

April 14, 2023

Mr. Emory A. Rounds III  
Director, U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005

Mr. Corey Amundson  
Chief, Public Integrity Section  
U.S. Department of Justice  
1301 New York Avenue, 10th Floor  
Washington, D.C. 20005

**Re: Request for Investigation into Justice Thomas' Unreported Gifts, Real Estate Sale**

Dear Messrs. Rounds and Amundson:

We write to request that the Office of Government Ethics (“OGE”) and the Department of Justice’s Public Integrity Section investigate Justice Clarence Thomas’ failure to file accurate and complete financial disclosure reports as required by the Ethics in Government Act, as amended (the “Act”). Justices of the Supreme Court sit in a vaulted position of public trust. The duty to file accurate and complete financial disclosure reports detailing a public official’s gifts and financial transactions is the minimum ethical requirement for a member of the Court. It is also a legal requirement imposed by statute, which the Director of the OGE and the Attorney General are tasked with upholding. As you are likely aware, recent reporting by *ProPublica* revealed that over several decades Justice Thomas accepted lavish gifts from billionaire Republican donor Harlan Crow—including luxury travel on private jets, superyachts, and international and domestic vacations—the value of which extends into the hundreds of thousands of dollars.<sup>1</sup> Justice Thomas also sold Mr. Crow his mother’s home and two vacant residential lots he owned in Savannah, Georgia for over \$130,000.<sup>2</sup> However, in apparent violation of law, Justice Thomas never disclosed any of these gifts or the real estate transaction in his financial disclosure reports filed with the OGE.

**I. Unreported Gifts**

The Act requires that Supreme Court Justices file annual disclosures with the Director of the Office of Government Ethics.<sup>3</sup> These reports must disclose the source of, a description, and the value of all gifts, which includes “anything of value” that, in aggregate, exceeds \$480 per calendar year.<sup>4</sup> Gifts “received as personal hospitality of an individual” are exempt from disclosure, but the statute strictly limits the items that qualify as exempt to only “food, lodging, or entertainment” that are “extended for a nonbusiness purpose by an individual . . . at the personal residence of that individual or the individual’s family or on property or facilities owned by that individual or the

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<sup>1</sup> Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

<sup>2</sup> Justin Elliot, Joshua Kaplan & Alex Mierjeski, *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>.

<sup>3</sup> 5 U.S.C. § 13103(a), (f)(11).

<sup>4</sup> *Id.* §§ 13104(a)(2), 7342(a)(5); U.S. GEN. SERVS. ADMIN., FOREIGN GIFTS (last updated March 9, 2023), <https://www.gsa.gov/policy-regulations/policy/personal-property-policy-overview/special-programs/foreign-gifts>.

individual's family.”<sup>5</sup> The Act is unambiguous. Travel and transportation are not exempt from disclosure. Neither are meals, lodging, or entertainment provided outside of personal residences or property owned by the donor.

*ProPublica*'s reporting exposed the sheer magnitude of Justice Thomas' undisclosed gifts from Harlan Crow. Mr. Crow is a billionaire real-estate developer, Republican mega-donor,<sup>6</sup> and Trustee of the American Enterprise Institute,<sup>7</sup> a conservative think tank whose affiliate scholars have submitted at least five amicus briefs to the Court during Justice Thomas' tenure<sup>8</sup> and whose publications the Court recently cited in a seminal 2022 decision.<sup>9</sup>

The *ProPublica* report reveals that in 2019 Mr. Crow gifted Justice Thomas “nine days of island-hopping” in Indonesia.<sup>10</sup> Justice Thomas received free travel on Mr. Crow's private jet, and luxury lodging “on a superyacht staffed by a coterie of attendants and a private chef.”<sup>11</sup> The cost of chartering the jet and the yacht alone for the 2019 trip is reported to exceed \$500,000.<sup>12</sup>

However, this trip was not an isolated occurrence. In 2004, *The Los Angeles Times* reported that in 1997 Justice Thomas took “a free trip aboard a private jet to the exclusive Bohemian Grove club in Northern California -- arranged by a wealthy Texas real estate investor [Crow] who helped run an advocacy group that filed briefs with the Supreme Court.”<sup>13</sup> *ProPublica*'s reporting reveals that in fact, Justice Thomas “accepted luxury trips *virtually every year*” from Mr. Crow, as evidenced by “flight records, internal documents distributed to Crow's employees and interviews with dozens of people ranging from [Crow's] superyacht's staff to members of the secretive Bohemian Club to an Indonesian scuba diving instructor.”<sup>14</sup> Among the annual trips Justice Thomas accepted from Mr. Crow: a “river day trip around Savannah, Georgia,” “an extended cruise in New Zealand” and the evidence also suggests Justice Thomas accepted a superyacht vacation to the Greek Islands in March 2007.<sup>15</sup>

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<sup>5</sup> 5 U.S.C. §§ 13104(a)(2)(A), 13101(14).

<sup>6</sup> Abbie VanSickle, *Jet Setting With Clarence Thomas Puts Spotlight on an Eccentric Billionaire*, NEW YORK TIMES (Apr. 11, 2023), <https://www.nytimes.com/2023/04/11/us/politics/clarence-thomas-harlan-crow.html>.

<sup>7</sup> AM. ENTER. INST., BOARD OF TRUSTEES, <https://www.aei.org/about/board-of-trustees> (last visited Apr. 11, 2023).

<sup>8</sup> See AM. ENTER. INST., Supreme Court Amicus Brief Regarding *Wyeth v. Diana Levine* (June 3, 2008), <https://www.aei.org/research-products/testimony/supreme-court-amicus-brief-regarding-wyeth-v-diana-levine>; AM. ENTER. INST., Supreme Court Amicus Brief Seeking Certiorari in *AT Corp v. Lila T. Gavin* (Feb. 8, 2007), <https://www.aei.org/research-products/speech/supreme-court-amicus-brief-seeking-certiorari-in-at-corp-v-lila-t-gavin>; AM. ENTER. INST., *South Dakota v. Wayfair, Inc: How Should the U.S. Supreme Court Handle Interstate Commerce* (June 13, 2018), <https://www.aei.org/press/south-dakota-v-wayfair-inc-how-should-the-us-supreme-court-handle-interstate-commerce>; AM. ENTER. INST., Supreme Court Amicus Brief in *Davis v. Kentucky Department of Revenue* (Sept. 21, 2007), <https://www.aei.org/research-products/testimony/supreme-court-amicus-brief-in-davis-v-kentucky-department-of-revenue>; AM. ENTER. INST., *Facially Neutral, Racially Biased* (Sept. 22, 2022), <https://www.aei.org/op-eds/facially-neutral-racially-biased> (detailing AEI senior fellow's amicus brief to the Supreme Court).

<sup>9</sup> *West Virginia v. EPA*, 142 S.Ct. 2587, 2626 (2022) (Gorsuch, J. concurring).

<sup>10</sup> Kaplan, Elliott & Mierjeski, *supra* note 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Richard A. Serrano & David G. Savage, *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>.

<sup>14</sup> Kaplan, Elliott & Mierjeski, *supra* note 1.

<sup>15</sup> *Id.*

Justice Thomas also accepted luxury vacations “virtually every summer for more than two decades” at Camp Topridge (“Topridge”), a 105-acre mountain resort in the Adirondacks, New York, which features three boathouses, a clay tennis court, batting cages, and even a replica 1950’s soda shop in working order.<sup>16</sup> Reports indicate that accommodations comparable to Justice Thomas’ personal lodge at Topridge start at \$2,250 a night.<sup>17</sup> *ProPublica* determined that Camp Topridge is not personally owned by Mr. Crow, but through a corporation.<sup>18</sup>

Finally, over the last two decades Justice Thomas accepted luxury domestic and international travel on Mr. Crow’s private jet. On July 7, 2022, it appears Mr. Thomas accepted travel from Dulles to Topridge on the private jet.<sup>19</sup> Twice in recent years Mr. Thomas has accepted use of the private jet to visit Dallas and travel back to his D.C. home.<sup>20</sup> In October 2021 and February 2016, Mr. Thomas accepted use of Mr. Crow’s jet for short trips on the eastern seaboard – to New York and New Haven, Connecticut.<sup>21</sup> The New Haven private jet trip alone is estimated to cost \$70,000.<sup>22</sup>

The Act requires that members of the Supreme Court disclose travel and transportation, as well as meals, lodging, and entertainment that take place outside of property owned by the donor. Therefore, Justice Thomas is required by law to disclose the free international and domestic vacations, and gratis travel on Mr. Crow’s superyacht and private jet.

Even if assuming *arguendo* that Mr. Crow is a close friend of Justice Thomas, the Act’s exemption to disclosure for personal hospitality only extends to “food, lodging, or entertainment” that are “extended for a nonbusiness purpose by an individual . . . at the *personal residence of that individual or the individual’s family or on property or facilities owned by that individual or the individual’s family.*”<sup>23</sup> The exception plainly does not apply here. Gifts of travel and transportation are not exempt from disclosure. Neither are gifts of lodging, meals, or entertainment that take place outside of one’s personal residence or property owned by the donor. The Act thus requires Justice Thomas to disclose his lavish vacations—the meals, accommodations, and entertainment—at Topridge because the resort is not owned by Mr. Crow, but a corporation. Justice Thomas likewise had a duty to disclose each of the superyacht trips across the globe and the private jet trips since travel is not covered by the personal hospitality exemption.

Importantly, the facts evince that Justice Thomas knew, at the least, he had an obligation to disclose free luxury travel and trips. He did so once in his 1997 financial disclosure reports admitting that he received a trip on a private jet trip from Mr. Crow to the Bohemian Grove Club in California.<sup>24</sup> But after public reporting on the subject, Justice Thomas stopped making these disclosures altogether.<sup>25</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 5 U.S.C. §§ 13104(a)(2)(A), 13101(14) (emphasis added).

<sup>24</sup> Kaplan, Elliott & Mierjeski, *supra* note 1.

<sup>25</sup> David G. Savage, *Los Angeles Times Reported About Justice Thomas’ Gifts 20 Years Ago. After That He Stopped Disclosing Them*, LOS ANGELES TIMES (Apr. 6, 2023), <https://www.latimes.com/politics/story/2023-04-06/the-times-reported-about-justice-thomas-gifts-20-years-ago-after-he-just-stopped-disclosing-them>.

## II. Unreported Real Estate Transaction

The Act also requires reporting officials to disclose transactions concerning the sale of real property, “other than property used solely as a personal residence of the reporting individual or the individual’s spouse” if those transactions exceed \$1,000.<sup>26</sup> Recent reporting by *ProPublica* unearthed that in October 2014, Justice Thomas sold his mother’s home, in which his mother was still living, and two vacant lots to a holding company owned by Mr. Crow called “Savannah Historic Developments, LLC.” for \$133,363.<sup>27</sup> It is unclear whether the price Mr. Crow paid for the properties represents the fair market value, given that in 2013 Mr. Crow purchased a vacant lot and a small house on the same street as Justice Thomas’s property for far less – only \$40,000.<sup>28</sup> Regardless, the Act plainly requires that Justice Thomas disclose the real estate transaction since it exceeded \$1,000. Justice Thomas never did.<sup>29</sup>

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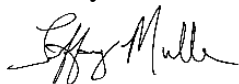
It is unlawful for any person required to file disclosure reports under the Act to knowingly and willfully fail to report any information required by the Act.<sup>30</sup> The Director of the Office of Government Ethics has a mandatory duty to refer to the Attorney General any individual who the Director has reasonable cause to believe has violated the Act.<sup>31</sup>

Here, there is more than reasonable cause to believe that Justice Thomas willfully failed to file information required by the Act. Supreme Court Justices are not above the law. As an officer of the highest Court in the United States, Justice Thomas’ apparent disregard of disclosure obligations severely undermines the Act’s transparency objectives and the public’s right to know and understand the potential conflicts of interest of members of the Supreme Court.

For these reasons, we respectfully request the OGE and the Department of Justice commence a full investigation into this matter and seek all appropriate remedies and penalties.

Thank you for your prompt attention to this matter.

Sincerely,



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<sup>26</sup> 5 U.S.C. § 13104(a)(5).

<sup>27</sup> Elliot, Kaplan & Mierjeski, *supra* note 2.

<sup>28</sup> *Id.*

<sup>29</sup> Clarence Thomas, Financial Disclosure Report for Calendar Year 2014 (May 15, 2015), accessible at: <https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2014.pdf>.

<sup>30</sup> 5 U.S.C. § 13106(a)(2)(A)(ii).

<sup>31</sup> *Id.* § 13106(b).