The Lone Opinions of Justice Clarence Thomas that Express a Willingness to Overrule or Revisit Constitutional Precedent

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Methodology: Listed below are 35 cases involving constitutional questions in which Justice Thomas wrote a lone concurring or dissenting opinion that calls for overruling or revisiting established constitutional precedent. Additional opinions urging revisions to constitutional precedent exist in which Thomas was joined by one or more justices, but the focus here is on cases in which Thomas has written separately. The list also does not include lone Thomas dissents that address purely statutory questions, such as his call in *Georgia v. Ashcroft* (2003) to reconsider interpretation of Section 2 of the Voting Rights Act.

Case	Opinion	Position
Hamdi v. Rumsfeld (2004)	Dissenting	"Cast[ing] doubt on the appropriateness or usefulness" of *Mathews v. Eldridge,* 424 U.S. 319 (1976) (establishing a balancing test to determine sufficiency of administrative procedures prior to the initial termination of benefits.
Tennard v. Dretke (2004)	Dissenting	Urging overruling of *Penry v. Lynaugh*, 492 U.S. 302 (1989) (holding jurors may consider mental deficiencies of defendant in criminal sentencing).
Elk Grove Unified School Dist. v. Newdow (2004)	Concurring	Rejecting incorporation of the Establishment Clause through the 14th Amendment; urging overrule of *Lee v. Weisman*, 505 U.S. 577 (1992).
Sabri v. United States (2004)	Concurring	Urging the Court to reconsider its Commerce Clause precedents; Questioning scope of the Necessary and Proper Clause.
Tennessee v. Lane (2004)	Dissenting	Calling "wrongly decided" the Court's ruling in *Nevada Dept. of Human Resources v. Hibbs,* 538 U.S. 721 (2003) (upholding application of Family and Medical Leave Act to the states).
United States v. Lara (2004)	Concurring	Urging the Court to "reexamine the premises and logic of our tribal sovereignty cases."
Locke v. Davey (2004)	Dissenting	Expressing willingness to revisit precedents involving the Free Exercise of Religion clause, possibly including *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S 520 (1993), *Everson* v. *Board of Ed. of Ewing,* 330 U.S. 1 (1947), and *Employment Div., Dept. of Human Resources of Ore.* v. *Smith,* 494 U.S. 872 (1990).

McConnell v. FEC (2003)	Conc./Diss.	Urging overruling of *Buckley v. Valeo*, 424 U.S. 1 (1976), and *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652 (1990), to permit corporate and union political contributions. Thomas believes much of the campaign finance regulatory system violates the First Amendment. Thomas (with Scalia) also urged overruling *Buckley* in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000).
Hillside Dairy, Inc. v. Lyons (2003)	Conc./Diss.	Stating that "the negative Commerce Clause has no basis in the text of the Constitution, makes little sense, and has proved virtually unworkable in application." *See also Camps Newfound/Owatonna, Inc. v. Town of Harrison,* 520 U.S. 564 (1997) (Thomas, J., joined by Scalia, J. and Rehnquist, C.J. as to Part I dissenting).
Pharmaceutical Research and Mfrs. of America v. Walsh (2003)	Concurring	Expressing willingness to consider whether Spending Clause legislation gives rise to private right of action and rejecting the concept of the "negative Commerce Clause."
Ewing v. California (2003)	Concurring	Urging overrule of *Solem v. Helm,* 463 U.S. 277 (1983), which applied a proportionality test to the Cruel and Unusual Punishments Clause of the Eighth Amendment.
Zelman v. Simmons-Harris (2002)	Concurring	Rejecting incorporation of the Establishment Clause to apply to the states through the Fourteenth Amendment.
Thompson v. Western States Medical Center (2002)	Concurring	Urging strict scrutiny in evaluating restrictions on commercial speech, disagreeing with use of balancing test established in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n.,* 447 U.S. 557 (1980)
Lorillard Tobacco Co. v. Reilly (2001)	Concurring	Urging strict scrutiny in evaluating restrictions on commercial speech.
U.S. v. United Foods, Inc. (2001)	Concurring	Urging strict scrutiny in evaluating restrictions on commercial speech.
Cooper Indus, Inc. v. Leatherman Tool Groups, Inc. (2001)	Concurring	Urging overrule of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), which limits the size of punitive damage awards.
American Trucking Assocs. v. Whitman (2001)	Concurring	Expressing willingness to revisit delegation jurisprudence and separation of powers.
Troxel v. Granville (2000)	Concurring	Expressing possible willingness to revisit substantive due process cases and the meaning of the Privileges and Immunities Clause.
United States v. Morrison (2000)	Concurring	expressed a willingness to reexamine fundamental aspects of the Court's jurisprudence under the Commerce Clause.
Greater New Orleans Broadcasting Ass'n v. United States (1999)	Concurring	Urging strict scrutiny in evaluating restrictions on commercial speech disagreeing with use of *Central Hudson* balancing test.

Lilly v. Virginia (1999)	Concurring	Indicating that the protections of the Confrontation Clause should be limited to witnesses who testify at trial
Mitchell v. United States (1999)	Dissenting	Urging overrule of *Griffin v. California*, 380 U.S. 609 (1965) and its progeny, including *Carter v. Kentucky*, 450 U.S. 288 (1981), which prohibited inferences based on a defendant's silence in criminal cases.
Eastern Enterprises v. Apfel (1998)	Concurring	Expressing willingness to reconsider *Calder v. Bull*, 3 Dall. 386, 1 L.Ed. 648 (1798) and its progeny to extend prohibition of Ex Post Facto Clause to retroactive civil regulation.
Printz v. United States (1997)	Concurring	Expressing "revisionist" view of Tenth Amendment and Commerce Clause, and urging reconsideration of Commerce Clause jurisprudence.
Glickman v. Wileman Bros & Elliott Inc. (1997)	Dissenting	Urging strict scrutiny in evaluating restrictions on commercial speech, and disagreeing with use of *Central Hudson* balancing test.
44 Liquormart, Inc. v. Rhode Island (1996)	Concurring	Urging strict scrutiny in evaluating restrictions on commercial speech, and disagreeing with use of *Central Hudson* balancing test.
Rosenberger v. Rector & Vistors of University of Virginia (1995)	Concurring	Urging reconsideration of "hopeless disarray" of Court's Establishment Clause jurisprudence.
Missouri v. Jenkins (1995)	Concurring	Questioning court's role in integration, noting that "extravagant uses of judicial power" to integrate schools, prisons, and hospitals "are at odds with the history and tradition of the equity power and the Framers' design."
United States v. Lopez (1995)	Concurring	expressed a willingness to reexamine fundamental aspects of the Court's jurisprudence under the Commerce Clause
Farmer v. Brennan (1994)	Concurring	Expressing willingness to overrule *Estelle v. Gamble*, 429 U.S. 97 (1976), and its progeny, which hold that the Eighth Amendment regulates prison conditions not imposed as part of a sentence.
U.S. v. James Daniel Good Real Property (1993)	Conc./Diss.	Expressing willingness to reevaluate deference to legislature on matters of civil forfeiture.
Johnson v. Texas (1993)	Concurring	Supporting reconsideration of *Penry v. Lynaugh*, 492 U.S. 302 (1989) (permitting consideration of mental deficiencies when imposing criminal sentence).
Graham v. Collins (1993)	Concurring	Urging overrule of *Penry v. Lynaugh*, 492 U.S. 302 (1989) (permitting consideration of mental deficiencies when imposing criminal sentence), and expressing disagreement with Court on imposition of mandatory death sentences.
Richmond v. Lewis (1992)	Concurring	Declaring *Stringer v. Black,* 503 U.S. 222 (1992) (which addresses use of aggravated factors in criminal sentencing), "wrongly decided."

Georgia v. McCollum (1992)	Concurring	Questioning use of Constitution to regulate preemptory challenges, suggesting need to reconsider *Edmonson* v. *Leesville Concrete Co.,* 500 U.S. 614 (1991), *Batson* v. *Kentucky,* 476 U.S. 79 (1986); *Powers* v. *Ohio,* 499 U.S. 400 (1991).