

Congress of the United States
Washington, DC 20510

April 7, 2023

The Honorable John G. Roberts
Chief Justice of the United States
Supreme Court of the United States
One First St. NE
Washington, D.C. 20543

Dear Chief Justice Roberts:

In light of yesterday’s reporting by *ProPublica* that Justice Clarence Thomas has repeatedly accepted and failed to disclose gifts and travel from billionaire Harlan Crow, we write to request an investigation into these and other outstanding allegations of unethical, and potentially unlawful, conduct at the Supreme Court. To date, the Court has barely acknowledged, much less investigated, these allegations. Amidst all of this—perhaps due in part to the Court’s inaction—the American people’s trust in the Supreme Court has plummeted to an all-time low. We believe that it is your duty as Chief Justice “to safeguard public faith in the judiciary,”¹ and that fulfilling that duty requires swift, thorough, independent and transparent investigation into these allegations.

According to *ProPublica*, “[f]or more than two decades, [Justice] Thomas has accepted luxury trips virtually every year . . . without disclosing them.”² These gifts were provided by Texas real estate magnate Harlan Crow, “[a] major Republican donor for decades.”³ Gifts that Mr. Crow reportedly provided to Justice Thomas include international travel on private jets and yachts, and stays at private resorts, including annual retreats to a resort owned by Mr. Crow’s company.⁴ The value of some of these gifts exceeds \$500,000, according to *ProPublica*’s reporting.⁵

Justice Thomas has disclosed almost none of these gifts over the past twenty years. Federal financial disclosure laws require senior government officials, including Supreme Court justices, to report gifts such as these annually.⁶ The limited exceptions to these laws are intended to allow government officials to enjoy hospitality in the course of ordinary, personal friendships. These exceptions are not meant to allow government officials to hide from the public extravagant gifts by wealthy political interests. It is telling that Mark Paoletta, the Thomases’ lawyer who

¹ Letter from Sen. Sheldon Whitehouse & Rep. Hank Johnson, Jr. to Hon. John Roberts 1 (Apr. 4, 2022).

² 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>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 5 U.S.C. § 13103.

accompanied the Justice on at least one of these trips, was informed by executive branch ethics counsel that he needed to reimburse Mr. Crow.⁷

A proper investigation should inquire who accompanied Justice Thomas on these undisclosed trips. Current reporting shows at least one individual active before the Court: Leonard Leo, who played an instrumental role in the appointment of several members of the Court and whose dark-money front groups funded ads for their confirmations and now appear before the Court.⁸ We have reason to believe that Mr. Crow himself is connected to multiple groups that have filed amicus briefs with the Court.⁹ Yet the public has no way of knowing who else with interests related to Justice Thomas's official duties joined these trips.

Just last year, a right-wing activist admitted to coordinating a previously undisclosed 20-year, \$30 million judicial lobbying campaign at the Supreme Court.¹⁰ As part of this operation, this activist reportedly "coached" wealthy donors "to wine, dine and entertain conservative Supreme Court justices" in an attempt to "embolden the justices" to write "unapologetically conservative" opinions.¹¹ These donors apparently "financed numerous expensive dinners with [Justices] Thomas, Alito, Scalia and their wives at Washington, D.C. hotspots" and hosted at least one Justice at a private retreat.¹² According to the activist who led this campaign, the donors involved in this lobbying effort were even able to secure advance notice from Justice Alito of the Supreme Court's 2014 decision in a pending case.¹³ While the Court called that concern "uncorroborated,"¹⁴ there was abundant corroboration that the activist knew in advance and communicated that knowledge.¹⁵ This episode too has never been investigated.

Over the course of the past year, Justice Thomas has participated in numerous cases implicating his wife's activities related to the 2020 election and the January 6 attack on the U.S. Capitol.¹⁶ Justice Thomas's failure to recuse in these cases raises questions about whether he

⁷ Kaplan et al., *supra* note 2.

⁸ HansiLo Wang, *This conservative group helped push a disputed election theory*, NPR (Aug. 12, 2022), <https://www.npr.org/2022/08/12/1111606448/supreme-court-independent-state-legislature-theory-honest-elections-project>.

⁹ Mike McIntire, *Friendship of Justice and Magnate Puts Focus on Ethics*, N.Y. Times (June 18, 2011), <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>; Ian Millhiser, *Second Harlan Crow Connected Group Has a Perfect Litigation Record Before Justice Thomas*, ThinkProgress (June 23, 2011), <https://archive.thinkprogress.org/second-harlan-crow-connected-group-has-a-perfect-litigation-record-before-justice-thomas-1aaf50c21db8/>.

¹⁰ Peter S. Canellos & Josh Gerstein, 'Operation Higher Court': Inside the religious right's efforts to wine and dine Supreme Court justices, Politico (Jul. 8, 2022), <https://www.politico.com/news/2022/07/08/religious-right-supreme-court-00044739>; Jodi Kantor & Jo Becker, *Former Anti-Abortion Leader Alleges Another Supreme Court Breach*, N.Y. Times (Nov. 19, 2022), <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

¹¹ *Id.*

¹² Canellos & Gerstein, *supra* note 10.

¹³ Kantor & Becker, *supra* note 10.

¹⁴ Letter from Ethan Torrey to Sen. Sheldon Whitehouse & Rep. Hank Johnson 1 (Nov. 28, 2022).

¹⁵ See Canellos & Gerstein, *supra* note 10; Kantor & Becker, *supra* note 10.

¹⁶ Nina Totenberg, *Legal ethics experts agree: Justice Thomas must recuse in insurrection cases*, NPR (Mar. 30, 2022), <https://www.npr.org/2022/03/30/1089595933/legal-ethics-experts-agree-justice-thomas-must-recuse-in-insurrection-cases>; Marcia Coyle, *Ethics Scholars Question Justice Thomas' Participation in Arizona Election Order*, Law.com (Nov. 14, 2022), <https://www.law.com/nationallawjournal/2022/11/14/ethics-scholars-question-justice-thomas-participation-in-arizona-election-order/>.

violated both federal law and canons of judicial ethics regarding conflicts of interest and recusal. It has been said that he knew nothing of his spouse’s activities;¹⁷ that is an assertion of fact that can and should be investigated, and would be in the ordinary course for other judges and officials.

It is no longer viable for the Supreme Court to argue that it “consults” the code of conduct governing lower court judges. And it is not accurate to state that the justices follow the same financial disclosure rules as other federal judges, when there are such flagrant violations. While the Judicial Conference recently updated those rules to reject definitions that Justice Thomas may have thought justified his lack of disclosure,¹⁸ your annual report more than a decade ago on the judiciary cast doubt on whether the Court believes it must abide by those rules¹⁹—notwithstanding the federal law governing disclosure that expressly applies to Supreme Court justices.²⁰ It is well past time for the Supreme Court to align with the rest of government in a proper code of ethics enforced by independent investigation and reporting.

Should the Supreme Court continue to refuse to act swiftly on these matters, we will continue to press Congress to act to restore accountability and ethics at the highest Court in the land.

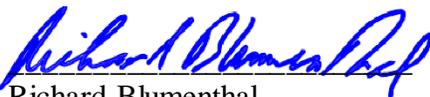
Sincerely,



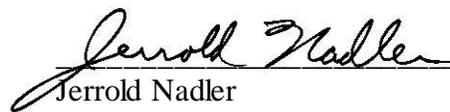
Sheldon Whitehouse
United States Senator



Henry C. “Hank” Johnson, Jr.
Member of Congress



Richard Blumenthal
United States Senator



Jerrold Nadler
Member of Congress

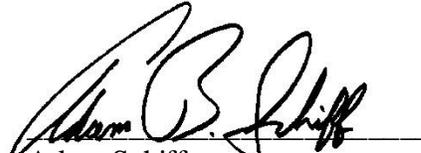
¹⁷ Steven T. Dennis, *Ginni Thomas Says She Didn’t Discuss Election Texts With Husband*, Bloomberg Law (Dec. 30, 2022), <https://news.bloomberglaw.com/us-law-week/ginni-thomas-says-she-didnt-discuss-election-texts-with-husband>.

¹⁸ Jonathan O’Connell & Ann E. Marimow, *Supreme Court justices under new ethics disclosure on trips, other gifts*, Wash. Post (Mar. 28, 2023), <https://www.washingtonpost.com/investigations/2023/03/28/supreme-court-disclosures-trips-gifts/>.

¹⁹ 2011 Year-End Report on the Federal Judiciary 4, 6 (Dec. 31, 2011), available at <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

²⁰ 5 U.S.C. §§ 13101(10), 13103(f)(11).


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Adam Schiff
Member of Congress


Edward J. Markey
United States Senator


Gerald E. Connolly
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Bernard Sanders
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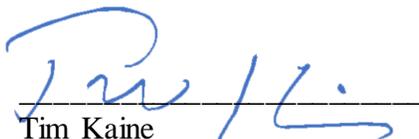

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United States Senator

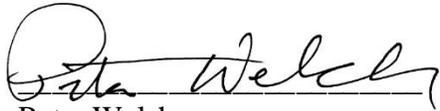

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