

United States Senate
WASHINGTON, DC 20510

May 5, 2023

The Honorable Roslynn R. Mauskopf
Director, Administrative Office of the United States Courts
Secretary, Judicial Conference of the United States
One Columbus Circle NE
Washington, D.C. 20544

Dear Judge Mauskopf:

I write to follow up on my prior correspondence regarding Justice Thomas's recently reported financial disclosure omissions and the Judicial Conference's treatment of the omissions first reported in 2011. Yesterday, ProPublica reported that, in addition to previously reported gifts from Harlan Crow to Justice Thomas, Crow paid for multiple years of tuition for Justice Thomas's grandnephew to attend private boarding schools.¹ According to ProPublica, Justice Thomas became his grandnephew's legal guardian "around 1998."² As legal guardian, Justice Thomas was presumably responsible for these kinds of education expenses for his grandnephew, making a gift covering those expenses a gift to Justice Thomas. Regardless, legislative and executive branch guidance is clear that gifts given to an official's close relatives or household members are often considered gifts provided to that official.³ These tuition payments from Crow therefore likely should have been considered reportable gifts to Justice Thomas under the Ethics in Government Act.

Justice Thomas appears to have himself considered these types of gifts reportable in the past. In 2002, Justice Thomas disclosed a \$5,000 gift from a friend intended to "help defray the costs" of Thomas's grandnephew's education.⁴ On his disclosure report, Justice Thomas described this payment as an "Education gift to" his grandnephew.⁵ Thus, Justice Thomas appears to have considered this payment from a friend to cover his grandnephew's education expenses a

¹ Joshua Kaplan, Justin Elliott, & Alex Mierjeski, *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 *Id.*

³ Senate Rule XXXV(2)(A) ("A gift to a family member of a Member . . . , or a gift to any other individual based on that individual's relationship with the Member . . . , shall be considered a gift to the Member . . . if it is given with the knowledge and acquiescence of the Member . . . and the Member . . . has reason to believe the gift was given because of the official position of the Member, officer, or employee."); House Rule 25, cl. 5(a)(2)(B)(i) ("[A] gift to a family member or another individual will be deemed to be a gift to the official when two circumstances are present: The gift was given with the knowledge and acquiescence of the Member or staff person; and [t]he Member or staff person has . . . reason to believe the gift was given because of his official position with the House."); 5 C.F.R. § 2365.203(f) (2016) (stating that an indirectly accepted gift includes a gift "[g]iven with the employee's knowledge and acquiescence to the employee's parent, sibling, spouse, child, dependent relative, or a member of the employee's household because of that person's relationship to the employee").

⁴ Kaplan et al., *supra* note 1.

⁵ *Id.*

reportable gift—either to Justice Thomas or to his grandnephew as a dependent child. At a minimum, Justice Thomas’s omission of similar gifts from Crow is further evidence of an intent to omit years of lucrative and unusual gifts from Harlan Crow.

Reporting from yesterday by the Washington Post also revealed that Leonard Leo, deeply involved in right-wing influence over the Supreme Court, directed payments of at least \$25,000 to a consulting firm run by Justice Thomas’s spouse, Virginia Thomas.⁶ Further investigation is needed into this matter, including whether the Thomases knew of this arrangement and whether the circumstances of this payment required disclosure separate from Mrs. Thomas’s reported income.

On April 18, 2023, you informed me that the Judicial Conference had referred to the Committee on Financial Disclosure my request for the Judicial Conference to investigate for possible referral to the Attorney General Justice Thomas’s undisclosed travel paid for by Harlan Crow, as well as the unreported real estate transaction between Justice Thomas and Crow.⁷ I request that the Committee consider as part of its investigation the additional gifts of tuition payments from Crow to Justice Thomas, and the payments from Leo to Mrs. Thomas.

Moreover, I respectfully request that this long pattern of failing to make required disclosures—which continued even after the Justice was put on notice when similar non-disclosures (including gifts of yacht and private jet travel from Harlan Crow) were referred to the Committee on Financial Disclosure in 2011—be evaluated as evidence of “reasonable cause to believe” that Justice Thomas has “willfully failed to file information required to be reported.”⁸

On April 21, 2023, and April 27, 2023, I also requested the Judicial Conference produce information related to the Committee on Financial Disclosure’s general procedures for consideration of these matters, as well as specific information related to how the Committee disposed of similar requests under 5 U.S.C. § 13106(b) in 2011.⁹ The mysterious disposition of the very similar non-disclosures back in 2011 is important to resolve and make transparent in light of present events.

When the issue is potentially unlawful conduct by a sitting Supreme Court justice, transparency is essential for accountability and to instill public confidence in the outcome. The Judicial Conference’s process remains almost entirely opaque. The 2011 referral to the Committee on Financial Disclosure seems to have disappeared. The public does not even know which members of the Judicial Conference serve on the Committee on Financial Disclosure. Nor does the public know the rules governing that Committee’s process for deliberating on these matters.

This is a difficult time for the judiciary, prompted by behavior at the Supreme Court no other court would countenance. I believe it would serve the public interest for the Judicial Conference

⁶ Emma Brown, Shawn Boburg, & Jonathan O’Connell, *Judicial activist directed fees to Clarence Thomas’s wife, urged ‘no mention of Ginni’*, Wash. Post (May 4, 2023),

<https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/>.

⁷ Letter from Hon. Roslynn R. Mausekopf, Sec’y, Jud. Conf. of U.S., to Sen. Sheldon Whitehouse (Apr. 18, 2023).

⁸ 5 U.S.C. § 13106(b).

⁹ Letter from Sen. Sheldon Whitehouse to Hon. Roslynn R. Mausekopf (Apr. 21, 2023); Letter from Sen. Sheldon Whitehouse to Hon. Roslynn R. Mausekopf (Apr. 27, 2023).

to publish all rules governing the Judicial Conference's operations, as well as the membership of all Judicial Conference committees, and to report the outcome of the 2011 referral as to Mrs. Thomas's undisclosed income, and Justice Thomas's gifts of yacht and jet travel.

My Subcommittee is scheduling a related hearing on these topics in the coming weeks. I respectfully request that you answer the following questions below, and respond to the outstanding questions from my letters dated April 21, 2023, and April 27, 2023, no later than May 15, 2023.

1. Please provide the names of the current members of the Judicial Conference's Committee on Financial Disclosure.
2. Please provide the names of the members of the Judicial Conference's Committee on Financial Disclosure who served in the years 2011, 2012, and 2013.
3. When did the Judicial Conference first refer to the Committee on Financial Disclosure complaints received in 2011 requesting the Judicial Conference to investigate Justice Thomas's possible violations of the Ethics in Government Act?
4. Before receiving those complaints, did anyone from the Judicial Conference, Committee on Financial Disclosure, or Administrative Office of the United States Courts communicate with Justice Thomas or any other officials at the Supreme Court regarding the omissions that were the subject of those complaints? If so, who, and when?
5. When did the Committee on Financial Disclosure begin deliberating on those complaints? What steps were taken as part of those deliberations?
6. Did the Committee consider both Justice Thomas's omissions of spousal income, first reported by Common Cause on January 21, 2011, and Justice Thomas's undisclosed travel on Harlan Crow's private plane and yacht, first reported by the New York Times on June 18, 2011?
7. On what date did the Committee conclude its deliberations? To whom did the Committee communicate its conclusions? On what date did the Committee make such communications, and did the Committee include the rationale supporting those conclusions? If not, what is the status of the referral at this time? Why was no report made to the Judicial Conference?
8. When the Committee considered whether it was obligated to refer Justice Thomas to the Attorney General under 5 U.S.C. § 13106(b), what was the precise question that the Committee considered (did the Committee consider whether Justice Thomas had acted "willfully" or whether it had "reasonable cause" to believe he acted "willfully"), and how was it answered?

9. Please provide or describe all communications between the Committee on Financial Disclosure, the Judicial Conference, and any Supreme Court personnel relevant to this referral.

Sincerely,



SHELDON WHITEHOUSE
Chairman, Senate Judiciary Subcommittee on
Federal Courts, Oversight, Agency Action,
and Federal Rights

cc: The Honorable S. Thomas Anderson
The Honorable John Bailey
The Honorable Patricia D. Barksdale
The Honorable Mark Barnett
The Honorable David Jeremiah Barron
The Honorable James Emanuel Boasberg
The Honorable Margo K. Brodie
The Honorable Debra M. Brown
The Honorable Renee Marie Bumb
The Honorable Michael A. Chagares
The Honorable Scott Coogler
The Honorable Jon DeGuilio
The Honorable Aida M. Delgado-Colón
The Honorable Roger L. Gregory
The Honorable Jerome A. Holmes
The Honorable William Paul Johnson
The Honorable Leslie E. Kobayashi
The Honorable Debra Ann Livingston
The Honorable Margaret M. Mann
The Honorable Kimberly A. Moore
The Honorable Mary H. Murguia
The Honorable William H. Pryor, Jr.
The Honorable Priscilla Richman
The Honorable John G. Roberts, Jr.
The Honorable Lavenski R. Smith
The Honorable Srikanth Srinivasan
The Honorable Jeffrey S. Sutton
The Honorable Diane S. Sykes
The Honorable John R. Tunheim