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April 27, 2023

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

Dear Judge Mauskopf:

I write to follow up on my prior letter, dated April 21, 2023, requesting additional information about the procedures and rules related to the Committee on Financial Disclosure and Judicial Conference's consideration of potential disclosure violations under the Ethics in Government Act of 1978. That letter also urged the Committee and Judicial Conference to act with due dispatch in considering possible violations in recent years by Justice Thomas. As you may know, the undisclosed gifts, travel, and transactions that form the basis of the matter currently pending before the Committee are not the only financial disclosure omissions in Justice Thomas's history.

Nor is this the first time that the Judicial Conference has been asked to consider whether to refer Justice Thomas's financial disclosure omissions to the Attorney General under the Ethics in Government Act.

In 2011, the nonprofit group Common Cause uncovered via IRS filings that Justice Thomas had failed to disclose several years of income that his wife had received from the Heritage Foundation and Liberty Central.<sup>1</sup> On January 21, 2011, Common Cause reported these omissions to the Judicial Conference in a letter to one of your predecessors, Judge and then-Director James Duff.<sup>2</sup> That letter noted that the Ethics in Government Act directs the Judicial Conference to report to the Attorney General the name of any federal judge whom the Conference "has reasonable cause to believe has willfully falsified or willfully failed to file information to be reported."<sup>3</sup> The letter then requested "that the Judicial Conference make such a determination in the case of Justice Thomas, and if reasonable cause is found, to refer the matter to the Attorney General."<sup>4</sup>

<sup>1</sup> Common Cause, Press Release, *What else haven't they told us?* (Jan. 21, 2011), available at <https://web.archive.org/web/20111123131308/http://www.commoncause.org/site/apps/nlnet/content2.aspx?c=dkLNK1MQIwG&b=4773613&ct=9042443>.

<sup>2</sup> Letter from Bob Edgar & Arn H. Pearson to Hon. James C. Duff (Jan. 21, 2011), available at <https://www.commoncause.org/resource/letter-to-james-duff-on-virginia-thomas-income/> [hereinafter January Common Cause Letter].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

The following Monday, it was reported that Justice Thomas had amended several of his prior reports to include previously undisclosed spousal income, which he said had been “inadvertently omitted due to a misunderstanding of the filing instructions.”<sup>5</sup> Although Justice Thomas’s amendments were not disclosed until Monday, January 24, 2011,<sup>6</sup> a review of his letters to the Committee on Financial Disclosure reveal that he had in fact requested such amendments on January 21<sup>7</sup>—the same day that Common Cause sent its letter to the Judicial Conference. However, there is no indication that Common Cause provided Justice Thomas advance notice of its letter, other than a press release from earlier the same day;<sup>8</sup> nor did the letter mention or allude to knowledge of Justice Thomas’s amendments.<sup>9</sup> The letter also did not reference the other sources of spousal income that Justice Thomas had not disclosed but that he requested to be included in his amendments.<sup>10</sup>

Later that year, on June 18, 2011, in a precursor to the most recent reporting by ProPublica, the New York Times reported that Harlan Crow had:

[D]one many favors for [Justice Thomas] and his wife, Virginia, helping finance a Savannah library project dedicated to Justice Thomas, presenting him with a Bible that belonged to Frederick Douglass and reportedly providing \$500,000 for Ms. Thomas to start a Tea Party-related group. They have also spent time together at gatherings of prominent Republicans and businesspeople at Mr. Crow’s Adirondacks estate and his camp in East Texas.<sup>11</sup>

The Times further reported that, “In addition to giving him the Douglass Bible, valued 10 years ago at \$19,000, Mr. Crow has hosted the justice aboard his private jet and his 161-foot yacht, at the exclusive Bohemian Grove retreat in California and at his grand Adirondacks summer estate called Topridge.”<sup>12</sup> Justice Thomas did not amend his financial disclosure reports to account for these gifts, nor did he or Mr. Crow respond to the Times’s requests for comments about these gifts.<sup>13</sup>

Following this reporting, Common Cause and another nonprofit organization, Alliance For Justice, again wrote to the Judicial Conference urging it to refer Justice Thomas to the Attorney General for Justice Thomas’s nondisclosure of his spouse’s income.<sup>14</sup> Two weeks later, the

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<sup>5</sup> Jennifer Epstein, *Thomas revises disclosure forms*, Politico (Jan. 24, 2011), <https://www.politico.com/story/2011/01/thomas-revises-disclosure-forms-048086>.

<sup>6</sup> See *id.* (“Supreme Court Justice Clarence Thomas has amended 13 years’ worth of disclosure reports to include details of wife Virginia Thomas’s sources of income, documents released on Monday show.”).

<sup>7</sup> Hon. Clarence Thomas Letter and Self Initiated Amendments to Committee on Financial Disclosure (Jan. 21, 2011), available at <https://big.assets.huffingtonpost.com/amendments.pdf> [hereinafter Thomas Letter].

<sup>8</sup> See Common Cause, *What else haven’t they told us?*, *supra* note 1.

<sup>9</sup> See January Common Cause Letter, *supra* note 2.

<sup>10</sup> See *id.*

<sup>11</sup> 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>.

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

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Bob Edgar & Nan Aron to Hon. James Duff (Sept. 13, 2011), available at <https://web.archive.org/web/20130415123051/https://www.commoncause.org/site/apps/nlnet/content2.aspx?c=dkLNK1MQIwG&b=4773617&ct=11216445>.

Judicial Conference replied that it was referring the matter—presumably including the matter of free private yacht and jet trips—to the Committee on Financial Disclosure.<sup>15</sup>

On September 29, 2011, several members of the House of Representatives sent a letter to the Judicial Conference also requesting that the Conference refer both the matter of Justice Thomas’s spousal income omissions and his failure to disclose “use of a private yacht and airplane owned by Harlan Crow . . . as a gift or travel reimbursement on his federal disclosure forms as required by the Ethics in Government Act of 1978.”<sup>16</sup> Common Cause, Alliance for Justice, and 53 members of the House of Representatives sent additional letters to the Judicial Conference and Chief Justice Roberts reiterating these requests.<sup>17</sup> These letters came after Common Cause and Alliance for Justice revealed on October 5, 2011, that Justice Thomas had for years correctly filled out the spousal income sections of his financial disclosure forms,<sup>18</sup> despite his claims of “misunderstanding . . . the filing instructions.”<sup>19</sup>

To my knowledge, despite receiving multiple requests for the Judicial Conference to investigate these omissions related to spousal income and gifts from Mr. Crow, the Judicial Conference has never revealed to the public how it ultimately resolved these matters—including whether it or the Committee on Financial Disclosure ever undertook an investigation or referred the matters to the Department of Justice. In 2011, the Committee on Financial Disclosure submitted two reports to the Judicial Conference as part of the biannual Reports of the Proceedings of the Judicial Conference. Neither report referenced any consideration of these or any related matters.<sup>20</sup> Nor did the Committee’s next report in March 2012.<sup>21</sup>

The only indication that the Committee or the Conference ever considered these matters is the following passage from the Committee’s September 11, 2012, report to the Judicial Conference:

**DISCHARGE OF STATUTORY DUTY UNDER 5 U.S.C. APP. § 104(B)**

A Judicial Conference member sought to have the Conference discuss the issue of how the Conference discharges its statutory duty, under 5 U.S.C. app. § 104(b), to determine whether an individual has willfully failed to file a financial disclosure report or has willfully falsified or failed to include required information in such a

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<sup>15</sup> See Common Cause, Press Release, *Citing new evidence, Common Cause and Alliance for Justice urge formal investigation of Justice Thomas’ disclosure failures*, Common Dreams (Oct. 5, 2011), <https://www.commondreams.org/newswire/2011/10/05/citing-new-evidence-common-cause-and-alliance-justice-urge-formal-investigation>.

<sup>16</sup> Letter from Rep. Louise Slaughter et al. to Hon. James C. Duff (Sept. 29, 2011), available at <https://www.law360.com/articles/275091/attachments/0>.

<sup>17</sup> Common Cause, “Supreme Conflict,” <https://www.commoncause.org/resource/supreme-conflict/>; Letter from Rep. Louise M. Slaughter et al. to Hon. John Roberts (Nov. 18, 2011), available at [https://lawprofessors.typepad.com/files/jud\\_conf\\_follow-up\\_letter\\_final\\_11.18.113.pdf](https://lawprofessors.typepad.com/files/jud_conf_follow-up_letter_final_11.18.113.pdf).

<sup>18</sup> Stephanie Mencimer, *Chart of the Day: Clarence Thomas’ Non-Disclosure Form*, Mother Jones (Oct. 5, 2011), <https://www.motherjones.com/politics/2011/10/clarence-thomass-non-disclosure-form/>.

<sup>19</sup> Thomas Letter, *supra* note 7.

<sup>20</sup> *Report of the Proceedings of the Judicial Conference of the United States* at 16, March 15 2011, available at <https://www.uscourts.gov/sites/default/files/2011-03.pdf>; *Report of the Proceedings of the Judicial Conference of the United States* at 24, September 13, 2011, available at <https://www.uscourts.gov/sites/default/files/2011-09.pdf>.

<sup>21</sup> *Report of the Proceedings of the Judicial Conference of the United States* at 16, March 13, 2012, available at <https://www.uscourts.gov/sites/default/files/2012-03.pdf>.

report. On the Conference floor, the member moved to disapprove the most recent report of the Committee on Financial Disclosure and require the Committee to file amended reports that provide information about Committee actions taken pursuant to the authority delegated to it by the Conference to carry out duties under 5 U.S.C. app. § 104(b). The Judicial Conference decided to postpone consideration of the motion so that the Committee may first consider the matter and report back to the Conference.<sup>22</sup>

This passage seems to coincide with the precise issues raised by Justice Thomas's omissions and requests for the Judicial Conference to exercise its power of referral under the Ethics in Government Act. However, despite the promise that the Committee would "consider the matter and report back to the Conference,"<sup>23</sup> no such report was apparently ever issued.<sup>24</sup> Thus, it remains unclear the nature of the precise issue regarding the referenced statutory duties, the perceived inadequacy of "the most recent report of the Committee on Financial Disclosure," and how or whether the Committee and Judicial Conference ultimately resolved the issue.

In light of these outstanding questions, I respectfully request the following information and answers to the following questions.

1. Please provide any reports, either of the Committee on Financial Disclosure or the Judicial Conference, related to the matter referenced in the Committee on Financial Disclosure's report to the Judicial Conference as part of the September 11, 2012, Report on the Proceedings of the Judicial Conference.
2. If those reports do not exist, or are otherwise not wholly responsive to the outstanding questions discussed above, please provide the following information.
  - a. What was the issue related to the Conference's duties under 5 U.S.C. § 13106(b) that the Judicial Conference member referenced in the September 11 report sought to discuss?
  - b. What was the issue with the Committee on Financial Disclosure's "most recent report" that caused the Judicial Conference member to seek disapproval of such report?
  - c. What "information about Committee actions taken pursuant to the authority delegated to it by the Conference to carry out duties under" 5 U.S.C. § 1306(b)

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<sup>22</sup> *Report of the Proceedings of the Judicial Conference of the United States* at 18, September 11, 2012, available at <https://www.uscourts.gov/sites/default/files/2012-09.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., *Report of the Proceedings of the Judicial Conference of the United States* at 15-16, March 12, 2013, available at <https://www.uscourts.gov/sites/default/files/2013-03.pdf>; *Report of the Proceedings of the Judicial Conference of the United States* at 21, September 17, 2013, available at <https://www.uscourts.gov/sites/default/files/2013-09.pdf>; *Report of the Proceedings of the Judicial Conference of the United States* at 17, March 11, 2014, available at <https://www.uscourts.gov/sites/default/files/2014-03.pdf>; *Report of the Proceedings of the Judicial Conference of the United States* at 16-17, September 16, 2014, available at [https://www.uscourts.gov/sites/default/files/2014-09\\_0.pdf](https://www.uscourts.gov/sites/default/files/2014-09_0.pdf).

did the Judicial Conference member seek to include in “amended reports” by the Committee?

- d. Did the Committee “consider the matter” referenced in the report and “report back to the Conference?” If so, please summarize that consideration and report, and provide any documentation of such consideration and report. Did the Judicial Conference ever consider such report?
3. How did the Judicial Conference and Committee on Financial Disclosure resolve the requests it received throughout 2011 related to Justice Thomas’s various disclosure omissions?

Thank you for your timely consideration of these matters.

Sincerely,



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