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June 2, 2023

VIA ELECTRONIC MAIL

The Honorable Ron Wyden, Chairman
United States Senate Committee on Finance
221 Dirksen Senate Office Building
Washington, DC 20510

Re: Response to May 17, 2023, Letter to Michael D. Bopp

Dear Chairman Wyden:

We write on behalf of Harlan Crow in response to your May 17, 2023 letter (the “Letter”) responding to our letter of May 8, 2023 (“Response”), which raised a number of concerns with the original letter, dated April 24, 2023. As discussed below, these concerns remain. Nevertheless, in the spirit of cooperation, we look forward to working with the Committee.

The Letter fails to establish a valid justification for the Committee’s impermissible legislative tax audit of a private citizen, Mr. Crow, nor does it identify any legitimate legislative need for requesting additional information from Mr. Crow in light of the legislative initiatives that the Committee suggests it may be pursuing. While the Letter describes prior Committee efforts to address estate and gift tax issues, none of these efforts are active in the 118th Congress and none demonstrate an interest in considering whether to extend the gift tax to matters of personal hospitality. A desire to focus on Justice Thomas, not the intricacies of the gift tax, appears to have been the genesis of this Committee inquiry. But “there is no congressional power to expose for the sake of exposure.” *Watkins v. United States*, 354 U.S. 178, 200 (1957).

The Letter also fails to address the separation of powers concerns implicated by the broad nature of the Committee’s request and its targeting of personal financial information relating to Mr. Crow’s friendship with a sitting Supreme Court Justice. Critically, those “separation of powers concerns are no less palpable . . . simply because the [Letter] w[as] issued to [a] third part[y].” *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2035 (2020). Where, as here, a congressional request is for information about the leadership of a coordinate branch of government, the request “present[s] an interbranch conflict no matter where the information is held.” *Id.* The Committee’s inquiry thus requires a heightened showing of legitimate legislative purpose and authority, and must be no broader than reasonably necessary to achieve legitimate legislative goals. *Id.* at 2036. It does not meet these constitutional standards.

The Committee cannot demand information about Mr. Crow’s personal friendship with Justice Thomas when, as here, “other sources could reasonably provide Congress the information

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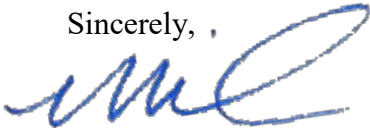
it needs” to pursue a valid legislative objective. *Id.* at 2035–36. Nor may that personal relationship properly be used as a “‘case study’ for general legislation.” *Id.* at 2036. The Committee has no authority to target specific individuals’ personal financial information when the asserted legislative goals could be served in less intrusive ways.

Although the Letter focuses on matters related to the federal gift tax, it also asks a series of questions relating to the federal income tax treatment of expenses incurred in connection with hospitality extended to the Thomases. Our understanding is that for trips involving the Thomases—and for Mr. Crow’s personal use of private aircraft and the Michaela Rose in general—charter rates or reimbursements at rates prescribed by law were paid to the Crow family entities holding or operating those assets. Those entities included in income the amounts paid. Accordingly, to the extent that the Letter and the inquiry in general involve income tax issues, including the proper deductibility of expenses incurred by the current Crow family entities owning the private aircraft and Michaela Rose, such issues are not presented in connection with the hospitality afforded to the Thomases.

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Please feel free to have your staff contact me with any questions concerning this response.

Sincerely, ,



Michael D. Bopp