



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

April 14, 2023

The Honorable John G. Roberts Jr.
Chief Justice
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Request for Investigation of Justice Clarence Thomas' failure to report gifts of private aircraft travel on his public financial disclosure report

Dear Chief Justice Roberts and Attorney General Garland:

According to a recently-published *ProPublica* article, Associate Justice Clarence Thomas and his wife have been accepting gifts of private jet travel and luxury vacation trips for more than 20 years from “real estate magnate and Republican megadonor,” Harlan Crow, who befriended the Justice after he assumed the bench, without ever having disclosed them as gifts or travel reimbursements on his financial disclosure reports filed each year under the Ethics in Government Act of 1978.¹ *ProPublica* is also reporting that Justice Thomas sold his and other family members’ interests in three Savannah, Georgia properties to Mr. Crow in 2014 for \$133,363 without having properly reported the sales transaction on his financial disclosure report.² If true, Justice Thomas’ acceptance and failure to report these gifts and sales transactions on his annual mandatory financial disclosure statements not only undermines trust in his ability to impartially and fairly administer his duties as a member of the Court, but also threatens to corrode public confidence in the Supreme Court as an institution.

¹ Joshua Kaplan, Justin Elliott and Alex Mierjeski, Clarence Thomas and the Billionaire, *ProPublica*, Apr. 6, 2023, <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

² Justin Elliott, Joshua Kaplan, and Alex Mierjeski, Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn’t Disclose the Deal., *ProPublica*, Apr. 13, 2023, <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus>.

Citizens for Ethics and Responsibility in Washington respectfully requests that the Chief Justice as the presiding officer of the Judicial Conference of the United States³ and the Attorney General for the Department of Justice (“DOJ” or the “Department”) as the chief law enforcement officer of the United States investigate Justice Thomas’ conduct to determine whether he violated the Ethics in Government Act by repeatedly accepting private plane travel and luxury vacation trips over two decades without disclosing them as gifts or in-kind travel-reimbursements on his financial disclosure reports and by engaging in real estate transactions without properly disclosing them on his financial disclosure reports. Additionally, the Chief Justice should investigate whether Justice Thomas violated his ethical obligations under the *Judicial Conference Gift Regulations* when he accepted private plane travel, luxury vacation trips overseas and domestically, and other gifts on a basis so frequent that a reasonable person would believe that his public office is being used for private gain.

As the Chief Justice has previously noted, “judges must exercise both constant vigilance and good judgment to fulfill the obligations they have all taken since the beginning of the Republic.”⁴ In this regard, Justice Thomas has failed extraordinarily. The financial disclosure requirements under the Ethics in Government Act exist so that the public can identify and understand potential financial conflicts of interest that may impact government officials’ partiality in the performance of their government jobs and so that any such conflicts can be resolved. Justice Thomas knows well the importance of these rules as he has previously reported both gifts of travel on private aircraft and other gifts from Mr. Crow on prior occasions. Justice Thomas’ years of accepting extravagant travel funded by Mr. Crow, the sale of his family’s property to Mr. Crow at what appears to be an above market rate purportedly for a museum dedicated to his legacy, and the Justice’s failure to report these gifts, all raise serious questions regarding Justice Thomas’s commitment to these rules and the Supreme Court’s ethics regime as a whole. A thorough investigation of the facts and circumstances surrounding these gifts and a full accounting of their value is necessary to preserve and restore the ethical integrity of the Supreme Court as an institution.

Background

Luxury Vacations and Private Plane Trips from Mr. Crow

In 1997, Justice Thomas accepted a private plane trip to California from Mr. Crow to attend an all-male retreat at the Bohemian Grove, which he reported on his financial disclosure report.⁵ More recently, Justice Thomas accepted, but did not disclose on his financial disclosure reports, a 2019 trip to Indonesia onboard Mr. Crow’s Bombardier Global 5000 jet so they could embark on a nine-day “island-hopping” cruise aboard Mr. Crow’s 162-foot “superyacht,” the *Michaela Rose*, which is “staffed by a coterie of attendants and a private chef.”⁶ *ProPublica* estimates that the total cost of that trip could have exceeded

³ About the Judicial Conference, *Judicial Conference of the United States*, <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference> (website last checked Apr. 13, 2023).

⁴ Chief Justice John G. Roberts, Jr., *2011 Year-End Report on the Federal Judiciary*, Dec. 31, 2011, <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

⁵ Richard A. Serrano and David G. Savage, *Justice Thomas Reports Wealth of Gifts*, *Los Angeles Times*, Dec. 31, 2004, <https://www.latimes.com/archives/la-xpm-2004-dec-31-na-gifts31-story.html>.

⁶ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

\$500,000 if Justice Thomas had chartered the plane and yacht himself.⁷ This was not the only cruise taken by Thomas and his wife aboard the *Michaela Rose*. *ProPublica* reports that Justice Thomas and his wife previously joined Mr. Crow on a New Zealand cruise and on a separate river day trip around Savannah, Georgia.⁸

In addition to the yachting ventures, *ProPublica* reports that Justice Thomas and his wife accept vacations almost every year from Mr. Crow, at *Topridge*, Mr. Crow's 105-acre luxury resort in the Adirondacks.⁹ *Topridge* features an artificial waterfall, more than 25 fireplaces, three boathouses, a clay tennis court, a batting cage, a hut that replicates the home of a Harry Potter character, a 1950's-style soda fountain where the staff fixes milkshakes, a great hall where guests are served meals prepared by private chefs, private fishing guides, and private concerts.¹⁰ Rooms at nearby resorts that are less "exclusive" than *Topridge* start at \$2,250 a night.¹¹

It is said that a picture paints a thousand words. In this case, a painting featuring Mr. Crow, Justice Thomas and three other guests hangs at *Topridge* that not only memorializes the degree to which Justice Thomas has benefited from Mr. Crow's generosity, but uniquely demonstrates the opportunity it affords other guests to befriend and influence a sitting Member of the Supreme Court.¹² The painting prominently features Justice Thomas seated next to Mr. Crow, and sitting nearby, in a half circle, are Leonard Leo, the Co-Chairman and former Executive Vice President of the Federalist Society;¹³ Professor Peter Rutledge, a contributor to the Federalist Society and professor of law who "regularly files briefs and advises lawyers in matters before the Supreme Court and lower courts,"¹⁴ and Mark Paoletta,¹⁵ who is also a contributor to the Federalist Society,¹⁶ former General Counsel of the Office of Management and Budget, author of a biography on Clarence Thomas, Senior Fellow at the Center for Renewing America,¹⁷ and most recently, a lawyer for Ginni Thomas when she was asked to appear before the House January 6 Committee.¹⁸ Notably, Mr. Paoletta was also a fellow traveler on the *Michaela Rose* cruise trip to Indonesia, but as he was the General Counsel for the US Office of Management and Budget (OMB) at the time and subject to executive branch ethics rules, he was instructed by his agency ethics official to reimburse Mr. Crow for the costs of that trip.¹⁹

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

¹² *Id.*

¹³ Biography of Leonard A. Leo, Co-Chairman of the Federalist Society for Law and Public Policy Studies, *The Federalist Society*, <https://fedsoc.org/contributors/leonard-leo> (website last checked Apr. 13, 2023).

¹⁴ Biography of Prof. Peter B. Rutledge, Professor of Law, University of Georgia School of Law, *The Federalist Society*, <https://fedsoc.org/contributors/peter-rutledge> (website last checked Apr. 13, 2023).

¹⁵ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

¹⁶ Biography of Mark Paoletta, Partner, Schaerr-Jaffe, *The Federalist Society*, <https://fedsoc.org/contributors/mark-paoletta> (website last checked Apr. 13, 2023).

¹⁷ @MarkPaoletta, *Twitter*, <https://twitter.com/MarkPaoletta> (last checked Apr. 13, 2023).

¹⁸ Jamie Gangel, Ariane de Vogue and Zachary Cohen, [First on CNN: Ginni Thomas agrees to January 6 committee interview](https://www.cnn.com/2022/09/21/politics/ginni-thomas-january-6-committee-interview/index.html), *CNN* (Sept. 22, 2022).

¹⁹ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

According to *ProPublica*'s reporting, Mr. Crow often invites other guests on the trips that he funds for Justice Thomas and his wife, many of whom have interests in matters before the Supreme Court, including corporate executives from Verizon and PricewaterhouseCoopers, major Republican donors, and leaders of conservative think tanks like the American Enterprise Institute ("AEI").²⁰

Mr. Crow is apparently no stranger to conservative political and legal causes. In addition to his vast private real estate and business interests,²¹ he has "deep connections" to conservative and Republican politics, and has reported more than \$10 million in political donations.²² Mr. Crow serves on the board of directors of AEI,²³ which is a conservative think tank "dedicated to preserving and strengthening the foundations of free society – limited government, competitive private enterprise, vital cultural and political institutions, and vigilant defense."²⁴ AEI's 2022 annual report boasts of its influence on the Supreme Court and specifically highlights Justice Thomas' participation in AEI's May 2022 conference, which was held at the Old Parkland campus in Dallas, Texas owned by Mr. Crow.²⁵ Mr. Crow has also donated to the Federalist Society,²⁶ which has been described as "a hugely powerful, nationwide organization of conservative lawyers" instrumental in helping Republican presidents put conservative judges and justices on the federal bench.²⁷ He has "given millions of dollars to groups dedicated to tort reform and conservative jurisprudence" and reportedly donated to dark money groups that support various causes.²⁸

2014 Sale of Properties to Mr. Crow

According to *ProPublica*, Justice Thomas and his family members sold their interests in three Savannah, Georgia properties in 2014 to a Texas company owned by Mr. Crow for the

²⁰ *Id.*

²¹ Our Team, Board of Directors, *Crow Holdings*, <https://www.crowholdings.com/team/> (website last checked Apr. 13, 2023) ("Harlan Crow is Chairman of the Board of Crow Holdings, a private family business established to manage the capital of the Trammell Crow family" that diversified its position in the real estate investment business into "public equities, hedge funds, private equities, and other asset classes.") *Id.*

²² Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

²³ Our Team, Board of Directors, *Crow Holdings* website.

²⁴ 2022 American Enterprise Institute Annual Report, <https://www.aei.org/about/annual-report/>.

²⁵ *Id.*

²⁶ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023; Our Background, *The Federalist Society*, <https://fedsoc.org/about-us#Background> (website last checked Apr. 13, 2023) (The Federalist Society defines its purpose as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law; The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities; This entails reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.")

²⁷ All Things Considered, [What is the Federalist Society and How Does it Affect Supreme Court Picks?](https://www.npr.org/2018/06/28/624416666/what-is-the-federalist-society-and-how-does-it-affect-supreme-court-picks) *NPR* (June 28, 2018, <https://www.npr.org/2018/06/28/624416666/what-is-the-federalist-society-and-how-does-it-affect-supreme-court-picks>).

²⁸ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

lump sum amount of \$133,363.²⁹ The properties sold to Mr. Crow included Justice Thomas' mother's house, where Thomas spent part of his childhood and where his mother continues to reside, and two vacant lots down the street from the mother's home.³⁰

No transaction reflecting the 2014 sale has ever been reported by Justice Thomas on his financial disclosure reports even though his interest in the properties were previously reported as rental properties held for business purposes. According to *ProPublica*, in the late 1980s, Justice Thomas listed the addresses of the three properties and his one-third interest in them on his financial disclosure reports.³¹ By the early 2000s, he stopped listing specific addresses, but continued to report them as "rental property at ##1,2, & 3" with a reported value of less than \$15,000.³²

- In his financial disclosure report covering CY 2009, he reported his interests in the Savannah, Georgia properties as "1/3 int. in rental property at ## 1, 2, & 3, Sav., GA" and rental income in the amount of \$1,000 or less (coded as "A") and a value of \$15,000 or less (coded as "J").³³
- In his financial disclosure report covering CY 2010, he reported his interests in the Savannah, Georgia properties as "1/3 int. in rental property, Liberty City, GA (Y)" with rental income in the amount of \$1,001-\$2,500 (coded as "B") and a value of \$15,000 or less.³⁴ In a footnote to the 2011 report, he noted that "two of the Georgia rental properties have been torn down. The only remaining property is an old house in Liberty County."³⁵ The "Y" denotes that the asset is unreportable on the next year's report,³⁶ but Justice Thomas appeared to continue to report the property as an asset for the next several years, even on reports filed after all the properties were sold to Mr. Crow in 2014.
- In his financial disclosure report covering CY 2011, he reported his interests in the Savannah, Georgia property as "1/3 int. in rental property, Liberty City, GA (Y)" with rental income in the amount of \$1,001-\$2,500 and a value of \$15,000 or less.³⁷
- In his financial disclosure report covering CY 2012, he reported his interests in the Savannah, Georgia property as "1/3 int. in rental property, Liberty City, GA" with rental income in the amount of \$1,001-\$2,500 and a value of \$15,000 or less.³⁸

²⁹ Elliott, Kaplan, and Mierjeski, *ProPublica*, Apr. 13, 2023.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 2009 Public Financial Disclosure Report, Part VII, item 2, https://pfds.opensecrets.org/N99999918_2009.pdf.

³⁴ 2010 Public Financial Disclosure Report, Part VII, item 2, https://pfds.opensecrets.org/N99999918_2010.pdf.

³⁵ *Id.*, Part VII, item 2 Part VIII, https://pfds.opensecrets.org/N99999918_2010.pdf.

³⁶ See Filing Instructions for Judicial Officers and Employees (AO-10), *Administrative Office of the U.S. Courts*, at 50 https://www.uscourts.gov/sites/default/files/financial_disclosure_filing_instructions.pdf (The Filing Instructions for Judicial Officers, at p. 50, explains: "(d) except as noted above, for a previously reported asset that becomes unreportable without a corresponding reportable transaction (i.e., when an asset's value and income fall below reporting thresholds, or upon emancipation of a dependent child, dissolution of marriage, reversion of rental property to personal residence), insert "(Y)" after the asset description in Column A and leave Columns B - D blank, or include an explanatory note in Part VIII. In subsequent years, this asset should be deleted from Part VII.")

³⁷ 2011 Public Financial Disclosure Report, Part VII, item 2, https://pfds.opensecrets.org/N99999918_2011.pdf.

³⁸ 2012 Public Financial Disclosure Report, Part VII, item 2, https://pfds.opensecrets.org/N99999918_2012.pdf.

- In his financial disclosure report covering CY 2013, he reported his interests in the Savannah, Georgia property as “ $\frac{1}{3}$ int. in rental property, Liberty City, GA” with rental income in the amount of \$1,000 or less and a value of \$15,000 or less.³⁹
- In his financial disclosure report covering CY 2014, he reported his interests in the Savannah, Georgia property as “ $\frac{1}{3}$ int. in rental property, Liberty City, GA” with no rental income and a value of \$15,000 or less.⁴⁰ The property was reported without any indication that a sale to Mr. Crow had taken place during the 2014 reporting period.
- In his financial disclosure report covering CY 2015, he reported his interests in the Savannah, Georgia property as “ $\frac{1}{3}$ int. in rental property, Liberty City, GA (Y) ‘See Part VIII’” with no rental income and no value.⁴¹ In a footnote, Justice Thomas disclosed that the “asset listed on line 1 does not receive any rental income for this property,”⁴² but he was not forthcoming about the reason for no rental income, which was that the properties had been sold the prior year to Mr. Crow.
- In his financial disclosure report covering CY 2016, he stopped reporting his interest in the Savannah, Georgia property as an asset on his financial disclosure reports.⁴³

Since he reported no sales of any of the Savannah, Georgia properties, Justice Thomas’ financial disclosure reports, as they are drafted, can only be read to mean that the properties continued to be held for the production of rental income and/or for investment purposes until at least 2015, when Justice Thomas stopped reporting them altogether. In fact, his mother’s house and the two vacant lots were bundled by the Thomas family and sold to Mr. Crow in 2014, as part of a single undisclosed private transaction.⁴⁴

After Mr. Crow purchased Justice Thomas’ mother’s house, Mr. Crow hired contractors to make tens of thousands of dollars of improvements to the property.⁴⁵ Although he owns Justice Thomas’ mother’s house, Mr. Crow has not disclosed publicly whether he charges Justice Thomas or his mother any rent. Furthermore, until the property was sold to Mr. Crow, Justice Thomas and his wife bore responsibility for paying “roughly \$1,500 in annual property taxes.”⁴⁶ Presumably, those taxes are now paid by Mr. Crow rather than passed on to Justice Thomas’ mother while she resides there. As to the vacant lots, Mr. Crow sold them for development, along with other nearby properties he purchased.⁴⁷ Eventually, the whole block was transformed in the process.⁴⁸

When asked about the sale, Mr. Crow told *ProPublica* that he purchased Justice Thomas’ mother’s home to “preserve it for posterity” and “maintain this historic site” with

³⁹ 2013 Public Financial Disclosure Report, Part VII, item 2, https://pfd.opensecrets.org/N99999918_2013.pdf.

⁴⁰ 2014 Public Financial Disclosure Report, Part VII, item 1, https://pfd.opensecrets.org/N99999918_2014.pdf.

⁴¹ 2015 Public Financial Disclosure Report, Part VII, item 1, https://pfd.opensecrets.org/N99999918_2015.pdf.

⁴² *Id.*

⁴³ 2016 Public Financial Disclosure Report, https://pfd.opensecrets.org/N99999918_2016.pdf.

⁴⁴ Elliott, Kaplan, and Mierjeski, *ProPublica*, Apr. 13, 2023.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

the intention to “one day create a public museum” dedicated to “telling the story of our nation’s second black Supreme Court Justice.”⁴⁹

Potential Violations

Ethics in Government Act

Under the Ethics in Government Act, as amended (“EIGA” or the “Act”), Justice Thomas is a “judicial officer” who is required to disclose travel and other gifts on his annual financial disclosure reports, including trips like the one he took to Indonesia aboard Mr. Crow’s private jet and yacht.⁵⁰ The Act requires disclosure of the “source,” a “brief description” and “value of all gifts” that exceed the reporting threshold (which is currently \$415) and the “source,” a “brief description (including a travel itinerary, dates and nature of any expenses provided) of reimbursements received from any source” exceeding the reporting threshold.⁵¹

The 2018 *Guide to Judiciary Policy for Financial Disclosure* in effect at the time the 2019 trip was taken⁵² makes expressly clear that gifts of in-kind travel are covered by the financial disclosure requirements.:

[E]ach financial disclosure report must contain the identity of the source, a brief description, and the value of all gifts aggregating more than [minimal] value that are received by the filer during the reporting period from any one source. *For in-kind travel-related gifts, include travel, locations, dates, and nature of expenses provided.* [emphasis added].⁵³

While there is an exception for reporting gifts of “food, lodging, or entertainment received as ‘personal hospitality of an individual,’”⁵⁴ the list of items covered by that exception clearly does not include travel. Rather, the regulations make clear that travel items should be disclosed on the reporting forms, as follows: the “identity of the source and a brief description (including travel locations, dates, and nature of expenses provided) of any travel-related reimbursements aggregating more than [minimal] value that are received by the filer from one source during the reporting period.”⁵⁵

Furthermore, the personal hospitality exception for food, lodging or entertainment items that Justice Thomas appears to have tried to rely on is clearly limited and can only be used when the covered items are extended “for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned

⁴⁹ *Id.*

⁵⁰ 5 U.S.C. §§ 13103(f)(11) and 13101(10).

⁵¹ 5 U.S.C. § 13104(a)(2)(A)(B).

⁵² 2018 Guide to Judiciary Policy on Financial Disclosure, Vol. 2D, *Administrative Office of the U.S. Courts* (Last substantive revision (February 5, 2018) Last technical revision (March 23, 2018), <https://web.archive.org/web/20200730135324/https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf>. (The 2018 version appears to have been in effect at the time of Justice Thomas’ 2019 trip to Indonesia).

⁵³ *Id.* at § 330.10.

⁵⁴ *Id.* at § 330.30.

⁵⁵ *Id.* at § 330.20 and § 170 (The definition of “reimbursement” is “any payment or other thing of value received by the reporting individual (other than gifts, as defined above) to cover travel-related expenses of such individual.”)

by that individual or his family.”⁵⁶ Since neither a private aircraft nor yacht would generally be viewed as “real property,” the personal hospitality exception that covers “food, lodging, or entertainment” offered at a “personal residence” would not be applicable.⁵⁷ Additionally, since “personal hospitality” can only be extended by an “individual” not a corporate entity, any “food, lodging and entertainment” offered on Mr. Crow’s aircraft or yacht would still need to be reported unless it could be established that the aircraft and yacht were “properties or facilities” owned by Mr. Crow personally as an individual rather than through an LLC or corporate entity, which is how these entities are normally held for liability purposes.

In a recent statement,⁵⁸ issued in response to *ProPublica*’s reporting,⁵⁹ Justice Thomas represents that “these guidelines are now being changed,” which seems to suggest that the substance of the law has changed, when in fact, that is not the case. There has been no change made to the statute or regulations that arguably could be read to have relieved him of his ongoing obligations to correctly report private aircraft trips and yacht cruises as travel received from Mr. Crow.

The *Guide to Judiciary Policy for Financial Disclosure* was recently updated on March 23, 2023, but the definition of “personal hospitality of any individual” has not changed since 2018.⁶⁰ Rather, notes have been added that merely reinforce what was obvious to any reasonable person,⁶¹ but apparently not to Justice Thomas, although he purportedly abides by the judicial principle that “any fool would know.”⁶²

⁵⁶ *Id.* at § 170.

⁵⁷ *Id.* at § 170 (The definition of “personal residence” for purposes of the personal hospitality exception is “any real property used exclusively as a private dwelling by the filer or filer’s spouse that is not rented during any portion of the reporting period. Note: The term is not limited to one’s domicile. Consequently, there may be more than one personal residence, including a vacation home.”)

⁵⁸ Statement by Justice Clarence Thomas, Apr. 7, 2023,

<https://www.documentcloud.org/documents/23745868-clarence-thomas-statement-4-7-23>.

⁵⁹ Joshua Kaplan, Justin Elliott and Alex Mierjeski, Clarence Thomas Defends Undisclosed “Family Trips” With GOP Megadonor. Here Are the Facts, *ProPublica*, Apr. 7, 2023,

<https://www.propublica.org/article/clarence-thomas-response-trips-legal-experts-harlan-crow#:~:text=In%20a%20rare%20public%20statement.and%20failed%20to%20disclose%20it>.

⁶⁰ 2023 Guide to Judicial Policy on Financial Disclosure, Vol. 2D (March 23, 2023), § 170, at 6,

<https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf> (“Personal hospitality of any individual” is defined as “hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his or her family or on property or facilities owned by that individual or his or her family.”)

⁶¹ *Id.* at 6 (The recently added notes state: “The personal hospitality gift reporting exemption applies only to food, lodging, or entertainment and is intended to cover such gifts of a personal, nonbusiness nature. Therefore, the reporting exemption does not include:

- gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation;
- gifts extended for a business purpose;
- gifts extended at property or facilities owned by an entity, rather than by an individual or an individual’s family, even if the entity is owned wholly or in part by an individual or an individual’s family;
- gifts paid for by any individual or entity other than the individual providing the hospitality, or for which the individual providing the hospitality receives reimbursement or a tax deduction related to furnishing the hospitality; or
- gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.”)

⁶² Gregory S. Coleman Memorial Lecture: Justice Clarence Thomas, *The Federalist Society* (Sept. 8, 2018), at approx. 11:45 mark in the videotaped program (quoting Judge Edith H. Jones, U.S. Court of Appeals, Fifth Circuit, who attributed them to Justice Thomas in her introductory comments),

In fact, Justice Thomas is well aware of his private aircraft travel reporting obligations from the 1997 private plane trip he took with Mr. Crow to the Bohemian Grove that was dutifully reported on a previous financial disclosure report. Any suggestion by Justice Thomas that he was not similarly obligated to disclose the Indonesia or other similar trips is not only misleading, but appears disingenuous in a possible effort to relieve himself of his obligation to go back and correct the record. In particular, to the extent that he did not properly report past trips taken aboard Mr. Crow's private aircraft and yacht, Justice Thomas should promptly amend and correct all applicable reports, as he did previously when he failed to report the source of his wife's income from a conservative think tank and corrected more than 20 years of reports.⁶³

Justice Thomas said that "early in [his] tenure" he "sought guidance from my colleagues and others in the judiciary" and was advised that these "sort" of trips were "not reportable," but this statement borders on disbelief.⁶⁴ Justice Thomas's statement provides little detail about what information he provided to his colleagues regarding the gifts in question or the donor that might be relevant to the appropriateness of accepting and failing to disclose lavish travel funded by a wealthy activist who befriended the Justice after he took the bench. Nor is there any indication whether this advice was provided in writing or what authorities were consulted in providing it. It's hard to fathom that any member of the federal judiciary when fully informed of all the relevant facts and circumstances would have advised Justice Thomas to accept luxury travel aboard the private plane and superyacht of a "real estate magnate and Republican megadonor," let alone advise him not to disclose it.

If Justice Thomas did receive this advice, then the Court's ethical challenges extend well beyond Justice Thomas and are potentially systemic to cover the federal judiciary in its entirety. Moreover, Justice Thomas' view is inconsistent with that offered by other branches of government, including the executive branch. In this regard, we note that Mr. Paoletta not only asked for and received ethics advice from agency ethics officials, but was told to reimburse Mr. Crow for the costs associated with his Indonesia trip, thereby negating any corresponding financial disclosure obligation.

Under the EIGA and the *Guide to Judiciary Policy for Financial Transaction*, Justice Thomas was also required to report his one-third interest in the \$133,363 sale price for the Savannah, Georgia rental properties since the bundled transaction involved a "sale" of property exceeding \$1,000.⁶⁵ While there is an exception for reporting transactions

<https://fedsoc.org/conferences/2018-texas-chapters-conference?#agenda-item-gregory-s-coleman-memorial-lecture-justice-clarence-thomas> (website last checked Apr. 13, 2023).

⁶³ Ariane de Vogue and Devin Dwyer, [Justice Clarence Thomas Amends 20 Years of Disclosure Forms With Wife's Employers](https://abcnews.go.com/Politics/Supreme_Court/justice-clarence-thomas-amends-financial-disclosure-reports-virginia/story?id=12750650), *ABC News*, Jan. 24, 2011,

https://abcnews.go.com/Politics/Supreme_Court/justice-clarence-thomas-amends-financial-disclosure-reports-virginia/story?id=12750650.

⁶⁴ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 7, 2023.

⁶⁵ 5 U.S.C. § 13104(a)(5) ("Each report filed pursuant to section 13103(d) and (e) of this title shall include a full and complete statement with respect to the following: . . . (5) TRANSACTIONS. Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000—(A) in real property, other than property used solely as a personal residence of the reporting individual or the individual's spouse."); 2023 *Guide to Judicial Policy on Financial Disclosure*, Vol. 2D, § 315.40(a)(b).

involving “personal residences,”⁶⁶ the properties were always referred to as rental properties by Justice Thomas on his financial disclosure reports even during the period when no rent was collected. Nor would the exception for “personal residences” reasonably apply to Justice Thomas’ sale of vacant lots since they lacked a “private dwelling” in which to reside.

A full accounting of the transaction is necessary to determine if Mr. Crow purchased the properties for more than fair market value since the \$133,363 sale price, when prorated by one-third, would significantly exceed the \$15,000 (presumably prorated) maximum value reported by Justice Thomas on his 2009 through 2016 financial disclosure reports. An investigation should also be conducted to determine whether Mr. Crow is charging Justice Thomas’ mother rent at fair market value consistent with any improvements made to the property while she continues to live in the family house. If Mr. Crow is absorbing those costs to relieve Justice Thomas of that financial burden, those costs should have been calculated and reported as a gift from Mr. Crow on Justice Thomas’ financial disclosure reports to the extent they exceed the \$415 reporting threshold. Additionally, Mr. Crow’s improvements to, and maintenance of, Justice Thomas’ mother’s home to “preserve it for posterity” as a historic site and museum likewise should be considered a gift to be disclosed since it is a thing of value that will be used to honor and preserve his place in history for time immemorial.

Justice Thomas has had prior significant reporting violations. In 2011, Justice Thomas amended 20 years of financial disclosure forms after it came to light that his wife had been drawing income from a conservative think tank without having reported it as a source of income.⁶⁷ Justice Thomas’ failure to promptly amend his financial disclosure reports to reflect *ProPublica*’s recent disclosures merits a full investigation by your offices.

Pursuant to the EIGA, the Attorney General is authorized to bring a civil action against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report.⁶⁸ Civil penalties can be assessed in an amount not to exceed \$50,000.⁶⁹ Criminal sanctions may also be imposed.⁷⁰

Judicial Conference Regulations on Gifts

The *Judicial Conference Gift Regulations* implement 5 U.S.C. §§ 7351 and 7353, which prohibit the giving, solicitation, or acceptance of certain gifts by officers and employees of the judicial branch.⁷¹ The implementing regulations apply to Justice Thomas by virtue of an internal resolution adopted by Members of the Supreme Court in 1991, in which the Justices agreed to “follow the very same practices as their lower court colleagues.”⁷²

⁶⁶ 2023 Guide to Judicial Policy on Financial Disclosure, Vol. 2D, § 315.40.10(c); § 170 (the definition of “personal residence” is “any real property used exclusively as a private dwelling by the filer or filer’s spouse that is not rented during any portion of the reporting period.”)

⁶⁷ de Vogue and Dwyer, *ABC News*, Jan. 24, 2011.

⁶⁸ 5 U.S.C. § 13106 (a)(1).

⁶⁹ *Id.*

⁷⁰ 5 U.S.C. § 13106 (a)(1).

⁷¹ *Judicial Conference Gift Regulations*, Vol. 2C, *Administrative Conference of the U.S. Courts*, § 620.15, <https://www.uscourts.gov/sites/default/files/vol02c-ch06.pdf>.

⁷² Chief Justice John G. Roberts, Jr., *2011 Year-End Report on the Federal Judiciary*, Dec. 31, 2011.

Under the gift regulations, judicial officers are prohibited from accepting a gift from any person who is seeking official action from or doing business with the court, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer's or employee's official duties.⁷³ Additionally, a gift may not be accepted if a reasonable person would believe it was offered in return for being influenced in the performance of an official act or from the same or different sources on a basis so frequent that a reasonable person would believe that his public office is being used for private gain.⁷⁴ While there is an exception for "gifts" based on "personal relationships,"⁷⁵ this exception would normally apply where there is evidence of a pre-existing friendship and reciprocity.⁷⁶ Neither a pre-existing relationship nor reciprocity is present here.

Rather, the reporting indicates that Mr. Crow fostered a friendship with Justice Thomas after he joined the Court and that his gifts bestow a level of luxury on Justice Thomas and his wife, which they not only cannot afford for themselves or reciprocate on the Justice's salary, but which could only be replicated by the very wealthiest members of our society. The estimated cost of the Indonesia trip alone would exceed \$500,000 to replicate.⁷⁷ When informed about the trips, one retired federal judge noted that "it's incomprehensible that someone would do this."⁷⁸ The exclusive, luxurious and repeated nature of these vacations act to subsidize the lifestyle of Justice Thomas and his wife to a degree that is unimaginable for most federal judges, and thereby causes a reasonable person to believe that Justice Thomas has violated his ethical obligations by repeatedly accepting expensive gifts from the same person on so frequent a basis that he is using his public office for private gain.

The fact that Mr. Crow purchased Justice Thomas' childhood home purportedly for the purpose of preserving it as a historic site and museum to honor the Justice's legacy only adds to the egregiousness of the apparent violation. Other expensive gifts Justice Thomas received from Mr. Crow or from organizations he is affiliated with, such as the \$19,000 Frederick Douglass bible and the \$15,000 bust of Abraham Lincoln, also need to be taken into consideration.⁷⁹

Because Mr. Crow is a real estate magnate with vast investments across a number of business sectors, he is likely to have a substantial interest in the outcome of any number of legal matters that are pending, or are likely to come, before the Court. Moreover, when Mr. Crow entertains Justice Thomas, he surrounds him with guests representing a particular ideological viewpoint and agenda, as evidenced by the *Topridge* painting, affording them unique access and opportunities to influence a sitting Member of the Court year after year in informal settings at Mr. Crow's Adirondack luxury resort, and on his private aircraft and far-flung yacht cruises. As an aggravating factor, Mr. Crow and his guests commingle their

⁷³ *Judicial Conference Gift Regulations*, § 620.35(a).

⁷⁴ *Id.* at § 620.45.

⁷⁵ *Id.* at § 620.25(a).

⁷⁶ See 5 C.F.R. § 2635.204 (b) ("An employee may accept a gift given by an individual under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history and nature of the relationship and whether the family member or friend personally pays for the gift.")

⁷⁷ Kaplan, Elliott, and Mierjeski, *ProPublica*, Apr. 6, 2023.

⁷⁸ *Id.*

⁷⁹ Mike McIntire, *Friendship of Justice and Magnate Puts Focus on Ethics*, *New York Times* (June 18, 2011), <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html?pagewanted=1&hp>.

social and official ties to Justice Thomas by inviting him to participate in an official capacity in events sponsored by their respective conservative organizations.⁸⁰ Under these circumstances, the vacation and travel opportunities offered by Mr. Crow do not evidence a “bona fide,” personal relationship separate and apart from his judicial office, but rather an ongoing influence campaign targeting Justice Thomas as a Member of the Court in an apparent effort to promote a particular judicial philosophy that furthers Mr. Crow’s and his guests’ private business interests and ideological agendas.⁸¹

More problematically, after having accepted potentially hundreds of thousands of dollars worth of luxury vacations and travel from an individual who fosters and promotes a clear ideological agenda, as well as a potential museum that will honor his legacy, any apparent violations on the part of Justice Thomas cannot be addressed solely by amending his disclosure reports. Justice Thomas himself has advocated for preserving the legitimacy of the Court “with honorability,” “honesty,” “integrity,” and an “ethical” and “moral foundation.”⁸² He had advised his own law clerks on the importance of leaving a job with “clean hands, clean hearts and clear consciences.”⁸³

For this reason, corrective action must include a recusal framework or other remedy that insulates the Court from ongoing criticism that Justice Thomas’ impartiality has been tainted by undue influence, in addition to whatever corrective action is necessary to address the errors contained in his financial disclosures reports resulting from his reporting failures and any other disciplinary action deemed appropriate when a gift regulation has been repeatedly violated by a Member of the Court.

Conclusion

Because they serve on the Nation’s court of last resort, every Justice must seek to follow the highest ethical standards and resolve to do their best to maintain the public’s trust that they are faithfully and impartially discharging their solemn obligation to equal justice under law.⁸⁴ It is incumbent on you to undertake a full and complete investigation into the facts and circumstances surrounding Justice Thomas’ acceptance and failure to report private aircraft travel and luxury vacations for over two decades from Mr. Crow, as well as his failure to report real estate transactions, in possible violation of the Ethics in Government Act and the *Judicial Conference Gift Regulations*. A full accounting of the value of the travel

⁸⁰ See e.g., Gregory S. Coleman Memorial Lecture: Justice Clarence Thomas, *The Federalist Society* (Sept. 8, 2018); 2022 American Enterprise Institute Annual Report (highlighting Justice Thomas’ participation in AEI’s May 2022 conference held at Mr. Crow’s Old Parkland campus in Dallas, Texas).

⁸¹ See Rules for Judicial Conduct and Judicial Disability (“Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts. Cognizable misconduct includes, but is not limited to, the following: (1) Violation of Specific Standards of Judicial Conduct. Cognizable misconduct includes: (B) accepting bribes, gifts, or other personal favors related to the judicial office; . . . (F) violating rules or standards pertaining to restrictions on outside income or knowingly violating requirements for financial disclosure.”) https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019.pdf.

⁸² Gregory S. Coleman Memorial Lecture: Justice Clarence Thomas, *The Federalist Society* (Sept. 8, 2018), at approx. 43:12 mark in the videotaped program.

⁸³ *Id.*

⁸⁴ See Chief Justice John G. Roberts, Jr., *2019 Year-End Report on the Federal Judiciary*, Dec. 31, 2019, at 4, <https://www.supremecourt.gov/publicinfo/year-end/2019year-endreport.pdf>; Chief Justice John G. Roberts, Jr., *2011 Year-End Report on the Federal Judiciary*, Dec. 31, 2011, at 5.

and other gifts accepted from Mr. Crow is of vital importance for purposes of restoring and maintaining the Court's integrity.

Sincerely,



Noah Bookbinder
President and Chief Executive Officer



Virginia Canter
Chief Ethics Counsel



Ambassador (Ret.) Norman L. Eisen



Richard Painter