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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

April 24, 2023

Harlan R. Crow
Chairman of the Board
Crow Holdings
3819 Maple Avenue
Dallas, TX

Dear Mr. Crow,

I write seeking information related to reports of undisclosed gifts and payments for the personal benefit of Supreme Court Justice Clarence Thomas, including private real estate transactions and the complimentary use of your private jet and superyacht. This unprecedented arrangement between a wealthy benefactor and a Supreme Court justice raises serious concerns related to federal tax and ethics laws.

As you are aware, a recent investigation by ProPublica revealed that for over two decades, you secretly lavished Justice Thomas with free luxury trips worth at least hundreds of thousands of dollars.¹ Though the full extent of your largesse to Justice Thomas remains unknown, public reporting indicates that virtually every year since joining the Supreme Court, Justice Thomas accepted free flights aboard your private jet and accommodations aboard your 162-foot superyacht, the Michaela Rose. According to reports, as part of these all-expense-paid trips, Justice Thomas and his wife, Ginni Thomas, flew on your private jet to Indonesia, where they went island-hopping for nine days on the Michaela Rose.² Justice Thomas also appears to have vacationed aboard the Michaela Rose in New Zealand and Greece, and frequently used your private jet to travel to other domestic and international destinations.³

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

² Id.

³ Id.

Justice Thomas failed to properly disclose any of these gifts on his annual financial disclosure forms, potentially in violation of federal law.⁴ In a statement made in response to ProPublica’s reporting, Justice Thomas did not deny that you paid for these trips and simply stated that he was advised the gifts were “not reportable.”⁵ It is hard to believe Justice Thomas did not understand his financial disclosure requirements, especially considering he previously reported a flight aboard your jet in 1997.⁶

While ethics experts disagree with Justice Thomas’ assertion that these benefits provided by you qualify under the “personal hospitality” exception in ethics rules, the Internal Revenue Code provides no such exceptions for transfers of a gratuitous or personal nature. The federal gift tax specifically applies to transfers without full consideration, including the uncompensated use of property. According to the Internal Revenue Code and Internal Revenue Service (IRS) regulations, a gift for gift tax purposes is a transfer to an individual, either directly or indirectly, where full consideration (measured in money or money's worth) is not received in return.⁷ The IRS has long made clear the gift tax applies to the transferor of a gift, including in cases where the transferor provides for the “use of property” without expecting to receive something of at least equal value in return.⁸ In general, taxpayers who make total gifts in excess of the annual gift tax exclusion (\$17,000 per recipient in 2023) must file a gift tax return, Form 709, even if the taxpayer has not yet exhausted their lifetime exemption from gift and estate tax (\$12.92 million in 2023). In instances where an entity like a corporation or partnership makes the gift, the partners or stockholders generally are considered the donors of the gift.⁹

While there are exemptions from the gift tax, such as for certain payments for medical expenses or tuition; for certain transfers to tax-exempt organizations; and for certain transfers to spouses, none of these exemptions appear to apply to any gifts you made to Justice Thomas. The cost of the use of your private jet and fully crewed superyacht by Justice Thomas would likely be well in excess of the annual gift tax exclusion (between \$13,000 per recipient in 2011 and \$17,000 per recipient in 2023, depending on the year), thus giving rise to a gift tax return filing requirement.¹⁰

⁴ 5 U.S.C. § 13104(a)(2)(A) (The Ethics in Government Act requires that annual financial disclosure statements for Supreme Court Justices include “the identity of the source, a brief description, and the value of all gifts worth more than \$415 from a single source.”)

⁵ *Clarence Thomas says trips paid for by billionaire were ‘personal hospitality’, not business*, NBC News, Apr. 7, 2023, <https://www.nbcnews.com/politics/supreme-court/justice-clarence-thomas-explains-failure-report-trips-paid-conservativ-rcna78696>

⁶ *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>

⁷ 26 U.S.C. § 2501, 26 CFR § 25.2512-8.

⁸ *Publication 950 (Rev. October 2011) Introduction to Estate and Gift Taxes*, Internal Revenue Service, <https://www.irs.gov/pub/irs-pdf/p950.pdf> (At pg. 8: “You make a gift if you give property (including money), the use of property, or the right to receive income from property without expecting to receive something of at least equal value in return.”)

⁹ *2022 Instructions for Form 709 United States Gift (and Generation-Skipping) Transfer Tax Return*, Internal Revenue Service, <https://www.irs.gov/pub/irs-pdf/i709.pdf> (At pg. 2: “Only individuals are required to file gift tax returns. If a trust, estate, partnership, or corporation makes a gift, the individual beneficiaries, partners, or stockholders are considered donors.”)

¹⁰ *Frequently Asked Questions on Gift Taxes*, Internal Revenue Service, <https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes>

For example, according to experts, the cost of renting a large private jet similar to your Bombardier Global 5000 is somewhere usually between \$5,600 and \$11,000 per hour within the United States and possibly more internationally.¹¹ For one prominent jet charter service, the average hourly rental rate of the Global 5000 is around \$8,400 per hour.¹² A 24-hour flight to Indonesia alone on this kind of jet would cost over \$200,000. The cost of chartering a 162-foot superyacht like the Michaela Rose, with the compliments of a full staff and private chef, is also extremely costly. By some estimates, the rate to charter a yacht with the same size and guest capacity as the Michaela Rose is \$245,000 per week.¹³

Justice Thomas also failed to disclose a private real estate transaction in 2014 in which you paid Justice Thomas and members of his family \$133,363 to purchase three properties in Savannah, Georgia. This transaction made you the owner of Justice Thomas' mother's house, where she was living at the time and appears to still live today.¹⁴ According to public reports, shortly after the sale was completed contractors began work on over \$36,000 worth of improvements on Justice Thomas' mother's home, including a new carport, a repaired roof and a new fence and gates.¹⁵

This unusual arrangement raises a myriad of questions, not least whether Justice Thomas's mother continued to reside at a property you have owned for nearly a decade. According to recent reporting, Justice Thomas's mother has been living in the property rent-free for almost a decade.¹⁶ The full factual background has not been made public, but it is possible that you have had gift tax filing obligations and gift tax liability as a consequence of this living arrangement. As previously noted, the IRS has made clear that allowing for the use of property without receiving full consideration can be a taxable gift.¹⁷

The secrecy surrounding your dealings with Justice Thomas is simply unacceptable. The American public deserves a full accounting of the full of extent of your largesse towards Justice Thomas, including whether these gifts complied with all relevant federal tax and ethics laws. In order to better understand any federal tax considerations arising from your gifts to Justice Thomas, please provide answers to the following questions no later than May 8th, 2023:

¹¹ *How much does it cost to rent a private jet?*, Yahoo! Finance, Mar. 3, 2023,

<https://finance.yahoo.com/news/much-does-cost-rent-private-114338797.html>

¹² *Global 5000 Private Jet Charter Flights and Prices*, Paramount Business Jets,

<https://www.paramountbusinessjets.com/private-jet-charter/aircraft/global-5000#:~:text=Global%205000%20Private%20Jet%20Charter%20Flights%20and%20Prices&text=The%20average%20hourly%20rental%20rate,around%20%2C400%20USD%20per%20hour.>

¹³ *How much does it actually cost to charter a yacht?*, Elite Traveler, Mar. 10, 2022, <https://elitetraveler.com/cars-jets-and-yachts/how-much-does-it-cost-to-charter-a-yacht>; Burgess Yachts,

<https://www.burgessyachts.com/en/charter-a-yacht/yachts-for-charter/home-00008193>

¹⁴ *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>

¹⁵ *Id.*

¹⁶ *Clarence Thomas to amend financial disclosure forms to reflect sale to GOP megadonor*, CNN, Apr. 17, 2023, <https://www.cnn.com/2023/04/17/politics/clarence-thomas-amend-disclosure-gop-megadonor/index.html>

¹⁷ See also Supreme Court decision *Dickman v. Commissioner* in 1984 where the majority used the "rent-free use of property consisting of land and buildings" as an example of a transfer of property by gift within the contemplation of gift tax statutes.

1. Please provide a detailed list of all flights Justice Clarence Thomas has taken on any private jets under your ownership or control of the ownership and control of any entities in which you are a partner, director or officer, including Crow Holdings and its subsidiaries. For each of these flights, please include the following information:
 - a. The date, point of departure and final destination for each flight.
 - b. The individual or entity that paid for the cost of the flight and the estimated cost of each flight.
 - c. Whether Justice Thomas ever made any reimbursements for his travel on the private jet to the individual or entity that paid for the flight.
 - d. The amounts recorded on any financial records or tax documents with respect to the total cost or value of each flight segment and the proportionate amount allocated to each passenger. For each taxable year in which such private jets were in service, the percentage of use recorded as qualified business use for tax purposes.
 - e. For each flight on which Justice Thomas was a passenger, please indicate whether any trade or business:
 1. Included the value of the flights as a taxable fringe benefit to the owner(s),
 2. Depreciated the private jet to the extent of qualified business use,
 3. Deducted operating costs (e.g., fuel, labor, food, etc.) attributable to these particular trips, or
 4. For flights that are used for personal reasons as well as mixed use reasons (i.e., both personal and business reasons), whether logs being kept to determine and substantiate proper income inclusion (e.g., all employee travelers, number of family members or guests accompanying the employee, weight class of the aircraft, distance flown, flight hours, etc.).

2. Please provide a detailed list of all instances in which Justice Clarence Thomas has been a guest aboard your superyacht, the Michaela Rose. For each of these trips, please include the following information:
 - a. The date, location and duration of stay for each instance in which Justice Thomas was a guest aboard the Michaela Rose.
 - b. The cost of chartering the Michaela Rose for each instance in which Justice Thomas was a guest aboard the Michaela Rose.
 - c. Whether Justice Thomas ever provided any monetary consideration for stays aboard the Michaela Rose to you or any entities in which you are a partner, director or officer, including Crow Holdings or subsidiaries.
 - d. For each instance in which Justice Thomas traveled aboard the Michaela Rose, please indicate whether any trade or business:
 1. Included the value of the use of the yacht as a taxable fringe benefit to the owner(s),
 2. Depreciated the yacht to the extent of qualified business use,

3. Deducted operating costs (e.g., fuel, labor, food, etc.) attributable to these particular trips, or
 4. For yacht uses that for personal reasons as well as mixed use reasons (i.e., both personal and business reasons), whether logs being kept to determine and substantiate proper income inclusion (e.g., all employee travelers, number of family members or guests accompanying the employee, distance traveled, hours used, etc.).
3. Please provide a detailed accounting of federal gift tax returns (Form 709) filed with the IRS for any gifts made to Justice Thomas or members of his family, including but not limited to those made in relation the use of any private jets or superyachts owned by Harlan Crow or any entities in which Harlan Crow is a partner, director or officer, including Crow Holdings and its subsidiaries. For each of these returns filed please include the following information:
 - a. The year for which each Form 709 was filed in relation to gifts made to Justice Thomas or his family members. Please also include the year in which each Form 709 was filed.
 - b. A list of gifts to Justice Thomas and his family members included in each Form 709.
 - c. The total dollar value of the gifts included in each Form 709 filed in relation to gifts made to Justice Thomas and his family members.
4. With respect to the three Georgia properties Harlan Crow purchased from Justice Thomas and his relatives, please provide the following information:
 - a. The amount paid for each property,
 - b. Any additional consideration, guarantees, representations, or informal agreements provided with respect to each sale, including but not limited to: relief of liabilities, contractual rights (including for the use of property), and representations related to the use or improvement of property.
 - c. The fair market value determined at the time of purchase for each property, and the manner in which such fair market value was determined.
 - d. Any gift tax filings (Form 709) with respect to the purchases or the rent-free use of the property.
 - e. The period in which Justice Thomas's mother used any of the properties, as well as the use of the properties by any person connected with Justice Thomas.
 - f. The amount of any rent paid by Justice Thomas's mother to the owner of the property for each month in which she used the property, as well as how the rental rate charged to Justice Thomas's mother was determined.
5. Please list any additional gifts or payments with a value in excess of \$1,000 made to Justice Thomas or members of his family since he was sworn into the Supreme Court that would not be captured by questions 1, 2 and 4.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Wyden". The signature is written in a cursive, flowing style.

Ron Wyden
Chairman, Senate Committee on Finance