

THE JURISPRUDENCE OF CLARENCE THOMAS

SUMMER 2023 SYLLABUS

Course Information

- 369-R01; 1 Credit Hour
- The class will meet from 6:00 p.m.–8:05 p.m. on the following six Thursdays: May 25, June 1, June 8, June 15, June 22, and July 6.
 - May 25 and June 8 will be in person (although students may attend via Zoom). The remaining classes will take place on Zoom.
 - Location for May 25 and June 8 will be emailed to enrolled students.

Course Instructor

- Hon. Kathryn Kimball Mizelle, U.S. District Court Judge for the Middle District of Florida
 - If any questions arise, please email [revise with GMU email].

Required Texts

- The reading assignments will primarily derive from constitutional cases available publicly or through databases like Lexis or Westlaw.

Course Description and Objectives

This compressed course offers an introduction to Justice Thomas's jurisprudence. Justice Thomas, arguably the most consistent originalist on the Supreme Court, has produced hundreds of opinions in over three decades. He is also the longest serving Justice currently on the Court.

The goal of the course is to understand Justice Thomas's approach to constitutional interpretation and to examine the Justice's impact on the Court's constitutional jurisprudence. This course surveys some of the Justice's opinions organized by topic. Given the brevity of the course and the breadth of the Justice's writings, it is neither possible to delve deeply into any one aspect of Justice Thomas's jurisprudence nor is it feasible to cover all aspects.

Learning Outcomes

After completing this course, students should be able to critically evaluate constitutional questions through the originalist perspective of Justice Thomas and to articulate legal arguments using that framework. That includes the following:

- a. Describe and apply Justice Thomas's jurisprudence as it relates to Article III and the limits of judicial power.
- b. Describe and apply Justice Thomas's approach to questions of federalism and the separation of powers.
- c. Describe and apply Justice Thomas's approach to issues related to the First, Second, Sixth, Eighth, and Fourteenth Amendments.

Course Requirements

- This course is open to students who have already taken the required first-year Constitutional Law class.
- Except for remote access, you will **not** be permitted to use laptops, cell phones, or other electronic devices during class. Please silence them and secure them out of sight during the class.
- Class attendance is mandatory. If you arrive late, it is your responsibility to make sure you are marked late rather than absent.

Grading Procedures

The mandatory grading curve and grade distribution will apply to final grades. Your grade will be based on the following two components:

- 1) Class participation, including attendance and meaningful engagement, constituting **20%** of your grade. Each student will be responsible for presenting a case from the below reading assignments. I will explain how selections will be made at the conclusion of the first class. Presentations should include:
 - An explanation of the case, including facts, meaningful procedural history, and issue(s) decided.
 - Justice Thomas's view and any necessary explanation of how that differs from the majority/dissent.
 - How Justice Thomas's opinion has impacted the law.

- 2) A take-home exam constituting **80%** of your grade. Further instructions will be provided during the final class.

Accommodations

Students with disabilities who wish to request an accommodation must contact the Records Office or Associate Dean Nields.

No Recordings of Class Discussions

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online.

Reading Assignments

The required reading assignments for the six class sessions are listed below. Students will be notified of any modifications via email.

1) Class on May 25, 2023: Introduction to Justice Thomas¹

- Clarence Thomas, *Clarence Thomas on the Two Great Heroes of His Life*, Daily Signal (Feb. 16, 2023), <https://www.dailysignal.com/2023/02/16/clarence-thomas-does-character-matter-yes-character-is-all-that-matters-our-character/>
- Gregory Katsas, *Justice Thomas Joins the Supreme Court*, HARV. J.L. & PUB. POL'Y PER CURIAM, Fall 2021, No. 1.
- *Gamble v. United States*, 139 S. Ct. 1960, 1980 (2019) (Thomas, J., concurring)
- *Obergefell v. Hodges*, 576 U.S. 644, 721 (2015) (Thomas, J., dissenting)
- Examples of Justice Thomas's impact on the Court:
 - *Wright v. West*, 505 U.S. 277 (1992)
 - *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021) (Thomas, J., concurring)

2) Class on June 1, 2023 (Zoom)

a. Commerce Clause:

- *United States v. Lopez*, 514 U.S. 549, 584 (1995) (Thomas, J., concurring)
- *United States v. Morrison*, 529 U.S. 598, 627 (2000) (Thomas, J., concurring)
- *Gonzales v. Raich*, 545 U.S. 1, 57 (2005) (Thomas, J., dissenting)

¹This class will include the Hon. Gregory Katsas, U.S. Court of Appeals for the D.C. Circuit, as a guest lecturer.

b. Federalism:

- *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 609 (1997) (Thomas, J., dissenting) (negative commerce clause)
- *Arizona v. United States*, 567 U.S. 387, 437 (2012) (Thomas, J., concurring in part and dissenting in part) (preemption)
- *Wyeth v. Levine*, 555 U.S. 555, 582 (2009) (Thomas, J., concurring) (preemption)
- *Franchise Tax Board v. Hyatt*, 139 S. Ct. 1485 (2019)
- *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 845 (1995) (Thomas, J., dissenting)
- *United States v. Comstock*, 560 U.S. 126, 158 (2010) (Thomas, J., dissenting)

3) Class on June 8, 2023²

a. Executive Power

- *Hamdi v. Rumsfeld*, 542 U.S. 507, 579 (2004) (Thomas, J., dissenting)
- *Hamdan v. Rumsfeld*, 548 U.S. 557, 678 (2006) (Thomas, J., dissenting)

b. Article III Power

- *Flowers v. Mississippi*, 139 S. Ct. 2228, 2252 (2019) (Thomas, J., dissenting) (Part IV-A only)
- *June Medical Services LLC v. Russo*, 140 S. Ct. 2103, 2142 (2020) (Thomas, J., dissenting)

²This class will include Christopher Mills, founder of Spero Law LLC, as a guest lecturer.

- *City of Ocala v. Rojas*, 598 U.S. ____ (2023) (Thomas, J., dissenting from denial of cert.)
- *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021) (Thomas, J., dissenting)
- *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1485 (2018) (Thomas, J., concurring)

4) Class on June 15, 2023 (Zoom)

a. Administrative Law

- *Nat'l Cable and Telecommunications Ass'n v. Brand X*, 545 U.S. 967 (2005)
- *Baldwin v. United States*, 140 S. Ct. 690 (2020) (Thomas, J., dissenting from denial of cert)
- *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1213 (2015) (Thomas, J. concurring in judgment)
- *Michigan v. E.P.A.*, 576 U.S. 743, 760 (Thomas, J., concurring)
- *Dep't of Transp. v. Ass'n of Am. R.Rs.*, 575 U.S. 43, 66 (2015) (Thomas, J., concurring)
- For further reading on this topic:
 - Elbert Lin, *At the Front of the Train: Justice Thomas Reexamines the Administrative State*, 127 YALE L.J. FORUM 182 (2017).
 - Hon. Neomi Reo, *Saying What the Law is, Justice Thomas Style*, HARVARD J.L. & PUB. POL'Y PER CURIAM, Fall 2021, No. 6.

b. **Second Amendment**

- *N.Y. State Rifle and Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022)

5) **Class on June 22, 2023 (Zoom)**

a. **Freedom of Speech**

- *Mahanoy Area School Dist. v. B.L.*, 141 S. Ct. 2038, 2059 (2021)
(Thomas, J., dissenting)
- *Good News Club v. Milford Central School*, 533 U.S. 98 (2001)
- *Virginia v. Black*, 538 U.S. 343 (2003) (Thomas, J., dissenting)

b. **Religion Clauses**

- *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 46 (2004)
(Thomas, J., concurring in judgment)
- *Van Orden v. Perry*, 545 U.S. 677, 693 (2005) (Thomas, J.,
concurring)
- *Locke v. Davey*, 540 U.S. 712, 734 (2004) (Thomas, J., dissenting)
- *Cutter v. Wilkinson*, 544 U.S. 709, 726 (2005) (Thomas, J.,
concurring)

c. **Criminal Procedure/Death Penalty**

- *Alleyne v. United States*, 570 U.S. 99 (2013)
- *Baze v. Rees*, 553 U.S. 35, 94 (2008) (Thomas, J., concurring in the
judgment)
- For further reading on this topic:

- Judge Hardy & Judge Ryan, *Justice Thomas: Staunch Defender of Criminal Defendants' Fifth and Sixth Amendment Rights*, HARVARD J.L. & PUB. POL'Y PER CURIAM, Fall 2021, No. 5.
- Judge William Pryor, *Justice Thomas, Criminal Justice, and Originalism's Legitimacy*, 127 YALE L.J. FORUM 173 (2017).

6) Class on July 6, 2023 (TBD in person or Zoom)

a. Privileges or Immunities Clause

- *McDonald v. City of Chicago*, 561 U.S. 742, 805 (Thomas, J., concurring in part and concurring in judgment)
- *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2300 (2022) (Thomas, J., concurring)

b. Equal Protection

- *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 240 (1995) (Thomas, J., concurring in part and concurring in judgment)
- *Grutter v. Bollinger*, 539 U.S. 306, 349 (2003) (Thomas, J., concurring in part and dissenting in part)
- *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 315 (2013) (Thomas, J., concurring)
- For further reading on this topic:
 - Nicole Garnett, *"But for the Grace of God There Go I": Justice Thomas and the Little Guy*, 4 N.Y.U. J.L. & LIBERTY 626 (2009).