



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

May 5, 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: Supplemental Request for Investigation of Justice Clarence Thomas for failure to properly report tuition payments made by a wealthy benefactor for the benefit of his close relative on his annual public financial disclosure report

Dear Chief Justice Roberts and Attorney General Garland:

According to reporting by *ProPublica* released yesterday, Associate Justice Clarence Thomas' wealthy benefactor, Harlan Crow, not only bestowed private jet travel, luxury vacations, and secret real estate deals on Justice Thomas and his family, but he also made tuition payments for Justice Thomas' grandnephew to attend private boarding school at a time when Justice Thomas was his grandnephew's legal guardian and had primary responsibility for paying those education costs himself.¹ None of these payments or transactions were reported by Justice Thomas on his public financial disclosure reports. A subsequently released public statement issued by a "friend of Justice Thomas" confirmed that Mr. Crow's tuition payments covered two years of private schooling for Justice Thomas' grandnephew.² The value of the education payments received from Mr. Crow may have been worth more than \$100,000.³

Based on this newly reported information, Citizens for Responsibility and Ethics in Washington ("CREW") is hereby supplementing its April 14, 2023 request for investigation,⁴

¹ Joshua Kaplan, Justin Elliott and Alex Mierjewski, Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition, *ProPublica*, May 4, 2023,

<https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus>.

² Statement of Mark Paoletta, Friend of Justice Thomas, *Twitter*, May 4, 2023, <https://twitter.com/MarkPaoletta/status/1654086444594483200>.

³ Kaplan, Elliott, Mierjewski, *ProPublica*, May 4, 2023.

⁴ Letter to Chief Justice John G. Roberts and Attorney General Merrick B. Garland from Noah Bookbinder, et al., April 14, 2023, <https://www.citizensforethics.org/legal-action/legal-complaints/crew-files-civil-and-criminal-complaint-against-clarence-thomas/#:~:text=Justice%20Thomas%20appears%20to%20have,Norm%20Eisen%20and%20Richard%20Painter>.

to request an investigation into the facts and circumstances surrounding Justice Thomas' failure to report Mr. Crow's tuition payments on his public financial disclosure reports. The investigation should determine if Justice Thomas' failure to report gifts of tuition payments not only violated his reporting obligations under the Ethics in Government Act, but also if it was part of a long-standing pattern of conduct to keep hidden his financial entanglements with Mr. Crow, so as to avoid public scrutiny of any potential conflicts of interests that could arise from cases brought before the Court in which Mr. Crow may have an interest through his extensive business holdings and ideological interests.

Justice Thomas personally benefited from Mr. Crow's generosity for the simple reason that he was relieved for two years from making costly tuition payments that he otherwise likely would have been responsible for making as the child's then-guardian, and he failed to disclose them as a gift received from Mr. Crow or from Mr. Crow's family business in apparent violation of the Ethics in Government Act ("EIGA"). EIGA requires covered officials to annually report the "identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value ... received from any source other than a relative of the reporting individual during the preceding calendar year."⁵ A similar gift reporting requirement applies to gifts to a "spouse" or "dependent child."⁶ A "gift" is defined in EIGA as "a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor."⁷

While Justice Thomas may wish to rely on the fact that his grandnephew, Mr. Martin, does not technically qualify under EIGA as Justice Thomas' "dependent child,"⁸ that argument is meaningless in the present case since Mr. Crow's tuition payments are clearly a "thing of value" that benefited Clarence Thomas as well as Mr. Martin. Justice Thomas likely signed enrollment contracts on behalf of Mr. Martin to attend Randolph-Macon Academy for the 2006 school year, which reportedly costs between \$25,000 and \$30,000 per year, and for his junior year, to attend Hidden Lake Academy for the 2007 school year, a therapeutic boarding school in Georgia, which reportedly cost approximately \$73,000, plus fees, per year.⁹ The enrollment contracts likely committed Justice Thomas to cover Mr. Martin's tuition payments since Mr. Martin himself was a minor at the time and not eligible to enter into contracts. Yet Justice Thomas did not report any tuition payments made on behalf of Mr. Martin or Justice Thomas as gifts on his annual financial disclosure reports covering calendar years 2006, 2007 or 2008.¹⁰

⁵ 5 U.S.C. § 13104(a)(2).

⁶ 5 U.S.C. § 13104(e)(1)(C) (Reports should also include "any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.")

⁷ 5 U.S.C. § 13101(5).

⁸ 5 U.S.C. § 13101(2).

⁹ Kaplan, Elliott, Mierjewski, *ProPublica*, May 4, 2023.

¹⁰ 2006 Annual Public Financial Disclosure Report, as amended, May 15, 2007, https://pfd.opensecrets.org/N99999918_2006_a.pdf; 2007 Annual Public Financial Disclosure Report, May 15, 2008, https://pfd.opensecrets.org/N99999918_2007.pdf; 2008 Annual Public Financial Disclosure Report, May 15, 2009, https://pfd.opensecrets.org/N99999918_2008.pdf.

When Mr. Crow made those tuition payments, it relieved Justice Thomas of the significant cost of Mr. Martin's private boarding school tuition, while providing his grandnephew with a quality education and other support. Justice Thomas previously recognized the need to report such gifts, having disclosed educational gifts for Mr. Martin on the Justice's annual financial disclosure report covering 2002. This prior disclosure further undercuts any argument that Justice Thomas did not recognize the later tuition payments for Mr. Martin as reportable gifts.¹¹

Justice Thomas had a history of making sacrifices to cover his grandnephew's education. As reported to *ProPublica* by Mr. Martin, Justice Thomas once sold "his most prized car" to cover a year of school tuition, and he would have likely had to make similar sacrifices to enable his grandnephew to attend Randolph-Macon and Hidden Lake had Mr. Crow not taken over that financial burden for the two school years Mr. Martin attended those institutions.¹² Having Mr. Crow assume the financial burden of these tuition payments not only benefited Mr. Martin, but apparently relieved Justice Thomas of a significant financial liability that he likely assumed when he enrolled the child in private boarding school.

Additional scrutiny is of particular importance in circumstances such as these when the payments that benefit a very close relative of a Supreme Court Justice are drawn from business accounts rather than from the purported friend's individual, personal bank account. In this case, tuition payments were drawn from a Crow Holdings LLC account and wired to the schools in question. While Mr. Crow has represented that his "scholarships and other contributions have always been paid solely from personal funds, sometimes held at and paid through the family business,"¹³ it doesn't negate the fact that Crow Holdings LLC is a business concern, and Mr. Crow has a fiduciary obligation to use company funds in furtherance of the business itself. Having drawn the monies from a Crow Holdings business account undermines claims that the gifts were personally motivated and raises the possibility that the gifts were instead intended to serve a business purpose.

On the basis of newly reported information from *ProPublica*, CREW requests to supplement its earlier letter requesting your offices investigate Justice Thomas' failure to report expensive gifts and real estate deals received from Mr. Crow, to determine if Justice Thomas may have also violated his reporting obligations under EIGA when he failed to disclose payments received from Mr. Crow to cover Mr. Martin's private boarding school tuition. The failure by Justice Thomas to report tuition payments made by Mr. Crow or his business for his grandnephew not only undermines public confidence in Justice Thomas'

¹¹ 2002 Annual Public Financial Disclosure Report, May 15, 2003, <https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2002.pdf>.

¹² Kaplan, Elliott, Mierjewski, *ProPublica*, May 4, 2023.

¹³ Statement to *ProPublica* from the Office of Harlan Crow, May 2023, <https://www.documentcloud.org/documents/23794177-statement-from-harlan-crows-office>.

ability to fully comply with his financial reporting obligations under applicable law,¹⁴ but appears to be part of a continuing pattern of conduct to intentionally cover up his financial entanglements with Mr. Crow and further impairs public trust in the integrity of the Court as an institution. Such conduct seriously jeopardizes the appearance of Justice Thomas' independence and calls into question his ability to fairly and impartially discharge his solemn obligation as a Member of the Court to apply equal justice under the law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder".

Noah Bookbinder
President and Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Virginia Canter".

Virginia Canter
Chief Ethics Counsel

¹⁴ While the statute of limitations under EIGA and 18 U.S.C. § 1001 to pursue violations stemming from these tuition payments may have already run, a full investigation into the facts and circumstances surrounding these tuition payments is necessary as they constitute evidence of a larger, continuing pattern of conduct by Justice Thomas to intentionally conceal payments, gifts and real estate transactions received from Mr. Crow from public disclosure seemingly required under EIGA. Justice Thomas' failure to disclose payments, gifts and transactions received from Mr. Crow undermines public trust by shielding items that may be worth several hundred thousands dollars from close public scrutiny, which would normally be merited to identify potential conflicts of interest that may arise if Justice Thomas were to participate in cases that come before the Court in which Mr. Crow may have an interest.