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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 5, 2023

Harlan Crow
Chairman of the Board
Crow Holdings Securities, LLC
3819 Maple Ave.
Dallas, TX 75219

Dear Mr. Crow:

This letter responds to the proposal your counsel made on your behalf concerning the Senate Judiciary Committee's May 8 and May 26 requests for information related to the gifts of travel, luxury vacations, and other largesse you have provided to Justice Clarence Thomas or any other justice. While your counsel reiterated your belief, expressed in your May 22 and June 5 response letters, that the Committee lacks a valid legislative purpose to inquire into these matters, because separation-of-powers principles supposedly preclude Congress from regulating judicial ethics, he nonetheless proposed to provide a partial response to the Committee's questions.

The proposed partial response would only include information from the last five years. Within that limited time period, the proposed partial response would not include, as the Committee requested, an itemized list of all gifts, payments, and items of value exceeding \$415 or the names of individuals who have gained access to Justice Thomas through the transportation and lodging you have provided.

The proposed partial response would include information about: 1) the invitation process for lodging at Topridge Camp and transportation on the *Michaela Rose* yacht and the private jet; 2) if any justice's presence was made known to other guests in advance of any transportation or lodging; 3) if transportation or lodging was provided to all guests for free and/or the process for determining which guests paid; 4) the identity of any corporate entities that secured transportation or lodging from you when a justice was present and their process for doing so; 5) the transactions involved in the purchase of Justice Thomas's childhood home; and 6) which justices, if any, you invited to the Bohemian Grove private club and whether you paid for their lodging.

In exchange for this information, the Committee would have to forego any further inquiries into your dealings with Justice Thomas, preemptively waiving its Article I authority to even ask follow-up questions. This proposal was also made on behalf of the holding companies that own Topridge Camp, the *Michaela Rose* yacht, and the private jet, despite the fact that your counsel would not confirm the existence of an attorney-client relationship with those parties.

We cannot agree with this proposal for the following reasons.

As the May 26 letter from Chair Durbin and Subcommittee Chair Whitehouse makes clear, there is simply no merit to your arguments that the Committee's requests are outside of its oversight authority or that they violate the separation of powers. Your position is at odds with basic separation-of-powers principles favoring checks and balances and rejecting the "archaic view of the separation of powers as requiring three air-tight departments of government."¹ Moreover, your argument is especially unreasonable in the government ethics context, given that the Judicial Conference is a creation of Congress, a number of longstanding judicial ethics-related laws have been passed by Congress, and the Court has adhered to those laws without complaint in multiple instances.

Additionally, the ethical lapses of Supreme Court justices, including the well-documented undisclosed gifts that Justice Thomas has accepted from you over two decades, go well beyond five years. For the past 25 years, you have also hosted Justice Thomas at the private, all-male retreat known as Bohemian Grove, where he stayed in a camp with you and the architects of one of the largest, most influential political apparatuses in recent history—Charles Koch and the late David Koch.² Furthermore, recent reporting indicates that in 2009, well outside of the five-year period you proposed, you may have engaged in other efforts to influence the Court through Justice Thomas's wife, Ginni Thomas.³

Receiving only partial responses during this arbitrary time period is insufficient to inform the Committee's ongoing legislative efforts. Parties with matters before the Court continue to take advantage of access to justices made possible by both disclosed and undisclosed transportation, lodging, and other gifts.⁴ For the Committee to ensure that legislation is appropriately tailored to address this ethical crisis, we must have a comprehensive understanding of the types of gifts provided and how this access is used. Five years of information is unreasonable in light of this pressing need, especially considering public reporting that details your gifts to Justice Thomas going back at least 25 years.⁵

¹ *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977) (internal quotation marks omitted).

² Joshua Kaplan, Justin Elliott, & Alex Mierjeski, *Clarence Thomas Secretly Participated in Koch Network Donor Events*, PROPUBLICA (Sep. 22, 2023).

³ Heidi Przybyla, *What Ginni Thomas and Leonard Leo wrought: How a justice's wife and key activist started a movement*, POLITICO (Sep. 10, 2023).

⁴ See e.g., Letter from Senators Richard J. Durbin and Sheldon Whitehouse to Chilton Davis Varner, President, Supreme Court Historical Society (Jul. 11, 2023); Letter from Senators Sheldon Whitehouse and Richard J. Durbin to Paul Singer, President, Elliott Investment Management LP (Jul. 11, 2023); Letter from Senators Sheldon Whitehouse and Richard J. Durbin to Robin Arkley II, President, Security National Master Holding Company LLC (Jul. 11, 2023); Letter from Senators Sheldon Whitehouse and Richard J. Durbin to Leonard Leo, Chairman, CRC Advisors (Jul. 11, 2023).

⁵ See e.g., Joshua Kaplan, Justin Elliott, & Alex Mierjeski, *Clarence Thomas Secretly Participated in Koch Network Donor Events*, PROPUBLICA (Sep. 22, 2023); Joshua Kaplan, Justin Elliot, & Alex Mierjeski, *Clarence Thomas and the Billionaire*, PROPUBLICA (April 6, 2023); Mike McIntire, *Friendship of Justice and Magnate Puts Focus on Ethics*, N.Y. TIMES (June 18, 2011).

If you would like the Committee to consider a renewed offer that takes into account these concerns, you are free to make one by October 19, 2023.

Sincerely,



Richard J. Durbin
United States Senator



Sheldon Whitehouse
United States Senator



Amy Klobuchar
United States Senator



Richard Blumenthal
United States Senator



Peter Welch
United States Senator



Alex Padilla
United States Senator



Mazie K. Hirono
United States Senator



Cory A. Booker
United States Senator



Christopher A. Coons
United States Senator



Jon Ossoff
United States Senator

cc: The Honorable Lindsey O. Graham
Ranking Member, Senate Committee on the Judiciary