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<https://www.wsj.com/articles/justice-clarence-thomas-questions-proposal-to-bar-judges-from-membership-in-ideological-groups-11580664462>

## POLITICS

# Justice Clarence Thomas Questions Proposal to Bar Judges From Membership in Ideological Groups

Ethics proposal by federal judiciary's policy-making body would tighten guidance letting them belong to two organizations but not take leadership roles



'I think they're about to silence the Federalist Society. So I guess I can't come back,' Justice Thomas told a Federalist Society convention at Walt Disney World on Friday. PHOTO: STEPHEN M. DOWELL/ASSOCIATED PRESS

*By Jess Bravin*

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LAKE BUENA VISTA, Fla.—Supreme Court Justice Clarence Thomas questioned a proposed ethics rule that would discourage federal judges from belonging to the conservative Federalist Society and its liberal counterpart, the American Constitution Society.

Justice Thomas has long participated in events sponsored by the Federalist Society, which has groomed many of President Trump's judicial nominees.

“And now I think they're about to silence the Federalist Society. So I guess I can't come back,” Justice Thomas quipped Friday at Federalist Society convention at Walt Disney World.

“Some of us are fighting back,” responded U.S. Circuit Judge Gregory Katsas, a former Thomas law clerk who interviewed his former boss before the audience.

The ethics proposal, circulated last month by the federal judiciary's policy-making body, the Judicial Conference of the U.S., would tighten existing guidance that lets judges belong to the two groups but not take leadership roles.

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*Do you think judges should abstain from membership in ideological groups? Why or why not? Join the conversation below.*

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The American Constitution Society is a group founded in 2001 by liberals seeking to replicate the Federalist Society's success in developing a network of like-minded legal power brokers. The group's website says ACS "nurtures the next generation of progressive lawyers, judges, policy experts, legislators, and academics." A spokesman for the group couldn't be reached to comment.

The ethics proposal also included cautionary words regarding the much larger American Bar Association. "In the current politically divisive climate," the Judicial Council said, "positions taken by the ABA's House of Delegates could reasonably be viewed to favor liberal or progressive causes."

The council didn't recommend barring judges from belonging to the bar association, citing ABA rules that place judges in a section not involved in taking legal or political positions and said that the organization's professional activities were significantly broader.

Justice Thomas's comments followed commentary published in the National Review by conservative activist Carrie Severino headlined, "The Judicial Campaign to Silence the Federalist Society."

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Under the draft proposal, however, judges could still attend and participate in events sponsored by the groups, such as panel discussions and symposiums. But it concludes that formal membership in organizations so closely identified with ideological missions could undermine public confidence in the courts' independence.

"A reasonable and informed public would view judges holding membership in these



Justice Thomas was interviewed by District of Columbia Circuit Judge Gregory Katsas at the convention on Friday. PHOTO: OCTAVIO JONES/ZUMA PRESS

organizations to hold, advocate, and serve liberal or conservative interests,” rather than being impartial, the proposal reads.

The Federalist Society’s president, Eugene Meyer, asserted it was beneficial for judges to be exposed to rigorous intellectual debate. “We’re an organization about ideas,” he said.

Founded in 1982, the Federalist Society doesn’t formally take policy positions. But membership has come to signal conservative bona fides for law students, lawyers and academics seeking advancement in Republican circles.

According to Sen. Sheldon Whitehouse (D., R.I.), a harsh critic of the society, 85% of President Trump’s circuit and Supreme Court nominees were members. A society spokeswoman said the organization doesn’t disclose its membership.

In his appearance Friday, Justice Thomas recalled serving on the U.S. Court of Appeals for the District of Columbia Circuit during the 1990-91 term when another judge’s law clerk sought his career advice.

The clerk, Leonard Leo, was torn between entering private practice or taking a “public service” position with the Federalist Society. “And I asked him, ‘Where was his heart?’ And he said, ‘With the Federalist Society,’” Justice Thomas said. “And I said, ‘You should go do that.’ And he did. And look at the difference he’s made.”

Mr. Leo, for many years the society's executive vice president, became a judicial adviser to President Trump who helped guide the nominations of Justices Neil Gorsuch and Brett Kavanaugh, along with many lower-court judges.

On a Saturday panel including four Trump appointees to the Atlanta-based 11th Circuit, several offered thanks to Federalist Society stalwarts who helped them advance, including former White House Counsel Don McGahn, who spoke earlier at the convention, and Judge Katsas, a deputy counsel before President Trump appointed him to the D.C. Circuit.

The judges— Lisa Branch, Britt Grant, Barbara Lagoa and Robert Luck —all declined to comment on the ethics proposal.

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