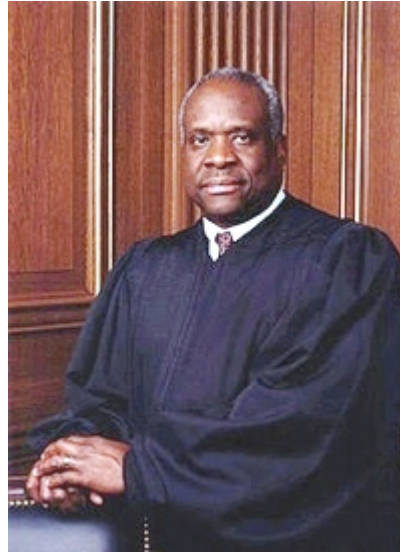




Written by [Alex Newman](#) on February 16, 2011

Activists Seek SCOTUS Recusals in ObamaCare Case

Pro-ObamaCare activists are seeking to have Supreme Court Justice Clarence Thomas recuse himself in the much-anticipated high-court case expected to decide whether the healthcare takeover will stand, while “health-reform” opponents aim to disqualify newly appointed leftist Justice Elena Kagan.



The argument against allowing Justice Thomas to participate in the case revolves around his wife’s work — lobbying, essentially. She has worked with various organizations opposed to ObamaCare, including the Heritage Foundation and Liberty Central.

Federal law states that judges should recuse themselves if it could be reasonably argued that there is an appearance of a lack of impartiality. And so, pro-government-healthcare activists have pounced on his wife’s political activities to question whether Justice Thomas could remain neutral and objective in the case.

“It’s really pretty simple. Justice Thomas’ wife Ginni has earned hundreds of thousands of dollars working for and leading groups that have repealing health care reform as one of their chief goals,” wrote Ben Betz, the Online Communications Manager of the leftist group called People for the American Way, in a letter to supporters. “And considering challenges to the health care law are expected to make it to the Supreme Court, how could that not be a major conflict of interest?” Betz wondered. The group is now organizing a petition calling for Thomas to recuse himself, though only he can make the decision.

Some members of Congress have joined the calls too. A coalition of at least 74 Democrat representatives recently sent a letter to Justice Thomas asking him to sit out on the ObamaCare case. The text of the letter is below:

Dear Justice Thomas:

As an Associate Justice, you are entrusted with the responsibility to exercise the highest degree of discretion and impartiality when deciding a case. As Members of Congress, we were surprised by recent revelations of your financial ties to leading organizations dedicated to lobbying against the Patient Protection and Affordable Care Act. We write today to respectfully ask that you maintain the integrity of this court and recuse yourself from any deliberations on the constitutionality of this act.

The appearance of a conflict of interest merits recusal under federal law. From what we have already seen, the line between your impartiality and you and your wife’s financial stake in the overturn of health care reform is blurred. Your spouse is advertising herself as a lobbyist who has “experience and connections and appeals to clients who want a particular decision — they want to overturn health care reform. Moreover, your failure to disclose Ginny Thomas’s receipt of \$686,589 from the Heritage



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Foundation, a prominent opponent of health care reform, between 2003 and 2007 has raised great concern.

This is not the first case where your impartiality was in question. As Common Cause points out, you participated in secretive political strategy sessions, perhaps while the case was pending, with corporate leaders whose political aims were advanced by the [5-4] decision on the Citizens United case. Your spouse also received an undisclosed salary paid for by undisclosed donors as CEO of Liberty Central, a 501(c)(4) organization that stood to benefit from the decision and played an active role in the 2010 elections.

Given these facts, there is a strong conflict between the Thomas household's financial gain through your spouse's activities and your role as a Associate Justice of the United States Supreme Court. We urge you to recuse yourself from this case. If the U.S. Supreme Court's decision is to be viewed as legitimate by the American people, this is the only correct path.

We appreciate your thoughtful consideration of this request.

Sincerely,
ANTHONY D. WEINER
Member of Congress

Some analysts, however, believe the effort to take Thomas out is merely payback for earlier Republican questions about the appropriateness of allowing former Solicitor General Elena Kagan to hear the case, since she very probably defended ObamaCare in her previous governmental job. "The purpose of this isn't really to pressure Thomas into a recusal, at which Thomas is almost certain to issue his trademark booming laugh, but to pre-empt the recusal argument for Elena Kagan," [wrote](#) Ed Morrissey for conservative blog HotAir.

Prior to being appointed to the Supreme Court by President Obama, Elena Kagan served as the regime's Solicitor General. Basically, she was in charge of fighting for the government's position in court, which presumably would include defending the alleged constitutionality of ObamaCare.

CNSNews.com, part of the Media Research Center, recently [filed a lawsuit](#) against the Department of Justice after it refused to hand over documents related to Kagan's work on ObamaCare under the Freedom of Information Act. In her case, it is particularly relevant, since the law states that judges must recuse themselves if they expressed an opinion about the merits of a particular statute or litigation while in government "service."

And as the organization points out, Kagan was still serving the administration while the constitutionality of the healthcare takeover was being challenged by various states. She also vowed during her confirmation hearings to recuse herself in any case on which she served as the government's counsel.

Some lawmakers are also [encouraging](#) Kagan to recuse herself from the case. "I personally believe she should recuse herself," Sen. Orrin Hatch (R-Utah) told Fox News. "I'm sure she participated in discussions at the White House, participated in discussions in the solicitor general's office. These issues were brought up throughout the process."

Analysts have [suggested](#) that it would indeed be appropriate for Kagan to recuse herself, while Thomas would be perfectly justified in staying on. What will happen, however, remains to be seen.

Most observers predict that the Supreme Court — notwithstanding [efforts toward state nullification](#) — will ultimately settle the question of whether the government considers ObamaCare constitutional. Two



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federal judges have already struck it down as unconstitutional, and numerous states have [stopped implementing](#) the government healthcare takeover after the rulings. But the outcome in the Supreme Court could easily be affected by what happens with the recusal efforts, and so the issue will not be going away soon.



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