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## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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May 17, 2023

Michael D. Bopp  
Partner  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306

Dear Mr. Bopp,

I write in response to your May 8, 2023 letter (“the letter”) to the Senate Finance Committee (“the Committee”) on behalf of Harlan Crow. Regrettably, the letter declined to substantively answer questions related to tax issues arising from Mr. Crow’s lavish gifts to Associate Justice Clarence Thomas, claiming, among other things, that the Committee has shown no prior interest in evaluating federal gift tax laws and that the Committee’s inquiry lacks a legislative purpose.

These assertions are without merit. A cursory review of the Committee’s activities demonstrates longstanding oversight and legislative interests in gift and estate tax laws. I write to address the inaccuracies in your prior response, and renew the Committee’s request for information regarding Mr. Crow’s compliance with existing tax laws. Furthermore, this letter will briefly address the Committee’s history of engagement on these matters, including prior legislative efforts and several other relevant ongoing Committee investigations.

First, let me address your assertion that the Committee’s investigation lacks a legislative purpose. Your letter states “the Committee showed no interest in evaluating federal gift tax laws” until our April 24<sup>th</sup> letter. This claim is without merit. Your letter ignores the Committee’s extensive history considering legislation on matters related to the gift tax, which is a backstop to both our nation’s income and estate tax regimes.<sup>1</sup> Your suggestion that the Committee is only interested in gift tax issues as a result of reports of Mr. Crow’s largesse towards a Supreme Court justice is ill-informed. During my tenure as both Chairman and Ranking Member of the Committee, the Committee has conducted extensive study of the means by which the wealthiest 1 percent of Americans avoid paying gift and estate taxes, and simultaneously proposed reforms to address these problems. The reality is that the Committee has weighed in forcefully on

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<sup>1</sup> See *The Federal Estate and Gift Tax: Description, Profile of Taxpayers, and Economic Consequences*, U.S. Treasury Office of Tax Analysis, OTA Paper 80, Dec. 1998, <https://home.treasury.gov/system/files/131/WP-80.pdf>.

legislation and policy related to gift tax laws. Below are just a few recent examples for your edification:

- In October 2017, the Committee published a report which provides extensive analysis on the strategies used by ultra-high net worth individuals to avoid paying gift, estate and generation-skipping transfer taxes.<sup>2</sup> This report examined the means by which the wealthy can exploit estate planning and loopholes in the tax code to avoid paying hundreds of millions, or billions, of dollars in gift and estate taxes. In fact, the term “gift tax” is mentioned *111 times* in that report.
- In March 2018, Senate Democrats on the Committee released an infrastructure funding plan that proposed lowering the unified estate and gift tax exemption back to the levels that existed prior to the passage of the 2017 Republican tax law, which had doubled the gift and estate tax exemption to \$22 million per household.<sup>3</sup>
- In January 2019, Republican members of the Committee, including now Ranking Member Crapo, reintroduced legislation to permanently repeal the estate tax, seeking to go beyond changes made by the 2017 Republican tax law to the gift and estate tax exclusion.<sup>4</sup> I have repeatedly opposed these efforts on the grounds that they are yet another misguided and unnecessary tax cut for billionaires.<sup>5</sup>
- In September-2019, as Ranking Member of the Committee, I released a legislative framework in response to Congressional Republicans’ continual weakening of the estate and gift taxes that would require certain wealthy taxpayers to treat gifts, bequests, and other transfers of property as taxable dispositions for income tax purposes.<sup>6</sup> My legislative proposal was even highlighted by attorneys at Gibson Dunn in a January 2022 presentation.<sup>7</sup>

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<sup>2</sup> *Estate Tax Schemes: How America’s Most Fortunate Hide Their Wealth, Flout Tax Laws, and Grow the Wealth Gap*, U.S. Senate Committee on Finance, Oct. 12, 2017, <https://www.finance.senate.gov/imo/media/doc/101217%20Estate%20Tax%20Whitepaper%20FINAL1.pdf>.

<sup>3</sup> *Senate Democrats’ Jobs & Infrastructure Plan for America’s Workers: Returning the Republican Tax Giveaways for the Wealthy to the American People*, U.S. Senate Democrats, Mar. 7, 2018 <https://www.democrats.senate.gov/imo/media/doc/Senate%20Democrats%27%20Jobs%20and%20Infrastructure%20Plan.pdf>.

<sup>4</sup> *Thune Leads Colleagues in Reintroducing Legislation to Permanently Repeal the Death Tax*, Senator John Thune, Jan. 28, 2019, <https://www.thune.senate.gov/public/index.cfm/2019/1/thune-leads-colleagues-in-reintroducing-legislation-to-permanently-repeal-the-death-tax>.

<sup>5</sup> *Wyden Statement on Republican Plans to Repeal Estate Tax*, Senator Ron Wyden, Apr. 14, 2015, <https://www.finance.senate.gov/ranking-members-news/wyden-statement-on-republican-plans-to-repeal-estate-tax>.

<sup>6</sup> *Treat Wealth Like Wages: A plan to fix our broken tax code, ensure the wealthy pay their fair share, and protect Social Security*, Senate Finance Committee Democrats, Sept. 12, 2019, <https://www.finance.senate.gov/imo/media/doc/Treat%20Wealth%20Like%20Wages%20RM%20Wyden.pdf>.

<sup>7</sup> *Tax Legislative, Regulatory & Enforcement Update*, Gibson Dunn: Michael Desmond, Lorna Wilson, and Brian Hamano, Jan. 2022, <https://www.gibsondunn.com/wp-content/uploads/2022/06/WebcastSlides-2022-Tax-Legislative-Regulatory-and-Enforcement-Update-11-JAN-2022.pdf>.

- In September 2021, during the consideration of the Build Back Better Act, the House Ways and Means Committee adopted provisions developed jointly with Committee staff to close down certain gift tax loopholes involving transfers of property involving grantor trust structures, which were previously identified in the Committee’s October 2017 report on gift and estate tax avoidance.<sup>8</sup>
- In October 2021, as Committee Chairman, I released draft legislation that would require certain wealthy taxpayers to treat gifts, bequests, and other transfers of property as taxable dispositions for income tax purposes.<sup>9</sup> This legislative proposal was also highlighted by Gibson Dunn attorneys’ presentation in January 2022.<sup>10</sup>

Second, let me address your claim that the Committee has “given no indication of any federal gift tax issues it seeks to investigate beyond those referenced in the letter.” In fact, the Committee has an extensive investigative record on these matters.

The Senate Finance Committee is conducting several investigations into the means by which ultra-high net worth persons avoid or evade paying federal taxes, including gift taxes. For example, the Committee has been investigating the growing use of Private Placement Life Insurance (PPLI) by the wealthiest Americans as a tax shelter to avoid paying billions of dollars in income, gift and estate taxes.<sup>11</sup> PPLI products are regularly marketed to wealthy clients as an effective means to transfer huge sums of wealth to their children while circumventing the gift tax and other types of taxes.<sup>12</sup> The Committee’s investigation is gleaning information and gaining insights into how PPLI products are structured and how they are being used to make tax-free investments in hedge funds and other alternative asset classes.

The Committee’s investigations into offshore tax evasion schemes involving individuals with dual citizenship have also uncovered other challenges related to the enforcement of gift tax laws. For example, the Committee’s investigation into Credit Suisse identified several situations where expatriating from the United States was part of a strategy to evade gift taxes while concealing offshore accounts from the IRS. In some situations, family members have renounced

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<sup>8</sup> Sec. 138209 of the House Ways and Means section of the *Build Back Better Act* developed jointly by House Ways and Means and the Senate Finance Committee would have modified rules related to certain gifts via grantor trusts, see *Markup of the Build Back Better Act*, House Ways and Means Committee, Sept. 9, 2021, <https://democrats-waysandmeans.house.gov/legislation/markups/markup-build-back-better-act>.

<sup>9</sup> *Wyden Unveils Billionaires Income Tax*, U.S. Senate Finance Committee Chairman Ron Wyden, Oct. 27, 2021, <https://www.finance.senate.gov/chairmans-news/wyden-unveils-billionaires-income-tax>.

<sup>10</sup> *Tax Legislative, Regulatory & Enforcement Update*, Gibson Dunn: Michael Desmond, Lorna Wilson, and Brian Hamano, Jan. 2022, <https://www.gibsondunn.com/wp-content/uploads/2022/06/WebcastSlides-2022-Tax-Legislative-Regulatory-and-Enforcement-Update-11-JAN-2022.pdf>.

<sup>11</sup> *Wyden Launches Investigation Into Private Placement Life Insurance Schemes*, U.S. Senate Finance Committee Chairman Ron Wyden, Aug. 15 2022, <https://www.finance.senate.gov/chairmans-news/wyden-launches-investigation-into-private-placement-life-insurance-schemes>; *Wyden Continues Investigation Into Private Placement Life Insurance Schemes*, U.S. Senate Finance Committee Chairman Ron Wyden, Sept. 21, 2022, <https://www.finance.senate.gov/chairmans-news/wyden-continues-investigation-into-private-placement-life-insurance-schemes>.

<sup>12</sup> *Private Placement Life Insurance and Split Dollar*, Lombard International, Mar. 13, 2018, <https://us.lombardinternational.com/en-US/Newsroom/Corporate-news/News-2018/PPLI-and-Split-Dollar>; *Private Placement Life Insurance*, Dennis McMahan, M Financial Group, <https://www.wdcepc.org/assets/Councils/Washington-DC/library/PPLI%20-%20DC%20Estate%20Planning%20Council%20-%20-%20-%20Compatibility%20Mode.pdf>

U.S. citizenship and opened additional accounts offshore in order to receive undeclared assets from other relatives while avoiding Foreign Account Tax Compliance Act (FATCA) disclosure as well as income, gift and expatriation taxes.<sup>13</sup>

In addition, the Committee is conducting other investigations related to gift tax issues that are being pursued in a nonpublic manner due to the subject of the investigation's links to known criminal actors. One of those investigations centers on whether over \$100 million in payments characterized as consulting fees may have been a disguised gift. That investigation is also examining potential problems with trust structures that were designed exclusively for the purposes of avoiding gift and estate taxes on the transfer of over \$2 billion to the heirs of a wealthy individual.

Third, your response makes no mention of numerous tax issues the Committee's letter raised relating to whether Mr. Crow, or any entities linked to Mr. Crow, claimed any deductions for the use of his private jet and superyacht to host Justice Thomas as a guest. As you are aware, for tax purposes, owners of private jets and yachts must clarify whether the use of the asset is for business or personal purposes because this determination affects what deductions are allowable according to the Internal Revenue Code. It is entirely appropriate for the Committee to seek information to understand whether changes to the tax laws are warranted to address taxpayers inappropriately claiming deductions related to the depreciation of the asset or the operating costs attributable to trips on jets and superyachts.

I believe that tax laws affecting enormous gifts and transfers of wealth by high net worth individuals are in urgent need of reform. I also believe that, when appropriate, Congressional oversight should be done in a manner that informs the public of the policy implications of the behavior being investigated.

In order to better understand any federal tax considerations arising from your client's gifts to Justice Thomas, please provide answers to the following questions no later than June 2, 2023:

1. Please provide a detailed list of all flights Justice Clarence Thomas has taken on any private jets under Mr. Crow's ownership or control or under the ownership and control of any entities in which Mr. Crow is 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.

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<sup>13</sup> *Credit Suisse's Role in U.S. Tax Evasion Schemes* at 34, U.S. Senate Finance Committee, Chairman Ron Wyden, Mar. 29, 2023 ("If a complicit banker takes steps early on to code the accounts to remove these indicia from the bank's system, there is a significant risk that automated surveillance systems or compliance executives will not detect the account's U.S. nexus. This also extends to expatriations where an individual renounces U.S. citizenship. In some situations, family members have renounced U.S. citizenship and opened accounts in order to receive undeclared assets from other relatives while avoiding FATCA disclosure as well as income, gift and expatriation taxes."), <https://www.finance.senate.gov/imo/media/doc/SFC%20CREDIT%20SUISSE%20REPORT%20FINAL%20Mar%202028.pdf>.

- 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 were 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 Mr. Crow's 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 Mr. Crow or any entities in which Mr. Crow is 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 are for personal reasons as well as mixed use reasons (i.e., both personal and business reasons), whether logs were 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 to the use of any private jets or superyachts owned by

Mr. Crow or any entities in which Mr. 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. Your letter provided limited information with respect to the three Georgia properties Mr. Crow purchased from Justice Thomas and his relatives. Please provide complete responses to each of the following requests for 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 other 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 immediate or extended family since he was sworn into the Supreme Court that are not encompassed by questions 1, 2 and 4.

Sincerely,



Ron Wyden  
Chairman