

WRITTEN TESTIMONY OF SENIOR JUDGE MARK L. WOLF
FOR THE MAY 17, 2023 HEARING OF THE SENATE COMMITTEE
ON THE JUDICIARY, SUBCOMMITTEE ON FEDERAL COURTS,
OVERSIGHT, AGENCY ACTION, AND FEDERAL RIGHTS
HEARING ON REVIEW OF FEDERAL JUDICIAL ETHICS PROCESSES
AT THE JUDICIAL CONFERENCE OF THE UNITED STATES

Submitted May 15, 2023

I. INTRODUCTION

Chairman Whitehouse, Ranking Minority member Kennedy, and members of the Subcommittee, thank you for requesting that I testify today on certain matters concerning the administration of justice with which I have personal experience - the manner in which the Judicial Conference of the United States has discharged its duties under the Financial Disclosure statutes Congress and the President have enacted.¹ I hope my testimony will be helpful to you as you consider whether those laws have been properly implemented, whether they should be revised and strengthened, and more broadly whether other legislation is necessary to promote public confidence in the integrity of federal Justices and judges without infringing on their independence in deciding cases.

I am testifying as an individual and not as a representative of the Judicial Conference of the United States or the federal judiciary.

II. BACKGROUND

My name is Mark L. Wolf. I am a Senior United States District Judge in the District of Massachusetts. Prior to my appointment in 1985, in addition to practicing law in Washington, D.C. and Boston, Massachusetts, I served in the Department of Justice as: a Special Assistant to Deputy Attorney General Laurence H. Silberman (1984);

¹ 5 U.S.C. §§ 13101-13111.

a Special Assistant to Attorney General Edward H. Levi (1975-77); and Deputy United States Attorney and Chief of the Public Corruption Unit in the District of Massachusetts (1981-85).

Since 1985, in addition to my work as a trial judge, I have been actively involved in the governance of the judiciary. I have served as Chief Judge of the United States District Court for the District of Massachusetts (2006-12); as a member of the Judicial Conference of the United States (2010-12); as Chair of the group of District Judge members of the Judicial Conference (2012); and as a member of the Judicial Conference Committees on Criminal Law, Codes of Conduct, and Criminal Rules.²

III. THE CODE OF CONDUCT FOR UNITED STATES JUDGES AND SEPARATION OF POWERS

In deciding whether to testify, I have considered: (1) whether my testimony is permissible under the Code of Conduct for United States Judges; and (2) whether my testimony would be incompatible with the principles of separation of powers and the importance of preserving the independence of judges in deciding cases.

A. Code of Conduct

My appearance today is permitted and, indeed, encouraged by the Code of Conduct for United States Judges. Canon 4(A)(2) of the Code states that:

[a] judge may consult with or appear at a public hearing before an executive or legislative body or official: (a)

² A more complete biography is attached as Exhibit 1.

on matters concerning the law, the legal system, or the administration of justice; (b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area.³

The Commentary to Canon 4 states, in pertinent part, that "[a]s a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law [T]he judge is encouraged to do so" ⁴ These principles are reiterated and amplified in published Advisory Opinions of the Judicial Conference Committee on Codes of Conduct.⁵

B. Separation of Powers

While federal judges are permitted and generally encouraged to testify concerning matters involving the administration of justice, I have considered whether doing so now with regard to the whether the Judicial Conference has properly complied with its statutory duties under the Financial Disclosure laws, and possible related legislation, would be inconsistent with the principle of

³ U.S. CTS., CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 4(A)(2) (2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

⁴ Id. Canon 4 Commentary.

⁵ See 2 GUIDE TO JUDICIARY POLICY § 220, Advisory Ops. 50 and 93, at 63-65, 154-58 (ADMIN. OFF. OF THE U.S. CTS. 2009), https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02_0.pdf.

separation of powers and the importance of preserving the independence of the judiciary. I have concluded that it is not.

Every United States Justice and judge takes an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich" and to "faithfully and impartially discharge and perform all the duties" of his or her office.⁶ As this oath demonstrates, it is the fundamental duty of each Justice and judge to decide cases impartially. Protecting federal judges from potential improper influence in performing this judicial function is important to their ability and willingness to decide impartially, based solely on the evidence and the law, whether legislation enacted by Congress is unconstitutional, whether the President has exceeded the powers delegated to his or her office, and whether even despised individuals or groups are entitled to prevail in court. Constitutional provisions that protect federal judges from being punished for making unpopular decisions - epitomized by the constitutional guarantee of life tenure⁷ -

⁶ 28 U.S.C. § 453 (emphasis added).

⁷ U.S. CONST. art. III § 1; see also THE FEDERALIST No. 78 (Alexander Hamilton) (concerning life tenure and explaining that "nothing can contribute so much to [the judiciary's] firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security").

promote judicial independence and encourage judges to perform their judicial duties impartially.

However, independence is not an end in itself. An independent judiciary is not necessarily an impartial judiciary. It could be a dishonest, unaccountable judiciary. Therefore, there must be means of determining whether a Justice or judge is capable of deciding a particular case impartially and whether reasonable, well-informed people can be confident that he or she is doing so. There must also be means of holding Justices and judges accountable if they violate their duties to, among other things, be honest and impartial.

In the United States we seek to balance the interests of independence and accountability of Justices and judges in a range of ways. Except for Supreme Court Justices, a judge's decisions can be reviewed and reversed on appeal.

In addition, with rare exceptions, judicial proceedings must be open to the public and media. The Supreme Court has recognized the historic importance of openness to the proper functioning of the courts, explaining that openness "gave assurance that the proceedings were conducted fairly to all concerned, and it discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality."⁸ This principle of

⁸ Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 569 (1980).

transparency is important "to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system."⁹

Moreover, every Justice and judge is, by statute, obligated to disqualify himself or herself if a reasonable person might question his or her impartiality in a particular case even if the Justice or judge is not actually biased or prejudiced.¹⁰ In part to assure that litigants and the public have the information necessary to have confidence that a Justice or judge is capable of performing impartially in a particular case Congress and the President enacted legislation that requires federal Justices and judges to make certain financial disclosures annually.¹¹

These requirements are not a violation of separation of powers. Our Constitution is based on Lord Acton's famous insight that "power tends to corrupt, and absolute power corrupts absolutely."¹² Therefore, federal power is divided between the Legislative, Executive, and Judicial branches of government.¹³ In

⁹ In re Cont'l Ill. Sec. Litig., 732 F.2d 1302, 1308 (7th Cir. 1984); see also F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 410 (1st Cir. 1987) (same).

¹⁰ See 28 U.S.C. § 455(a).

¹¹ See S. Rep. No. 95-170, at 21-22 (1977); see generally 5 U.S.C. §§ 13101-13111.

¹² JOHN EMERICH EDWARD DALBERG-ACTON, FIRST BARON ACTON, HISTORICAL ESSAYS & STUDIES 504 (John Neville Figgis & Reginald Vere Laurence eds., 1907).

¹³ See U.S. CONST. art. I; id. art. II; id. art. III.

our system of government, each branch serves as a check on the potential abuses of authority by the other branches.¹⁴ The Supreme Court has "squarely rejected the argument that the Constitution contemplates a complete division of authority between the three branches."¹⁵ "[I]n determining whether [a statute] disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents [one branch] from accomplishing its constitutionally assigned functions."¹⁶

The core constitutionally assigned function of the judiciary is to decide cases impartially. The Financial Disclosure statutes do not injure the ability of Justices and judges to do so.¹⁷ They only require that Justices and judges file accurate and complete annual reports of, among other things, their income, assets, gifts, travel, and certain financial information concerning their spouses.¹⁸ Therefore, the statutes promote the likelihood that

¹⁴ THE FEDERALIST NOS. 47, 51 (James Madison).

¹⁵ Nixon v. Adm'r Gen. Servs., 433 U.S. 425, 443 (1977) (citing United States v. Nixon, 418 U.S. 683, 703 (1974)).

¹⁶ Id.

¹⁷ In a case involving a member of Congress, the District of Columbia Circuit held that authorizing the Department of Justice to investigate and prosecute possible violations of the Act does not "offend[] the separation of powers doctrine." United States v. Rose, 28 F.3d 181, 190 (D.C. Cir. 1994). Rather, in investigating whether to bring a civil action against the member of Congress, the Department of Justice "was fulfilling its constitutional responsibilities, not encroaching on Congress's." Id.

¹⁸ See generally 5 U.S.C. § 13104.

Justices and judges will perform their core function properly, without bias, prejudice, or undue influence, and that reasonable people will not doubt that they are doing so.

Several years ago, I published an article supporting legislation that would require the Supreme Court to promulgate a Code of Conduct for itself.¹⁹ I now believe that issue is distracting from consideration of more important questions.

As Senator John N. Kennedy said at a May 2, 2023 Senate Judiciary Committee hearing concerning Supreme Court ethics reform, "federal law already requires recusal in certain circumstances, like bias or financial interest The Justices are also subject to strict financial disclosure rules, just like my colleagues" ²⁰ In my view, the more important questions concern whether the existing Financial Disclosure statutes are adequate to serve their intended purpose and whether the Judicial

¹⁹ Mark L. Wolf, House Anti-Corruption and Supreme Court Ethics Vote Helps Restore U.S. Credibility, THINK (Mar. 4, 2021, 4:45 AM), <https://www.nbcnews.com/think/opinion/house-anti-corruption-supreme-court-ethics-vote-helps-restore-u-ncnal259514>.

²⁰ Supreme Court Ethics Reform: Hearing Before the S. Comm. on the Judiciary, 117th Cong. 39:24-30 (May 2, 2023) (statement of Sen. John Neely Kennedy, Ranking Minority Member of the S. Subcomm. on Fed. Cts., Oversight, Agency Action, & Fed. Rights), <https://www.judiciary.senate.gov/committee-activity/hearings/supreme-court-ethics-reform>; see also Press Release, Sen. John Neely Kennedy, Some Democrats on Crusade to Undermine Supreme Court's Legitimacy (May 2, 2023), <https://www.kennedy.senate.gov/public/press-releases?ID=D4D040AE-D434-4E0D-835E-165A7EF8B2D0>.

Conference of the United States has properly discharged its statutory duties concerning them.

Congress has a legitimate interest in examining these questions. You have asked me to assist in that examination by testifying based on my relevant personal experience and the insights resulting from it. As explained earlier, federal judges are encouraged to testify in Congress on matters relating to the administration of justice. We are also required to "maintain and enforce high standards of conduct" for the federal judiciary.²¹ Therefore, I have accepted your request to testify today.

IV. THE ETHICS IN GOVERNMENT ACT

In 1978, the Ethics in Government Act (the "Act") became law in the aftermath of the Watergate scandal that resulted in the resignation of President Richard Nixon in the midst of hearings in the House of Representatives to determine whether he should be impeached.²² The legislation is essentially a codification of Justice Louis D. Brandeis' belief that "sunlight is . . . the best of disinfectants."²³ Among other things, the Act includes

²¹ U.S. Cts., supra note 3, Canon 1.

²² See Judith Rosenbaum & Steven Lubet, Financial Disclosure by Judges: Functional Analysis and Critique, 40 U. FLA. L. REV. 241, 248 (1988); see also S. Rep. No. 95-170, at 21 (1977).

²³ Louis D. Brandeis, What Publicity Can Do, HARPER'S WKLY., Dec. 20, 1913, at 10.

provisions (the "Financial Disclosure statutes")²⁴ that make mandatory public disclosure of financial and certain other information of federal public officials and members of their immediate family²⁵ in order to reduce the risk that those officials will be improperly enriched and influenced in the performance of their duties.²⁶

The Act applies to all judicial officers, including the Chief Justice and Associate Justices of the Supreme Court.²⁷ The Act requires a Justice or judge to file an annual report that includes, among other things, a full and complete statement of: his or her income;²⁸ the source of all gifts with a value of more than \$480 other than "food, lodging, or entertainment received as personal hospitality;"²⁹ any transaction in real property exceeding \$1,000

²⁴ The Financial Disclosure statutes are now codified at 5 U.S.C. §§ 13101–13111. At all times relevant to this testimony, the Financial Disclosure statutes were codified at 5 U.S.C. App. §§ 101–111. On December 27, 2022, the statutes were transferred without change to their meaning or effect to their present location in the U.S. Code. See Revisions in Title 5, United States Code and Technical Amendments to Improve the United States Code, Pub. L. No. 117–286 (2022). For the sake of clarity and consistency, this testimony cites to the current codification.

²⁵ See generally 5 U.S.C. § 13104.

²⁶ See S. Rep. No. 95–170, at 21–22 (1977).

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

²⁸ Id. § 13104(a).

²⁹ See id. § 13104(a)(2)(A); id. § 7342(a)(5) (authorizing the Administrator of General Services to redefine the "minimal value" at 3 year intervals); GEN. SERVS. ADMIN., GSA BULLETIN FMR B-52 FOREIGN GIFT AND DECORATION MINIMAL VALUE (Mar. 6, 2023) (setting the minimal value effective January 1, 2023).

other than a transaction involving the personal residence of the official or his or her spouse;³⁰ and the name of any individual or organization that paid for or reimbursed the Justice or judge for travel, meals, or lodging.³¹ In addition, the Act requires annual disclosure of the source of income a Justice or judge's spouse received from a third party, other than the government, in an amount greater than \$1,000.³²

The Act also provides that it is unlawful for any person - including a Justice or judge - to knowingly and willfully falsify any information required to be reported, or to fail to file or report any information required to be reported.³³ To act knowingly and willfully in the context of the Act means to "intentionally disregard[] the statute" or to be "indifferent to its requirements."³⁴

The Act makes the knowing and willful filing of false information a crime punishable by up to one year in prison, a fine

³⁰ 5 U.S.C. § 13104(a)(5)(A).

³¹ Id. § 13104 (a)(2)(B), (a)(6)(B).

³² Id. § 13104(e)(1)(A).

³³ Id. § 13106(a)(2)(A)(i-ii).

³⁴ United States v. Gant, 268 F. Supp. 2d 29, 33 (D.D.C. 2003) (quoting United States v. Tarver, 642 F. Supp. 1109, 1111 (D. Wyo. 1986)); see also United States v. Bank of New England, 821 F.2d 844, 856 (1st Cir. 1987) (defining willfulness in the context of federal regulatory statutes as "a disregard for the governing statute and an indifference to its requirements") (collecting cases).

under title 18 - the United States Criminal Code - or both.³⁵ A knowing and willful failure to file or to report required information is a crime punishable by a fine under title 18.³⁶ In addition, any official who knowingly and willfully either falsifies information required to be disclosed or fails to report such information may be subject to a civil penalty of up to \$71,316.³⁷ Moreover, 18 U.S.C. § 1001 also makes it a crime to knowingly and willfully falsify, conceal, or cover up a material fact.³⁸ The penalty for doing so under that statute includes imprisonment for up to five years.³⁹

The Act defines a specific and limited role for the Judicial Conference of the United States (the "Judicial Conference" or "Conference") concerning possible violations. It states that:

[T]he Judicial Conference . . . shall refer to the Attorney General the name of any individual which [it]

³⁵ 5 U.S.C. § 13106(a)(2)(B)(i).

³⁶ Id. § 13106(a)(2)(B)(ii). The penalty for "knowingly and willfully" failing to "file or report" required information is a fine "under title 18." Id. Title 18's fine provisions are provided in subchapter C, see 18 U.S.C. § 3551(b)(2), which grades fines according to an offense's classification, see id. U.S.C. § 3571(b). Because 5 U.S.C. § 13106(a)(2)(B)(ii) has no incarceration penalty it is classified as an infraction. See 18 U.S.C. § 3559(a)(9). The fine for an infraction is "not more than \$5,000." 18 U.S.C. § 3571(b)(7).

³⁷ See 5 U.S.C. § 13106(a)(1) (as adjusted by 5 C.F.R. § 2634.701). For violations occurring prior to November 3, 2015, the penalty is \$50,000. 5 C.F.R. § 2634.701.

³⁸ 18 U.S.C. § 1001(a)(1).

³⁹ Id. § 1001(a).

has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.⁴⁰

"Reasonable cause" is closely analogous to, if not less than, probable cause.⁴¹ "Probable cause is an objective standard 'to be met by applying a totality-of-the-circumstances analysis.'"⁴²

"Probable cause is more than bare suspicion but is less than beyond a reasonable doubt and, indeed, is less than a preponderance of the evidence."⁴³ Probable cause is determined based upon the "practical considerations of everyday life on which reasonable and

⁴⁰ 5 U.S.C. § 13106(b) (emphasis added).

⁴¹ See Brown v. Dep't of Just., 715 F.2d 662, 667 (D.C. Cir. 1983) (holding that reasonable cause to believe that an employee had committed a work-related crime existed because the employee had already been indicted based upon probable cause); Angelex, Ltd. v. United States, 907 F.3d 612, 618 (D.C. Cir. 2018) (holding that because the court had been given "no basis for distinguishing" between reasonable cause and probable cause, a showing of probable cause was sufficient to satisfy reasonable cause); Hackley v. Roudebush, 520 F.2d 108, 150 n.172 (D.C. Cir. 1975) (noting in dicta that "the 'reasonable cause' standard is considerably lower than the 'preponderance of the evidence' standard"); Hatch v. Dep't for Child., Youth & Their Fams., 274 F.3d 12, 21 (1st Cir. 2001) (noting that a reasonable cause standard "borders on an obligatory showing of probable cause (or something fairly close to probable cause)"); see also Reasonable Cause, BLACK'S LAW DICTIONARY (10th ed. 2014) ("See PROBABLE CAUSE (1).").

⁴² United States v. Burnett, 827 F.3d 1108, 1114 (D.C. Cir. 2016) (quoting United States v. Vinton, 594 F.3d 14, 21 (D.C. Cir. 2010)).

⁴³ Id.; see also United States v. Cardoza, 713 F.3d 656, 660 (D.C. Cir. 2013) ("[P]robable cause does not require certainty, or proof beyond a reasonable doubt, or proof by a preponderance of the evidence.").

prudent men, not legal technicians, act."⁴⁴ It "is a reasonable ground for belief."⁴⁵

Accordingly, pursuant to the Act, it is not the responsibility of the Judicial Conference to determine whether a Justice or judge has violated the Financial Disclosure Statutes and should be sanctioned. Rather, it is the duty of the Judicial Conference to decide whether there is reasonable cause to believe a willful violation occurred.⁴⁶ If such reasonable cause exists, the Judicial Conference must refer the Justice or judge involved to the Attorney General for possible investigation,⁴⁷ including potentially a grand jury investigation, and a possible criminal prosecution or a civil suit.

In my view, this division of duties is wise and important. It appropriately allocates these duties if the Judicial Conference properly performs its limited role. If the Judicial Conference properly considers a matter and refers it to the Attorney General, the referral will reduce the risk of there being a well-founded claim that an investigation of a Justice or judge is an improperly motivated, unjustified attack on the independence of the

⁴⁴ Brinegar v. United States, 338 U.S. 160, 175 (1949).

⁴⁵ Id. (quoting Carroll v. United States, 267 U.S. 132, 161 (1925)).

⁴⁶ 5 U.S.C. § 13106(b).

⁴⁷ Id.

judiciary. Making the Department of Justice, rather than the Judicial Conference, the ultimate arbiter of whether a Justice or judge should be prosecuted or sued and, if a charge is proven, sanctioned, diminishes the risk that friendships, professional relationships, a desire to protect colleagues, or an interest in protecting the reputation of the judiciary will result in the Act not being properly enforced concerning a Justice or judge.

V. REQUESTS TO THE JUDICIAL CONFERENCE IN 2011 TO REFER JUSTICE CLARENCE THOMAS TO THE ATTORNEY GENERAL AND RELATED MATTERS

The Judicial Conference is comprised of the Chief Justice of the Supreme Court, the Chief Judges of each Circuit, and a District Judge from each Circuit, who serves a three year term. As indicated earlier, from 2010 through 2012, I was the representative of the First Circuit District Judges on the Judicial Conference.

I now know that in 2011, many members of Congress and two public interest organizations - Common Cause and Alliance for Justice - sent letters to the Judicial Conference, Chief Justice John Roberts, and the Supreme Court describing specific ways in which Justice Clarence Thomas had allegedly committed willful violations of the Financial Disclosure statutes, and in some instances, expressly urging the Judicial Conference to find reasonable cause and refer Justice Thomas to the Attorney General. There were also media reports relating to the issues raised by the

letters. The public record now includes the following information concerning the letters, which are included in Exhibits 2 and 3.

On **January 21, 2011**, Common Cause emailed a letter to James Duff, the Director of the Administrative Office of the United States Courts and as such, the Secretary of the Judicial Conference. It stated the following: Justice Thomas' wife, Virginia Thomas, was employed by the Heritage Foundation from 2003 to 2007 and at Liberty Central in 2009.⁴⁸ Both organizations compensated Mrs. Thomas for her work.⁴⁹ Justices are required to disclose their spouse's sources of income in excess of \$1,000 pursuant to 5 U.S.C. § 13104.⁵⁰ However, on his Financial Disclosure Reports from 2003 to 2009 "Justice Thomas checked the box for 'None' for 'Spouse's Non-Investment Income.'"⁵¹ Common Cause requested that the Judicial Conference consider the omission, make a determination under 5 U.S.C. § 13106, and, if it found reasonable

⁴⁸ Letter from Bob Edgar, President & CEO of Common Cause, to James C. Duff, Sec'y to the Jud. Conf. of the U.S. (Jan. 21, 2011), <https://www.commoncause.org/resource/letter-to-james-duff-on-virginia-thomas-income/>, included in Exhibit 3.

⁴⁹ Id.

⁵⁰ See 5 U.S.C. § 13106.

⁵¹ Letter from Bob Edgar to James C. Duff, supra n. 48.

cause, "refer the matter to the Attorney General."⁵² Mr. Duff brought the matter to Justice Thomas' attention.⁵³

On **January 22, 2011**, the Financial Disclosure Office of the Administrative Office of the United States Courts received seven letters from Justice Thomas, each dated January 21, 2011, amending his reports to include information concerning Mrs. Thomas' employment.⁵⁴ The letters stated that he had "inadvertently omitted" his wife's employment "due to a misunderstanding of the filing instructions."⁵⁵ He amended his reports by adding the following employment for Mrs. Thomas: (a) for 2009, he added Hillsdale College; (b) for 2008, he added The Heritage Foundation and Hillsdale College; and (c) for 1998 to 2007, he added The Heritage Foundation.⁵⁶

On **January 24, 2011**, Mr. Duff wrote to Common Cause that the matter had been brought "to Justice Thomas' attention and he immediately amended his reports."⁵⁷ Mr. Duff further advised that

⁵² Id.

⁵³ See Exhibit 2.A, Letter from James C. Duff, Dir. of the Admin. Off. of the U.S. Cts., to Bob Edgar, President & CEO of Common Cause (Jan. 24, 2011).

⁵⁴ Exhibit 2.B, Letters from Justice Clarence Thomas to Comm. on Fin. Disclosure (Jan. 21, 2011), <https://fixthecourt.com/wp-content/uploads/2023/04/thomas-clarence-amendments.pdf>.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Exhibit 2.A, Letter from James C. Duff to Bob Edgar, supra n. 53.

he had "forwarded [Common Cause's January 21, 2011 letter] to the appropriate Judicial Conference committee."⁵⁸ That was the Committee on Financial Disclosure (the "Committee"), which was then chaired by Judge Bobby Baldock.

On **February 14, 2011**, Common Cause sent a letter to William Suter, Clerk of the Supreme Court, questioning a reimbursement Justice Thomas reported on his 2008 Financial Disclosure Report.⁵⁹ It stated that Justice Thomas reported reimbursement from the Federalist Society "for four days in Palm Springs, January 26-29, 2008."⁶⁰ Common Cause questioned whether Justice Thomas properly characterized this as a reimbursement or whether the payment to him was instead a gift.⁶¹ It also questioned whether Justice Thomas was actually in Palm Springs for a Koch Industries event and if some organization or individual other than the Federalist Society had paid his expenses.⁶² A Supreme Court spokesperson had previously said that Justice Thomas spoke at a Federalist Society event and "then dropped by one of the separate Koch meeting

⁵⁸ Id.

⁵⁹ Exhibit 2.C, Letter from Bob Edgar, President & CEO of Common Cause, to William Suter, Clerk of the U.S. Sup. Ct. (Feb. 14, 2011), <https://www.commoncause.org/resource/letter-to-the-clerk-of-the-supreme-court/>.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

sessions" but "was not a participant."⁶³ Common Cause stated that, when asked, Federalist Society staff could not recall an event that corresponded with the dates on Justice Thomas' Financial Disclosure Report.⁶⁴ Common Cause noted that Koch Industries had a history of holding its semi-annual strategy and fundraising session in Palm Springs.⁶⁵

On **March 15, 2011**, the Judicial Conference met.⁶⁶ Its Report of the meeting concerning the Committee's activities did not include any reference to the allegations concerning Justice Thomas in Common Cause's letters.⁶⁷ The Committee made no reference to any matters concerning Justice Thomas in its Report to the Judicial Conference.⁶⁸

On **June 18, 2011**, the New York Times published an article regarding Justice Thomas' association with Harlan Crow.⁶⁹ The

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ See JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (Mar. 15, 2011), <https://www.uscourts.gov/sites/default/files/2011-03.pdf>.

⁶⁷ See id. at 16.

⁶⁸ See COMM. ON FIN. DISCLOSURE, REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON FINANCIAL DISCLOSURE (Mar. 2011), which is now available to the public upon request to the Administrative Office of the United States Courts.

⁶⁹ 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>.

article noted that Mr. Crow had recently financed a museum in Pin Point, Georgia Justice Thomas' birthplace.⁷⁰ It also stated that "[t]ravel records for Mr. Crow's planes and yacht . . . suggest[ed] that Justice Thomas may have used them in recent years."⁷¹ However, there were not corresponding reports of any travel on Mr. Crow's plane or yacht in Justice Thomas' Financial Disclosure Reports.⁷²

On **September 13, 2011**, Common Cause and Alliance for Justice sent a letter to Mr. Duff noting the allegations in the June 18, 2011 New York Times article.⁷³ They also referenced Common Cause's January 21, 2011 letter on Justice Thomas' failure to report properly his wife's sources of income.⁷⁴ Common Cause "request[ed] that the Judicial Conference make a public determination as to whether Justice Thomas' failure to report his wife's income, and or failing to disclose travel reimbursements" established "'reasonable cause' under [§ 13106]" to "refer the matter to the Department of Justice."⁷⁵

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Letter from Bob Edgar, President & CEO of Common Cause and Nan Aron, President of All. for Just., to James Duff, Dir. of Admin. Off. of the U.S. Cts. (Sept. 13, 2011), <https://web.archive.org/web/20130128054142/https://www.commoncause.org/site/apps/nlnet/content2.aspx?c=dkLNK1MQIwG&b=4773617&ct=11216445>, included in Exhibit 3.

⁷⁴ Id.

⁷⁵ Id.

The Judicial Conference met on September 13, 2011.⁷⁶ Its report of the meeting did not include any reference to: (1) the allegations raised in Common Cause's January 21, 2011 letter, Common Cause's February 14, 2011 letter to the Clerk of the Supreme Court, Common Cause and Alliance for Justice's September 13, 2011 letter, or the June 2011 New York Times article; or (2) any Committee or Conference activity related to those allegations.⁷⁷ The Committee made no reference to matters concerning Justice Thomas in its report to the Judicial Conference for the September 13, 2011 meeting.⁷⁸

On **September 29, 2011**, members of the House of Representatives sent Mr. Duff a letter regarding Justice Thomas' failure to disclose his wife's employment with the Heritage Foundation and the allegations in the June 18, 2011 New York Times article.⁷⁹ The letter urged the Judicial Conference to "refer the matter . . . to the Department of Justice."⁸⁰

⁷⁶ See JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (Sept. 13, 2011), <https://www.uscourts.gov/sites/default/files/2011-09.pdf>.

⁷⁷ See id.

⁷⁸ See COMM. ON FIN. DISCLOSURE, REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON FINANCIAL DISCLOSURE (Sept. 2011).

⁷⁹ Letter from Rep. Louise M. Slaughter et al. to James C. Duff, Sec'y to the Jud. Conf. of the U.S. (Sept. 29, 2011), <https://justfacts.votesmart.org/public-statement/643438/letter-to-james-c-duff-secretary-to-the-judicial-conference-of-the-united-states>, included in Exhibit 3.

⁸⁰ Id.

On **October 5, 2011**, Common Cause and Alliance for Justice sent another letter to Mr. Duff and George Reynolds, counsel for the Committee.⁸¹ They stated that after sending their September 13, 2011 letter they had learned two new facts.⁸² First, "Justice Thomas correctly disclosed his wife's income for as many as ten years before he began to file inaccurate disclosure forms."⁸³ They expressed their view that this information "call[ed] into question Justice Thomas' explanation that his omissions were due to a misunderstanding of the filing instructions."⁸⁴ Second, they had discovered that Mrs. Thomas' income for the years that Justice Thomas failed to report her employment exceed \$1.6 million.⁸⁵ Once again, they asked that the Judicial Conference make a public determination of whether there was reasonable cause to "refer the matter to the Department of Justice."⁸⁶

On **October 14, 2011**, Jill Sayenga, Acting Director of the Administrative Office of the United States Courts, responded to

⁸¹ Letter from Nan Aron, President of All. for Just., and Bob Edgar, President & CEO of Common Cause, to James Duff, Dir. of Admin. Off. of the U.S. Cts., and George Reynolds, Counsel for Comm. on Fin. Disclosure (Oct. 5, 2011), <https://www.commoncause.org/wp-content/uploads/2018/03/thomas-non-disclosure.pdf>, included in Exhibit 3.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

the September 29, 2011 letter from the members of Congress, stating that she had "forwarded [their] letter to the [Committee]." ⁸⁷ On October 14, 2011, Ms. Sayenga also responded to Common Cause and Alliance for Justice's October 5, 2011 letter, writing that she had "forwarded [their] letter to the [Committee]." ⁸⁸

On **November 18, 2011**, 52 Members of the House of Representatives wrote to Chief Justice Roberts, as Presiding Officer of the Judicial Conference. ⁸⁹ They advised him that since sending their September 29, 2011 letter they had learned from Common Cause and Alliance for Justice that Justice Thomas accurately included his wife's income on his Financial Disclosure Reports "for as many as 10 years" before he stopped reporting it. ⁹⁰ This, they asserted, made it "very difficult for Justice Thomas to make a credible argument that he understood the filing instructions for ten years but then misunderstood them for the next thirteen years." ⁹¹ The members of Congress reiterated their

⁸⁷ Letter from Jill C. Sayenga, Acting Dir. of Admin. Off. of the U.S. Cts., to Rep. Louise M. Slaughter et al. (Oct. 14, 2011), included in Exhibit 3.

⁸⁸ Exhibit 2.D, Letter from Jill C. Sayenga, Acting Dir. of Admin. Off. of the U.S. Cts., to Bob Edgar, President & CEO of Common Cause, and Nan Aron, President of All. for Just. (Oct. 14, 2011).

⁸⁹ Letter from Rep. Louise M. Slaughter et al. to Chief Just. John Roberts, Presiding Officer of the Jud. Conf. of the U.S. (Nov. 18, 2011), included in Exhibit 3.

⁹⁰ Id.

⁹¹ Id.

request that the Conference review the facts and refer Justice Thomas to the Attorney General.⁹²

On **December 22, 2011**, Judge Thomas Hogan, who had recently become the Acting Director of the Administrative Office and Secretary of the Judicial Conference, responded to the members of Congress' November 18, 2011 letter, advising that their letter had been "referred" to him.⁹³ Judge Hogan stated that he had "forwarded [their] letter to the [Committee]."⁹⁴

In the Fall of 2011, I saw an article in the media reporting that a letter had recently been sent to the Judicial Conference alleging that Justice Thomas had failed to include for several years in his Financial Disclosure Reports the required information that his wife had been employed by the Heritage Foundation. Not then knowing of the Judicial Conference's statutory duty to refer matters to the Attorney General in certain circumstances, I wondered why the letter was sent to the Conference.

On about January 1, 2012, I read an article about Chief Justice Roberts' 2011 Year-End Report on the Federal Judiciary.⁹⁵

⁹² Id.

⁹³ Exhibit 2.E, Letter from Hon. Thomas F. Hogan, Sec'y of the Jud. Conf. of the U.S., to Rep. Louise M. Slaughter et al. (Dec. 22, 2011).

⁹⁴ Id.

⁹⁵ See generally CHIEF JUST. JOHN G. ROBERTS, JR., 2011 YEAR-END REPORT ON THE FEDERAL JUDICIARY (2011) <https://www.supremecourt.gov/public/info/year-end/2011year-endreport.pdf>.

In that Report, the Chief Justice explained his view that a Code of Conduct for Supreme Court Justices was not necessary or appropriate in part because the Justices, as well as other federal judges, file a statutorily required Financial Disclosure Report annually.⁹⁶ He also noted that Justices are subject to 28 U.S.C. § 455, the statute requiring a Justice or Judge's recusal in certain circumstances, but asserted that the principles of recusal "can differ due to the unique circumstances of the Supreme Court."⁹⁷ The Chief Justice concluded that his colleagues were "jurists of exceptional integrity and experience" and, therefore, a Code of Conduct applicable to them was not needed.⁹⁸

In February 2012, I found on the internet some, but not all, of the series of letters, beginning in January 2011, to the Judicial Conference from members of Congress, Common Cause, and Alliance for Justice that raised questions concerning whether Justice Thomas had repeatedly, knowingly, and willfully failed to disclose, or misrepresented information required to be included in, his Financial Disclosure Reports. As indicated earlier, some of the letters urged the Conference to refer the matter to the Attorney General pursuant to 5 U.S.C. § 13106. I then realized that I had not received the letters, or seen any reference to them

⁹⁶ Id. at 5-7.

⁹⁷ Id. at 7.

⁹⁸ Id. at 10.

or the issues that they raised, in the materials for the March 13, 2012 meeting of the Judicial Conference.

This concerned me because the issues raised by the letters were serious. Pursuant to established Conference policies and procedures, if the Committee had considered the letters, my colleagues on the Judicial Conference and I should have been informed of them in its Reports to the Conference, even if the Committee was not recommending any action by the Conference. Such information would have afforded me and the other members of the Conference the opportunity to discuss and decide whether there was reasonable cause to believe Justice Thomas had willfully violated the Act and, if so, to make the required referral to the Attorney General.

Therefore, on February 15, 2012, I spoke to Judge Hogan, the Acting Director of the Administrative Office of United States Courts and as such Secretary to the Judicial Conference.⁹⁹ I inquired about the status of the letters. I also expressed concern that the members of the Conference had not been given notice of the letters and the opportunity to have the issues they raised put on the agenda for discussion and decision. I indicated that I might ask that the matter be discussed at the Conference's March 13,

⁹⁹ The date of this discussion and many of the following facts are included in August 29, 2012 letters I sent to Judge Hogan and Judge David Sentelle, the Chair of the Executive Committee of the Judicial Conference, included in Exhibit 3.

2012 meeting. Judge Hogan thanked me for reminding him of this issue, told me that the matter was not ripe for possible discussion at the March 13, 2012 meeting of the Conference because he had not received a response to the reference of the September 29, 2011 letter from members of Congress to the Committee. He said he would speak to the new Chair of the Committee, Judge Joseph McKinley,¹⁰⁰ and then to me again.

Judge Hogan subsequently told me that the Committee had decided that referring Justice Thomas to the Attorney General was not justified. He said that he had received a February 23, 2012 letter from Judge McKinley explaining the Committee's process and reasoning, which he would send me. He encouraged me to consider the letter and to speak to Judge McKinley as well.

I read the letter and spoke to Judge McKinley. I expressed to him my concern that the members of the Conference had not been informed of the issues concerning Justice Thomas and provided an opportunity to discuss the matter. I thought an opportunity was warranted because these issues were serious and important. Judge McKinley told me that the Committee's staff had not included the matters in the March 2011, September 2011, or March 2012 Committee reports to the Conference because the staff felt they were "routine." He also informed me, however, that issues of whether

¹⁰⁰ In 2012, Judge McKinley succeeded Judge Bobby Baldock as the Chair of the Financial Disclosure Committee.

there had been a willful failure to include required information in a Financial Disclosure Report were very rare, and the matter involving Justice Thomas was evidently the first and only time that members of Congress or anyone else had requested that the Conference refer a matter to the Attorney General pursuant to the statute.

I subsequently told Judge Hogan that while I appreciated the opportunity to speak to with Judge McKinley, our talk had not eliminated my concerns and that I might ask that the matter be placed on the Discussion Calendar for the September 2012 meeting of the Conference. Judge Hogan told me that he would be requesting a revised letter from the Committee.

In reviewing the materials for the September 11, 2012 meeting of the Conference, I saw that again no reference was made to issues concerning Justice Thomas in the Committee's report or elsewhere. I spoke again to Judge Hogan, who informed me that he had received an April 17, 2012 letter from Judge McKinley and, on April 30, 2012,¹⁰¹ written to members of Congress that the Committee had determined that a reference to the Attorney General was not justified. Judge Hogan also told me that he had received no response to his letter to Congress.

¹⁰¹ Letter from Hon. Thomas F. Hogan, Sec'y of the Jud. Conf. of the U.S., to Rep. Louise M. Slaughter et al. (Apr. 30, 2012), included in Exhibit 3.

Nevertheless, I believed that the Conference should discuss at its September 12, 2012 meeting whether there was reasonable cause to refer Justice Thomas to the Attorney General. I communicated this to Judge Hogan.

The proposed agenda for Conference meetings was developed by the Conference Executive Committee. Chief Justice Roberts had appointed as Chair of the Executive Committee David Sentelle, the Chief Judge of the District of Columbia Circuit. The Executive Committee developed and distributed proposed Consent and Discussion Calendars concerning committee reports. Reports on the Consent Calendar could and would not be discussed by the Conference. Committee reports were almost always on the proposed Consent Calendar. The Committee Report for the September 2012 meeting was placed on the Consent Calendar on the Executive Committee's proposed agenda for the September 11, 2012 meeting of the Conference.

I still wanted the Conference to discuss the range of issues raised by the letters sent to it concerning Justice Thomas, including the fact that, contrary to Conference requirements, members were not informed of those letters in the Reports of the Committee. I also hoped for an opportunity to discuss with my colleagues the merits of whether there was reasonable cause to believe Justice Thomas had repeatedly willfully failed to disclose

that his wife was employed by the Heritage Foundation, and falsified or omitted other information required to be disclosed.

I spoke to Judge Sentelle about this and, on August 8, 2012, sent him a letter stating:

As we discussed, I am writing to request that the Executive Committee put on the Discussion Calendar for the September 11, 2012 meeting of the Judicial Conference of the United States the process by which the Conference should discharge its duty, under 5 U.S.C. [§ 13106(b)], to determine whether there is reasonable cause to believe that a judge or justice has willfully failed to disclose, or willfully misrepresented, information required to be included in an Annual Financial Disclosure Report and, therefore, whether to refer the matter to the Attorney General. My concerns about the present process for discharging the Conference's statutory duties are prompted by the manner in which issues have been addressed on behalf of the Conference in response to a series of letters, beginning in January, 2011, from more than 50 members of Congress and several organizations, regarding Financial Disclosure Reports filed by Justice Clarence Thomas.

The letters allege primarily that the Justice willfully omitted certain information from his Financial Disclosure Reports for many years and request that the Conference refer the matter to the Attorney General pursuant to [§ 13106(b)]. The letters were referred to the Committee on Financial Disclosure. The members of the Conference, however, have not been informed of the letters or of the issues that they raise which require resolution under the statute. Nor have any of the four reports to the Conference of the Committee on Financial Disclosure since January, 2011 mentioned the letters, the issues they raise, or the Committee's position on whether a reference to the Attorney General is required under the statute.

I understand that the Conference often acts through its Committees. However, their reports are regularly relied upon to inform members of the Conference of the

material activities of a Committee in order to provide an opportunity for members of the Conference to put a matter on the Discussion Calendar and to request a decision concerning it by the full Conference. It is particularly important that this practice be followed where the matter at issue involves a statutory duty of the Conference.

I believe that the matter involving Justice Thomas raises issues that the Judicial Conference should discuss promptly. These issues include, but may not be limited to, whether the rare questions that arise under [§ 13106(b)] should continue to be delegated to the Committee on Financial Disclosure and, if so, whether that Committee should be required to report the existence of the issue and the proposed resolution of it to the full Conference so there can be an opportunity for discussion and possibly decision by the full Conference before the duty imposed by [§ 13106(b)] is considered discharged. I, therefore, request that this matter be put on the Discussion Calendar for the September 11, 2012 meeting.

I will, of course, be pleased to speak to your colleagues on the Executive Committee and you about this request.¹⁰²

Judge Sentelle subsequently told me that the Executive Committee had decided to deny my request to add the matters concerning Justice Thomas to the agenda for the September 2012 Conference meeting. He also sent me a copy of an August 21, 2012 letter he had sent to Judge McKinley requesting the views of the Committee on the issues raised in my August 8, 2012 letter.¹⁰³ I

¹⁰² Letter from Hon. Mark L. Wolf to Hon. David Bryan Sentelle, Chair of the Exec. Comm. of the Jud. Conf. of the U.S. (Aug. 8, 2012), included in Exhibit 3.

¹⁰³ Letter from Hon. David Bryan Sentelle, Chair of the Exec. Comm. of the Jud. Conf. of the U.S., to Hon. Joseph H. McKinley, Chair of the Comm. on Fin. Disclosure (Aug. 21, 2012), included in Exhibit 3.

had discussed those issues with Judge McKinley in February 2012, knew he had discussed them with Judge Hogan, and assumed he had discussed them with his colleagues on the Committee. Therefore, I assumed he would be prepared to discuss the issues fully at the September 11, 2012 Conference meeting.

As the Executive Committee did not grant my request to place matters relating to Justice Thomas on the agenda for that meeting, I exercised my right to move the Committee Report from the Consent Calendar to the Discussion Calendar in an August 29, 2012 letter to Judge Hogan.¹⁰⁴ In addition, I reiterated and amplified the concerns I expressed in my August 8, 2012 letter to Judge Sentelle in an August 29, 2012 letter to Judge Sentelle.¹⁰⁵

On September 8, 2012, I sent a memorandum to the members of the Judicial Conference.¹⁰⁶ Attached to this memorandum, among other things, were my August 8, 2012 letter to Judge Sentelle, my

¹⁰⁴ Letter from Hon. Mark L. Wolf to Hon. Thomas F. Hogan, Sec'y of the Jud. Conf. of the U.S. (Aug. 29, 2012), included in Exhibit 3.

¹⁰⁵ Letter from Hon. Mark L. Wolf to Hon. David Bryan Sentelle, Chair of the Exec. Comm. of the Jud. Conf. of the U.S. (Aug. 29, 2012), included in Exhibit 3.

¹⁰⁶ Exhibit 3, Memorandum of Hon. Mark L. Wolf to Members of the Jud. Conf. of the U.S. (Sept. 8, 2012) (all attachments are public documents or written by me, and the non-public Judicial Conference documents attached to the original are omitted).

August 29, 2012 letters to Judge Sentelle and Judge Hogan,¹⁰⁷ and the November 18, 2011 letter to Chief Justice Roberts as Chair of the Judicial Conference, from 52 members of Congress. As described earlier, the November 18, 2011 letter referenced prior letters recounting Justice Thomas' failure to disclose his wife's employment for many years, including by the Heritage Foundation and Hillsdale College, after having disclosed her employment in prior reports.¹⁰⁸ As also explained earlier, in that letter, the members of Congress asserted that the Judicial Conference was required to refer the matter to the Attorney General.¹⁰⁹

I wrote in my memorandum that my concerns arose out of the manner in which the series of letters from many members of Congress and others concerning Justice Thomas, involving a statutory duty to refer a Justice or judge to the Attorney General if there was reasonable cause to believe that he or she had willfully falsified or failed to report information required to be included in his Financial Disclosure Reports, had evidently been decided by the Committee without any notice of the issues to members of the Conference. I noted that members of the Conference might not know,

¹⁰⁷ Letter from Hon. Mark L. Wolf to Hon. David Bryan Sentelle, supra n. 102, included in Exhibit 3; Letter from Hon. Mark L. Wolf to Hon. David Bryan Sentelle, supra n. 105, included in Exhibit 3.

¹⁰⁸ Letter from Rep. Louise M. Slaughter et al. to Chief Justice John Roberts, supra n. 89, included in Exhibit 3.

¹⁰⁹ Id.

as I did not know until I became involved in this matter, of that duty. I expressed my view that "[b]ecause of the series of material omissions [in the Committee Reports], members of the Conference have been deprived of the opportunity to decide whether to exercise their right to have the matter [of whether a referral to the Attorney General was required] placed on the Conference agenda for discussion and possible decision by the full Conference."¹¹⁰

I acknowledged that the Executive Committee had solicited the views of the Committee on the issues raised in my August 8, 2012 letter to Judge Sentelle.¹¹¹ As indicated earlier, I expected the Committee's views would be explained and discussed at the September 11, 2012 Conference meeting. I concluded my memorandum by saying that "I appreciate your consideration of this matter and will look forward to discussing it with you."¹¹²

The September 11, 2012 meeting of the Judicial Conference was not open to the public. Judge McKinley presented the Committee Report, which like the other three since the January 2011 letter from Common Cause made no reference to the information the Judicial Conference had been provided concerning Justice Thomas or the multiple requests that the Judicial Conference refer him to the

¹¹⁰ Exhibit 3, Memorandum of Hon. Mark L. Wolf to Members of the Jud. Conf. of the U.S., supra n. 106.

¹¹¹ Id.

¹¹² Id.

Attorney General. I do not recall Judge McKinley mentioning matters concerning Justice Thomas in his oral remarks concerning the Report.

I then moved to disapprove the Committee Report and the motion was seconded. After I had spoken for a few minutes to explain my concerns in the hope of generating a discussion of what I believed - and still believe - were serious issues, the Chief Justice asked if I was finished. I said I was not, but would be soon. I concluded a few minutes later. The Chief Justice immediately called on Judge Sentelle, who moved to postpone consideration of my motion until the Committee reported back to the Conference on the issues I raised. Judge Sentelle's motion was seconded, promptly voted upon, and passed. That ended the opportunity to have any discussion of the issues I had raised at the September 2012 meeting, which, as at least Judge Sentelle and Judge Hogan knew, would be my last because my three-year term as a member of the Conference was ending.

The public Report of the Proceedings of the September 11, 2012 Judicial Conference meeting concerning the Committee states in pertinent part:

DISCHARGE OF STATUTORY DUTY UNDER 5 U.S.C. [§ 13106(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. [§ 13106(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 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. [§ 13106(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.¹¹³

This Report made no reference to Justice Thomas or the issues I had raised concerning whether the Judicial Conference was required to refer him to the Attorney General. Significantly, it misstated the question the Judicial Conference was, by statute, empowered and obligated to decide. It stated that its statutory duty under § 13106(b) is "to determine whether an individual has willfully falsified or failed to include required information in [his or her] report." As explained earlier, the statute, for good reasons, does not make judges the ultimate arbiters of whether a fellow Justice or judge should be prosecuted or sued for violating the law. Rather, the role of the Judicial Conference is limited to determining whether there is "reasonable cause" to believe a violation has occurred. If so, the Judicial Conference must refer the matter to the Attorney General.

¹¹³ JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (Sept. 11, 2012) (emphasis added), <https://www.uscourts.gov/sites/default/files/2012-09.pdf>.

My term as a member of the Judicial Conference did end on December 31, 2012. I was subsequently invited to explain my concerns to the Committee and did so in a teleconference on, I believe, January 8 or 9, 2013.

On January 29, 2013, I was copied on an email to the members of the Judicial Conference transmitting a January 28, 2013 letter from Judge McKinley to Judge Sentelle, with attachments, marked "CONFIDENTIAL." The letter and attachments related to the issues I raised.

The Committee submitted a Report for the March 2013 Judicial Conference meeting. It states that I "sought to have the Conference discuss how it discharges its statutory duty under 5 U.S.C. [§ 13106(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 a report."¹¹⁴ As explained earlier, determining whether a willful violation has occurred is not the question the statute authorizes the Judicial Conference to decide. Rather, it is the Conference's duty to decide if there is reasonable cause to believe a willful violation occurred and, if so, to refer the Justice or judge to the Attorney General.

The Committee Report for the March 2013 Conference meeting

¹¹⁴ COMM. ON FIN. DISCLOSURE, REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON FINANCIAL DISCLOSURE 4 (Mar. 2013) (emphasis added).

also stated that in the future the Committee "will report to the Conference the number and nature of any written public allegations of willful misconduct received and the action taken with respect to such allegations."¹¹⁵

The Report of the Proceedings of the Judicial Conference on March 12, 2013, mentions no discussion of matters relating to Justice Thomas or the issues concerning how questions regarding possible referrals to the Attorney General had been or would be addressed.¹¹⁶

VI. CONCLUSION

In 1861, Lord Acton less famously wrote, "[e]very thing secret degenerates, even the administration of justice"¹¹⁷ I have explained my view that the Financial Disclosure statutes enacted by Congress and the President, as applied to Justices and judges, serve a vital public purpose. They require transparency concerning the financial affairs of Justices and Judges in part to deter them from accepting payments and other valuable benefits that have the purpose or effect of compromising their impartiality in deciding

¹¹⁵ Id. at 7.

¹¹⁶ See JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (Mar. 12, 2013), <https://www.uscourts.gov/sites/default/files/2013-03.pdf>.

¹¹⁷ JOHN EMERICH EDWARD DALBERG-ACTON, LORD ACTON AND HIS CIRCLE 166 (Abbot Gasquet ed., 1st ed., 1906); United States v. Salemme, 91 F. Supp. 2d 141, 148 (D. Mass. 1999).

cases, and to help assure that they administer justice equally to the poor and to the rich.

When properly implemented and enforced, those statutes should also provide litigants and the public with some of the information necessary to develop informed views concerning whether a Justice or judge has a statutory duty not to participate in a particular case because he or she is actually biased, prejudiced, or personally interested in a case, or because a reasonable person could question his or her impartiality.¹¹⁸

Public confidence in the integrity of Justices and judges is crucial in our democracy. Judges do not have armies to enforce our orders.¹¹⁹ Rather, we rely on the willingness of the American people to accept peacefully even deeply disappointing decisions that affect their fates and fortunes. They will do that only if they have the faith that they are principled decisions, rendered by impartial judges who have not been improperly influenced financially or in any other way.

If properly implemented and enforced the current laws should encourage and sustain public confidence in the integrity of the judiciary. They provide a role for the Judicial Conference by

¹¹⁸ 28 U.S.C. § 455 (a), (b).

¹¹⁹ THE FEDERALIST No. 78 (Alexander Hamilton) ("The judiciary . . . has no influence over either the sword or the purse . . . and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.").

giving it the opportunity to decide whether there is reasonable cause to believe a Justice or judge has willfully failed to accurately and completely disclose certain relevant information. However, it is challenging for judges - like other human beings - to evaluate impartially the truthfulness of colleagues, who may at times be friends, and understandably difficult for reasonable members of the public to believe they are doing so. Therefore, in enacting the Financial Disclosure statutes, Congress and the President only empowered the Judicial Conference to decide whether there is reasonable cause to believe a willful violation has occurred. If so, the Conference must refer the Justice or judge to the Attorney General to decide whether investigation and prosecution or a civil suit is justified.

The manner in which the Judicial Conference has interpreted and implemented the Financial Disclosure statutes has been shrouded in secrecy. The concerns I expressed about the way in which the Judicial Conference was discharging its duty to decide if a referral to the Attorney General was required were stated on the assumption that the Committee was improperly keeping important information from the members of the Conference and thus depriving them of the opportunity to make the reasonable cause determination themselves.

In preparing this testimony, I reviewed more 2011 letters to the Conference and the Supreme Court concerning Justice Thomas

than I had found in 2012. I have also read materials available to me as a judge but not to the public. I now wonder if any of the letters sent to the Conference were discussed in 2011 by the members of the Committee to which they were referred.

Additional issues have now arisen concerning whether Justice Thomas has since 2012 willfully failed to make required disclosures.¹²⁰ The Judicial Conference is again called upon to decide if there is reasonable cause to believe that occurred and, if there is, to refer Justice Thomas to the Attorney General.

You, as members of the Senate, have a legitimate interest in examining how the Judicial Conference in 2012 interpreted and discharged its duties as you consider whether existing legislation concerning financial disclosures should be strengthened and supplemented, and whether the recusal statute that applies to Justices, 18 U.S.C. § 455, is adequate and being properly implemented as well. These important issues deserve thoughtful attention by Congress and by the Judicial Conference. They involve

¹²⁰ Joshua Kaplan et al., Clarence Thomas and the Billionaire, PROPUBLICA (Apr. 6, 2023, 5:00 AM), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>; Justin Elliott et al., Billionaire Harlan Crow Bought Property from Clarence Thomas. The Justice Didn't Disclose the Deal., PROPUBLICA (Apr. 13, 2:20 PM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus>; Joshua Kaplan et al., Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition., PROPUBLICA (May 4, 2023, 6:00 AM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus>.

considerations of comity among the two branches of government. They require weighing legitimate interests served by transparency against legitimate interests served by confidentiality.¹²¹ They demand respect for the American people whose confidence in the integrity of the judiciary is necessary to sustain our democracy.

I hope that this hearing and my testimony will prove to be part of a constructive colloquy between two branches of government that share responsibility for assuring the integrity of the judiciary and the public confidence in it.¹²²

¹²¹ See generally Edward H. Levi, *Government Confidentiality and Individual Privacy*, in *RESTORING JUSTICE: THE SPEECHES OF ATTORNEY GENERAL EDWARD H. LEVI* 125-39 (Jack Fuller ed., 2013).

¹²² At times, the Congressional oversight and the potential for legislation impacting the judiciary has contributed to the Judicial Conference taking action that may diminish the need for statutory reform. For example, the Judicial Conference has recently clarified its view on the distinction between "personal hospitality," which the Act does not require to be reported, and a "gift" which must be disclosed. Letter from Hon. Roslynn R. Mauskopf, Dir. Admin. Off. of the U.S. Cts., to Sen. Sheldon Whitehouse (Mar. 23, 2023), [https://www.whitehouse.senate.gov/imo/media/doc/Response%20to%20Senator%20Whitehouse's%20Letter%20of%202-21-2023%20\(Final\).pdf](https://www.whitehouse.senate.gov/imo/media/doc/Response%20to%20Senator%20Whitehouse's%20Letter%20of%202-21-2023%20(Final).pdf); see also COMM. ON FIN. DISCLOSURE & ADMIN. OFF. OF THE U.S. CTS., *FILING INSTRUCTIONS FOR JUDICIAL OFFICERS AND EMPLOYEES* (AO-10) 25 (Mar. 2023), https://www.uscourts.gov/sites/default/files/financial_disclosure_filing_instructions.pdf.

Exhibit 1

Judge Mark L. Wolf

Mark L. Wolf was appointed to the United States District Court for the District of Massachusetts in 1985, served as its Chief Judge from 2006 through 2012, and is now a Senior Judge. He has previously served as a member of the Judicial Conference of the United States and Chair of the Committee of District Judges on the Judicial Conference, and on the Judicial Conference Committees on Criminal Law, the Federal Rules of Criminal Procedure, and Codes of Conduct.

Judge Wolf also previously served in the Department of Justice as a Special Assistant to the Deputy Attorney General of the United States (1974) and the Attorney General of the United States (1975-1977), and as Deputy United States Attorney for the District of Massachusetts and Chief of the Public Corruption unit in that office (1981-1985). He was also in private practice in Washington, D.C. (1971-1974) and in Boston (1977-1981).

Judge Wolf is the Chair of Integrity Initiatives International, an international NGO whose mission is to strengthen the enforcement of criminal laws to punish and deter leaders who are corrupt and regularly violate human rights. He is also the Chair Emeritus of the John William Ward Public Service Fellowship, the Chairman Emeritus of the Albert Schweitzer Fellowship, and the past Chair of the Judge David S. Nelson Fellowship.

Among other honors, Judge Wolf received a Certificate of Appreciation from President Gerald Ford for his work in the resettlement of Indochinese refugees (1976), the Attorney General's Distinguished Service Award (1984), an honorary degree from Boston Latin School (1990), the Boston Bar Association's Citation for Judicial Excellence (2002 and 2007); similar citations from the Boston Chapter of the Federal Bar Association (2009) and the Massachusetts Bar Association (2012); and the International Conference of Chief Justices of the World Mother Teresa Award (2021).

A graduate of Yale College and the Harvard Law School, Judge Wolf has taught courses on the role of the judge in American democracy at the Harvard, Boston College, New England and University of California - Irvine Law Schools. He is or has recently been: an Adjunct Lecturer in Public Policy at the Harvard Kennedy School, where he has taught a seminar on Combatting Corruption Internationally; a Senior Fellow of the Harvard Carr Center for Human Rights; a member of the Council on Foreign Relations; and a Distinguished Non-Resident Fellow of the Woodrow Wilson International Center for Scholars. He has spoken on the role of the judge in a democracy, human rights issues, and combatting corruption in many countries, including Russia, China, Ukraine, Turkey, the Czech Republic, Slovakia, Slovenia, Romania, Hungary, Egypt, Cyprus, Panama, Colombia, Mexico, Norway, the United Kingdom, the Netherlands, Belgium and at the Vatican.

May 2023

Exhibit 2

Exhibit 2.A



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

January 24, 2011

Mr. Bob Edgar
President and CEO
Arn H. Pearson, Esq.
Vice President for Programs
Common Cause
1133 19th Street, N.W., 9th Floor
Washington, D.C. 20036

Dear Messrs. Edgar and Pearson:

Thank you for your letter of January 21, 2011, which I received late Friday afternoon by email concerning Justice Clarence Thomas' Financial Disclosure Reports. We brought the matter to Justice Thomas' attention and he immediately amended his reports. I have forwarded your letter to the appropriate Judicial Conference committee.

Sincerely,

A handwritten signature in black ink that reads "James C. Duff". The signature is written in a cursive style.

James C. Duff
Director

Exhibit 2.B

January 21, 2011

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

SELF INITIATED
AMENDMENT

Re: Calendar Year 2009 Financial Disclosure Report

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my report to add "2009 – Hillsdale College" in Part III B.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12:22
COMMITTEE ON FINANCIAL
DISCLOSURE OFFICE

January 21, 2011

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

SELF INITIATED
AMENDMENT

Re: Calendar Year 2008 Financial Disclosure Report

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my report to add "January-October, 2008 – The Heritage Foundation," and "October-December, 2008 – Hillsdale College" in Part III B.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12: 22
FINANCIAL
DISCLOSURE OFFICE

January 21, 2011

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

SELF INITIATED
AMENDMENT

Re: Calendar Year 2007 Financial Disclosure Report

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my report to add "2007 – The Heritage Foundation" in Part III B.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12: 22
FINANCIAL
DISCLOSURE OFFICE

January 21, 2011

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

SELF INITIATED
AMENDMENT

Re: Calendar Year 2006 Financial Disclosure Report

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my report to add "2006 – The Heritage Foundation" in Part III B.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12: 22
FINANCIAL
OFFICE

January 21, 2011

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

SELF INITIATED
AMENDMENT

Re: Calendar Year 2005 Financial Disclosure Report

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my report to add "2005 – The Heritage Foundation" in Part III B.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12: 22
U.S. FINANCIAL
DISCLOSURE OFFICE

January 21, 2011

SELF INITIATED
AMENDMENT

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

Re: Calendar Year 2004 Financial Disclosure Report

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my report to add "2004 – The Heritage Foundation" in Part III B.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12: 22
DISC FINANCIAL
OFFICE

January 21, 2011

Committee on Financial Disclosure
One Columbus Circle, NE, Suite 2-301
Washington, DC 20544

SELF INITIATED
AMENDMENT

Re: Calendar Year 1990-2003 and Nomination Financial Disclosure Reports

To Whom it May Concern:

It has come to my attention that information regarding my spouse's employment required in Part III B. of my financial disclosure report was inadvertently omitted due to a misunderstanding of the filing instructions. Please amend my reports to reflect my spouse's employment as noted below:

CT January 1988⁹ - January 1993 - U.S. Department of Labor

January 1993 - January 1995 - U.S. House of Representatives, House Republican Conference (Rep. Dick Armey)

January 1995 - December 1998 - U.S. House of Representatives, House Majority Leader (Rep. Dick Armey)

December 1998 - December 2003 - The Heritage Foundation.

Sincerely,



Clarence Thomas

RECEIVED
2011 JAN 22 P 12: 22
FINANCIAL
DISCLOSURE OFFICE

Exhibit 2.C



Letter to the Clerk of the Supreme Court

02.14.2011

William Suter

Clerk of the Supreme Court

Supreme Court of the United States

One First Street, NE

Washington, DC 20543

Dear Mr. Suter,

Common Cause submitted a letter to the Department of Justice on January 19th raising questions about whether Justices Thomas or Scalia had attended closed-door strategy and fundraising sessions sponsored by Koch Industries. According to the Los Angeles Times, the Court's response was as follows:

Supreme Court spokesperson Kathy Arberg said that Justices Thomas and Scalia had traveled to Indian Wells, California to address a Federalist Society dinner sponsored by Charles and Elizabeth Koch but did not actively participate in the separate Koch strategy and policy meetings. Justice Scalia spoke about international law at the January 2007 meeting of the quasi-academic Federalist Society and did not attend the separate political and strategy meeting hosted by the Kochs, she said. Justice Thomas spoke to the Federalists at the same location in January 2008 about his recently published book. Thomas then dropped by one of the separate Koch meeting sessions. "It was a brief drop by," Arberg said. "He was not a participant."

Unfortunately, the Court's response raises more questions than it answers.

On his financial disclosure forms for 2008, Justice Thomas reported reimbursement from the Federalist Society for "transportation/meals and accommodations" for four days in Palm

Springs, January 26-29, 2008.

This is problematic when matched against the Court's response. If Justice Thomas received a four-day all-expenses-paid trip to Palm Springs in January 2008 just to give a speech at a dinner, the bulk of his expenses should have been reported as a gift. Under the Ethics in Government Act, a "gift" covers any payment or any thing of value "unless consideration of equal or greater value is received by the donor." 5 U.S.C App. ♦ 109(5). Receiving three nights' accommodations plus meals in a popular resort area far exceeds the value of speaking at a dinner, and is inappropriate for a "reimbursement."

Furthermore, a review of the Federalist Society's extensive on-line archives produces no record of any Federalist Society event in Palm Springs on those dates. When Common Cause called the Federalist Society to inquire further, staff members could not recall any corresponding event.

With all due respect, if Justice Thomas's trip to Palm Springs on January 26-29, 2008 was not a gift from the Federalist Society, it is incumbent on the Court to provide the public with a full accounting of what events Justice Thomas was being reimbursed to attend and whether he stayed in the same resort where the Koch Industries conference was held.

Koch Industries has been holding its semi-annual strategy and fundraising sessions in Palm Springs for the past eight years, and Justice Thomas's trip to Palm Springs appears to precisely align with the profile set by this year's 4-day session on the last weekend of January.

Common Cause respectfully requests further clarification on this matter.

Sincerely,

Bob Edgar

President and CEO

Arn H. Pearson, Esq.

Vice President for Programs

cc: Kathleen Arberg

LETTER TO GOVERNMENT OFFICIALS

See More: [JUDICIAL ETHICS](#) [ETHICS & ACCOUNTABILITY](#)

Our Work

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Ensure Fair Districts & Reflective Democracy

Expand Voting Rights & Election Integrity

Promote Free Speech & Accountability in Media

Protect the Constitution, Courts & Other Democracy Reforms

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Common Cause
805 15th Street, NW, Suite 800
Washington, DC 20005



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Exhibit 2.D



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JILL C. SAYENGA
Acting Director

WASHINGTON, D.C. 20544

October 14, 2011

Ms. Nan Aron
President
Alliance for Justice
11 Dupont Circle, 2nd Floor
Washington, DC 20036

Mr. Bob Edgar
President and CEO
Common Cause
1133 19th Street, NW, 9th Floor
Washington, DC 20036

Dear Ms. Aron and Mr. Edgar:

Thank you for your letter of October 5, 2011, to former Administrative Office of the U.S. Courts Director James Duff providing additional information concerning Justice Clarence Thomas' financial disclosure reports. I have forwarded your letter to the Judicial Conference Committee on Financial Disclosure, which is responsible for implementing the disclosure provisions of the Ethics in Government Act and addressing allegations of errors or omissions in the filing of financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill C. Sayenga".

Jill C. Sayenga
Acting Director

Exhibit 2.E



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE THOMAS F. HOGAN
Secretary

December 22, 2011

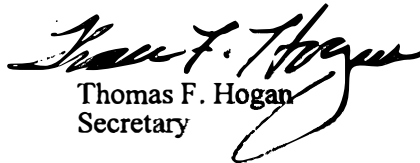
Honorable Louise M. Slaughter
United States House of Representatives
Washington, DC 20515

Dear Representative Slaughter:

I write in response to your letter of November 18, 2011, which has been referred to me in my capacity as Secretary of the Judicial Conference of the United States. I have forwarded your letter to the Judicial Conference Committee on Financial Disclosure, which is responsible for implementing the disclosure provisions of the Ethics in Government Act and addressing allegations of errors or omissions in the filing of financial disclosure reports.

If we may be of other assistance to you, please do not hesitate to contact our Office of Legislative Affairs at (202) 502-1700.

Sincerely,



Thomas F. Hogan
Secretary

Identical Letter Sent to: Honorable Earl Blumenauer

cc: Honorable Robert Andrews	Honorable Barney Frank	Honorable Christopher S. Murphy
Honorable Karen Bass	Honorable Gene Green	Honorable Jerrold Nadler
Honorable Bruce L. Braley	Honorable Raúl M. Grijalva	Honorable John W. Olver
Honorable Kathy Castor	Honorable Alcee L. Hastings	Honorable William L. Owens
Honorable David N. Cicilline	Honorable Maurice D. Hinchey	Honorable Frank Pallone Jr.
Honorable Yvette D. Clarke	Honorable Michael M. Honda	Honorable Chellie Pingree
Honorable James E. Clyburn	Honorable Jesse L. Jackson Jr.	Honorable Jared Polis
Honorable Steve Cohen	Honorable Henry C. "Hank" Johnson Jr.	Honorable Steven R. Rothman
Honorable Gerald E. Connolly	Honorable Barbara Lee	Honorable Janice Schakowsky
Honorable John Conyers Jr.	Honorable John Lewis	Honorable Robert Scott
Honorable Peter A. DeFazio	Honorable Ben Ray Luján	Honorable Jackie Speier
Honorable Theodore E. Deutch	Honorable Carolyn B. Maloney	Honorable Fortney Pete Stark
Honorable Lloyd Doggett	Honorable Jim McDermott	Honorable Betty Sutton
Honorable Donna F. Edwards	Honorable James P. McGovern	Honorable Paul Tonko
Honorable Keith Ellison	Honorable Brad Miller	Honorable Lynn C. Woolsey
Honorable Anna G. Eshoo	Honorable Gwen Moore	Honorable John A. Yarmuth
Honorable Sam Farr	Honorable James P. Moran	
Honorable Bob Filner		

Exhibit 3

From: Honorable Mark Wolf/MAD/01/USCOURTS

To:

[REDACTED]

Cc: [REDACTED]

Date: 09/08/2012 03:49 PM

Subject: Judicial Conference Discussion Calendar Item Concerning the Committee on Financial Disclosure Report

TO: The Members of the Judicial Conference
of the United States

FROM: Chief Judge Mark L. Wolf

DATE: September 8, 2012

RE: Discussion Calendar Agenda Item E-10

I objected to the proposed approval of the Report of the Committee on Financial Disclosure (the "Report") by acclamation and asked that the Report be placed on the Discussion Calendar. At our meeting on September 11, 2012, I will ask that the Report not be approved in its present form and that the Judicial Conference direct that it be promptly amended to comply with the established requirements for reports to the Conference. The background concerning this matter is described in my August 8 and August 28, 2012 letters to David Sentelle, the Chair of the Executive Committee, and the related materials previously distributed to members of the Conference. In essence, my concerns arise out of the manner in which a series of letters from many members of Congress, and others, relating to a statutory duty of the Conference has been addressed without notice to members of the Conference. Since writing my letters I have reviewed the Conference's established standards and procedures, and considered their implications for the issues I have raised. As my views have evolved, and the time for discussion may be short, I am writing to update my letters.

As you know, every judge and justice is required to file annually a Financial Disclosure Report accurately and completely disclosing certain information. See 5 U.S.C. App. 4, §§101(f)(11), 102, 109 (10). You may not know, as I did not know, that 5 U.S.C. App.4 §104(b) provides that "the Judicial Conference . . . shall refer to the Attorney General the name of any individual which [it] has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported."

The practices and procedures of the Judicial Conference are described in "The Judicial Conference of the United States and Its Committees" (October 2011). They include the following. All matters to go before the Judicial Conference are ordinarily considered by a Committee. See §II.A. Such matters include statutory requirements concerning financial disclosure. Id. "Committee reports to the Judicial Conference should include discussion of all committee activities since the prior Conference session, whether or not the committee met during the time. This includes items for action by the Conference, as well as matters discussed by the committee on which no action is sought." Id., §II.C.4. "[A]ny Conference member may, by giving notice to the Conference Secretary, move an item from the consent to the discussion calendar. In addition, items presented in a committee report for information may be moved to the discussion calendar if a member believes that action and/or discussion by the Conference is appropriate." Id., §II.C.5.

Matters concerning the Judicial Conference's statutory duties with regard to Financial Disclosure Reports are within the jurisdiction of the Committee on Financial Disclosure. In February, 2012, I discovered that since January, 2011, the Conference has received a series of letters from more than 50 members of Congress and several organizations, concerning the accuracy and completeness of many annual Financial Disclosure Reports

filed by Justice Clarence Thomas. The Conference has been asked to find that there is reasonable cause to believe that the Justice willfully failed to disclose or misrepresented specified information and, therefore, to make the referral to the Attorney General required by §104(b). The letters were referred to the Committee on Financial Disclosure. The actions of the Committee are described in February 23, 2012 and April 17, 2012 letters from the Chair of the Committee, Judge Joseph McKinley, to Judge Thomas Hogan, Secretary of the Conference, which were written after I inquired about this matter and were given to me by Judge Hogan. Among other things, the letters state that the issue of a possible referral to the Attorney General was discussed by the full Committee in January, 2012; the Committee decided that such a referral was not justified; and in April, 2012 Judge Hogan so informed the members of Congress and others who had initiated the matter.

However, the Reports of the Committee on Financial Disclosure for the last four meetings of the Judicial Conference have not mentioned the letters or the issues that they raise. As a result, I doubt that many, if any, members of the Conference knew that the Conference has the statutory duty established by §104(b). I also doubt that many members of the Conference knew that members of Congress, and others, had raised an issue involving that duty concerning Justice Thomas. In my view, under the Conference's established practices and procedures this matter should have been disclosed and discussed in several of the Reports of the Committee on Financial Disclosure, including the Report for the September 11, 2012 meeting of the Conference. Because of the series of material omissions, members of the Conference have been deprived of the opportunity to decide whether to exercise their right to have the matter placed on the Discussion Calendar for discussion and possible action by the full Conference.

The failure of a committee to report required information to the Conference is to me particularly serious when, as here, the discharge of a statutory duty is involved. Therefore, I now intend to ask that the Conference require that the pending Report of the Committee on Financial Disclosure be amended promptly, rather than approved at the September 11, 2012 meeting.

On August 8, 2012, I wrote Judge Sentelle that:

I believe that the matter involving Justice Thomas raises issues that the Judicial Conference should discuss promptly. These issues include, but may not be limited to, whether the rare questions that arise under §104(b) should continue to be delegated to the Committee on Financial Disclosure and, if so, whether that Committee should be required to report the existence of the issue and the proposed resolution of it to the full Conference so there can be an opportunity for discussion and possibly decision by the full Conference before the duty imposed by §104(b) is considered discharged.

The Executive Committee has referred these issues to the Committee on Financial Disclosure. It now appears to me, however, that it may be

sufficient for the Conference to simply require that the Committee on Financial Disclosure and its staff, which I understand drafts its reports, comply in the future with the already existing policy concerning what must be included in a committee report before any issue of a possible referral to the Attorney General is deemed decided.

Attached are the documents referenced in this memorandum, except for the letters from Judge McKinley to Judge Hogan, which Judge Hogan prefers I not distribute.

I appreciate your consideration of this matter and will look forward to discussing it with you.

(See attached file: Agenda E-10 materials previously distributed.pdf)

(See attached file: JCUS&Comm.pdf)(See attached file: Delegation of Authority.pdf)

(See attached file: Common Cause.pdf)(See attached file: Congress Letters.pdf)

Letter from Chief Judge David Bryan Sentelle to
Chief Judge Joseph H. McKinley, Jr.,
dated August 21, 2012



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

DAVID BRYAN SENTELLE
CHAIRMAN, EXECUTIVE COMMITTEE

(202) 216-7330
(202) 273-0174 FAX
david_sentelle@cade.uscourts.gov

August 21, 2012

Honorable Joseph H. McKinley, Jr.
Chief Judge
United States District Court
Federal Building
423 Frederica Street, Room 423
Owensboro, KY 42301-3013

Dear Chief Judge McKinley:

As you know, a member of the Judicial Conference, Chief Judge Mark L. Wolf, recently wrote to me in my capacity as chair of the Conference's Executive Committee (see enclosure), concerning the procedures for discharging the Conference's responsibility, under 5 U.S.C. app. 4, § 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 report. Judge Wolf has asked that the Conference consider whether authority should continue to be delegated to the Committee on Financial Disclosure to address issues that arise under § 104(b), and if so, whether that committee should be required to advise the Conference of any decisions it makes on such issues before the Conference's statutory responsibility is considered discharged.

Following a discussion at its August 2012 meeting, the Executive Committee decided to seek the views of the Financial Disclosure Committee on the issues raised in Judge Wolf's letter before they are considered by the Judicial Conference. Therefore, we are asking your committee to consider these issues and then report to the Conference on what action, if any, should be taken in response to Judge Wolf's inquiry. If you have any questions about this matter, please let me know.

Sincerely,

David B. Sentelle

Enclosure

cc: Members, Executive Committee
Honorable Mark L. Wolf

Letter from Chief Judge Mark L. Wolf to
Chief Judge David Bryan Sentelle, dated August 29, 2012,
with attachments

United States District Court

Boston, Massachusetts 02210

MARK L. WOLF
CHIEF JUDGE

August 29, 2012

Honorable David Bryan Sentelle, Chair
Executive Committee of the Judicial
Conference of the United States
One Columbus Circle, NE
Washington, D.C. 20544

Dear Chief Judge Sentelle:

Thank you for sending me a copy of your August 21, 2012 letter to Chief Judge Joseph McKinley, Jr., referring to the Committee on Financial Disclosure the issues raised in my attached August 8, 2012 letter to you requesting that the question of how the Judicial Conference discharges its statutory duty under 5 U.S.C. App. 4 §104(b) be put on the Discussion Calendar for the September 11, 2012 meeting of the Conference. However, as I said when you called, I continue to believe that the members of the Conference should be promptly informed of this matter and that it should be discussed at the September 11, 2012 meeting. Therefore, I have sent the attached August 29, 2012 letter to Judge Thomas Hogan, the Secretary of the Conference, asking that the Report of the Committee on Financial Disclosure be put on the Discussion Calendar for that meeting because I object to the approval of that Report by acclamation.

It may be helpful if I amplify the reasons for this request. As we discussed, I doubt that many, if any, members of the Conference know that the Conference has a statutory duty to make a reference to the Attorney General if there is reasonable cause to believe that a judge or justice has willfully failed to disclose, or misrepresented, information required to be included in an annual Financial Disclosure Report. I also doubt that many members of the conference know that since January, 2011 the Conference has been sent a series of letters from more than 50 members of Congress and two organizations, asking that it make such a referral concerning Justice Clarence Thomas.¹

¹The attached November 18, 2011 letter from the members of Congress is representative and includes some of the alleged facts

In February, 2012, I found some of the letters on the internet and learned from them of the Conference's statutory duty. I then realized that I had not received the letters or seen any reference to them, or the issues that they raise, in the materials for the March 13, 2012 meeting of the Judicial Conference.

Therefore, I spoke to Judge Hogan about this matter on February 15, 2012. I inquired about the status of the matter, and expressed concern that the members of the Conference had not been given notice of it and the usual opportunity to have it put on the Discussion Calendar. I indicated that I might ask that the matter be discussed at the Conference's March, 2012 meeting. Judge Hogan thanked me for reminding him of this issue, told me that the matter was not ripe for possible discussion at the March 13, 2012 meeting of the Conference because he had not received a response to the reference of it to the Committee on Financial Disclosure, and said he would speak to the new Chair of the Committee, Judge Joseph McKinley, and then to me again.

Judge Hogan subsequently told me that the Committee on Financial Disclosure had decided that a reference to the Attorney General concerning Justice Thomas was not justified, and that he had received a February 23, 2012 letter from Judge McKinley explaining the Committee's process and reasoning, which he would send me. He encouraged me to consider the letter and to speak to Judge McKinley as well.

I did read the letter and speak to Judge McKinley. I expressed to him my concern that the members of the Conference had not been informed of the issue concerning Justice Thomas and provided an opportunity to have the matter put on the Discussion Calendar. Judge McKinley told me that the Committee's staff had not included the matter in the past three Committee reports to the Conference because the staff felt it was "routine." He also informed me, however, that issues of whether there has been a willful failure to include required information in a Financial Disclosure Report were very rare, and the matter involving Justice Thomas was evidently the first and only time that members of Congress or anyone else had requested that the Conference refer a matter to the Attorney General pursuant to the statute.

I subsequently told Judge Hogan that while I appreciated the opportunity to speak to Judge McKinley, our talk had not eliminated my concerns and that I might ask that the matter be placed on the Discussion Calendar for the September, 2012 meeting of the Conference. Judge Hogan told me that he would be requesting a revised letter from the Committee on Financial Disclosure.

that the Conference has been asked to consider.

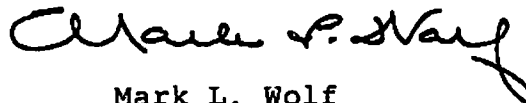
In reviewing the materials for the September 11, 2012 meeting of the Conference, I saw that again no reference was made to the issue concerning Justice Thomas in the Committee's report or elsewhere. I spoke to Judge Hogan, who informed me that he had received an April 17, 2012 letter from Judge McKinley and, on April 30, 2012, written to the members of Congress and others that the Committee on Financial Disclosure had determined that a reference to the Attorney General was not justified.² Judge Hogan also told me that he had received no response to his letters.

Nevertheless, I continue to be concerned about the process by which the issues presented to the Conference have been addressed on its behalf. Chief Judge McKinley's letters to Judge Hogan explain that process and provide a basis for the Conference to at least begin a discussion of the issues at our September 11, 2012 meeting. I believe that the response of the Committee on Financial Disclosure to the reference of my letter to it would be valuably informed by that discussion.

Therefore, I have sent the attached August 29, 2012 letter to Judge Hogan to request that the Report of the Committee on Financial Disclosure be placed on the Discussion Calendar for the September 11, 2012 meeting of the Conference. If necessary, I will appreciate the Executive Committee's further consideration of this request.

With best wishes,

Sincerely yours,



Mark L. Wolf

cc: Members, Executive Committee
Honorable Thomas F. Hogan
Honorable Joseph McKinley, Jr.

²A representative April 30, 2012 letter to Honorable Louise M. Slaughter is attached.

United States District Court

Boston, Massachusetts 02210

MARK L. WOLF
CHIEF JUDGE

August 8, 2012

Honorable David Bryan Sentelle, Chair
Executive Committee of the Judicial
Conference of the United States
One Columbus Circle, NE
Washington, D.C. 20544

Re: Discussion Calendar for September 11, 2012
Meeting of the Judicial Conference

Dear Chief Judge Sentelle:

As we discussed, I am writing to request that the Executive Committee put on the Discussion Calendar for the September 11, 2012 meeting of the Judicial Conference of the United States the process by which the Conference should discharge its duty, under 5 U.S.C. App. 4 §104(b), to determine whether there is reasonable cause to believe that a judge or justice has willfully failed to disclose, or willfully misrepresented, information required to be included in an Annual Financial Disclosure Report and, therefore, whether to refer the matter to the Attorney General.¹ My concerns about the present process for discharging the Conference's statutory duties are prompted by the manner in which issues have been addressed on behalf of the Conference in response to a series of letters, beginning in January, 2011, from more than 50 members of Congress and several organizations, regarding Financial Disclosure Reports filed by Justice Clarence Thomas.

The letters allege primarily that the Justice willfully omitted certain information from his Financial Disclosure Reports for many years and request that the Conference refer the matter to

¹Every judge and justice is required to file annually a Financial Disclosure Report accurately and completely disclosing certain information. See 5 U.S.C. App. 4 §§101(f)(11), 102, 109(10). 5 U.S.C. App. 4 §104(b) provides that "the Judicial Conference . . . shall refer to the Attorney General the name of any individual which [it] has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported."

the Attorney General pursuant to §104(b). The letters were referred to the Committee on Financial Disclosure. The members of the Conference, however, have not been informed of the letters or of the issues that they raise which require resolution under the statute. Nor have any of the four reports to the Conference of the Committee on Financial Disclosure since January, 2011 mentioned the letters, the issues they raise, or the Committee's position on whether a reference to the Attorney General is required under the statute.

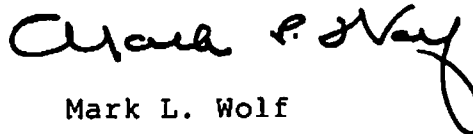
I understand that the Conference often acts through its Committees. However, their reports are regularly relied upon to inform members of the Conference of the material activities of a Committee in order to provide an opportunity for members of the Conference to put a matter on the Discussion Calendar and to request a decision concerning it by the full Conference. It is particularly important that this practice be followed where the matter at issue involves a statutory duty of the Conference.

I believe that the matter involving Justice Thomas raises issues that the Judicial Conference should discuss promptly. These issues include, but may not be limited to, whether the rare questions that arise under §104(b) should continue to be delegated to the Committee on Financial Disclosure and, if so, whether that Committee should be required to report the existence of the issue and the proposed resolution of it to the full Conference so there can be an opportunity for discussion and possibly decision by the full Conference before the duty imposed by §104(b) is considered discharged. I, therefore, request that this matter be put on the Discussion Calendar for the September 11, 2012 meeting.

I will, of course, be pleased to speak to your colleagues on the Executive Committee and you about this request.

With best wishes,

Sincerely yours,



Mark L. Wolf

cc: Honorable Thomas F. Hogan
Honorable Joseph H. McKinley, Jr.

Congress of the United States
Washington, DC 20515

November 18, 2011

Chief Justice John Roberts
Presiding Officer
Judicial Conference
One Columbus Circle, NE
Washington, D.C. 20036

Dear Mr. Chief Justice:

We write you today in your capacity as Presiding Officer of the Judicial Conference. We call your attention to the letter sent to the Conference by members of the House of Representatives on September 29, 2011, requesting an investigation of possible violations by Justice Clarence Thomas of the Ethics in Government Act of 1978.

Evidence that Justice Thomas failed for 13 years to accurately disclose his wife's employment has been submitted to the Conference and we believe the Conference is required by law to refer the matter to the Department of Justice for further investigation.

In January, Common Cause and Alliance for Justice alerted the Judicial Conference to Justice Thomas's repeated failure to make accurate financial disclosures as required under the Ethics Act. Justice Thomas then amended 21 years of his financial disclosure forms, explaining that he had, "misunderstood the reporting instructions."

Since we sent our September 29 letter, important new information concerning this matter has come to our attention. Disclosure forms obtained by Common Cause and Alliance for Justice show that Justice Thomas accurately filed his financial disclosure forms, including his wife's employment, for as many as 10 years beginning in 1987 when he was Chair of the Equal Employment Opportunity Commission.

Justice Thomas continued to file accurate disclosure forms concerning his wife's employment when he was a judge on the United States Court of Appeals for the District of Columbia. He also accurately filed his financial disclosure forms regarding his wife's employment for the first five years he was a Justice of the Supreme Court.

In 1997 however, Justice Thomas stopped disclosing his wife's employment on his annual form, instead marking the box labeled "NONE," to indicate his wife had no employment that year. Other public documents show that Justice Thomas's wife was employed in 1997 by the Office of the U.S. House Majority Leader.

Justice Thomas continued to omit his wife's employment from his disclosures for the next 12 years, marking the 'NONE' box on his annual forms. Other publicly available documents indicate that Justice Thomas's wife did have employment in every one of those twelve years.

Her employers included the Office of the U.S. House Majority Leader, the Heritage Foundation and Hillsdale College.

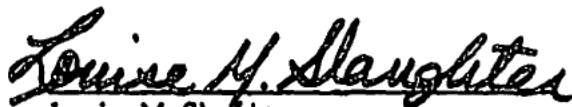
Documents obtained by Common Cause and Alliance for Justice show that Justice Thomas's wife earned over \$1.6 million from these sources. We understand that Justice Thomas is not required to disclose those earnings but we include the number here to show that his wife's earnings were very substantial and that their omission is unlikely to have been a mere oversight.

It is very difficult for Justice Thomas to make a credible argument that he understood the filing instructions for ten years but then misunderstood them for the next thirteen years.

Section 104(b) of the Ethics in Government Act of 1978 requires the Judicial Conference to refer to the Attorney General any judge whom the Conference "has reasonable cause to believe has willfully falsified or willfully failed to file information required to be reported."

We believe these facts easily establish reasonable cause and therefore reiterate the request of September 29, 2011, and urge you to review these facts and make the appropriate referral to the Attorney General for further investigation.

Sincerely,



Louise M. Slaughter
Member of Congress



Earl Blumenauer
Member of Congress

Cc: Jill C. Sayenga

Lenore Noller NY 6

Pete Stark

Tom Foy

Kathy Carter
FL-11

Jim McCaffrey WA-7

Betty Sutton

Jim Burr

Keith Ellison

Stanley
NY-9

Bill Owens

Bob King
Cuba Bay IA-01

Bob King KY-3

Good. Hastings

John King

Judith King

John King

Li King

Paul Jones

Jim Jones

Jim Kim

Wanda Dingle

David Jackson

Jan R. Kelly

Bob Filson

Lynn W. Wesley

Carol B. Kolbas

Benny Frank

Jim Moran

Green James

Michael Wood

Harold Johnson

Rael M. Fitzpatrick

Barbara Lee

Johnny Jones

Chell R.

Ben N. Long

Frank Pallone Jr.

~~Anna G. ...~~

Paul E. ...

Paul D. ...

John M. ...

~~...~~

BRUNO (VA-3)

Donna F. Edwards

Hyd Dought

John W. Allen

Glyette D. Clarke

Steve Cohen

John Lewis

Robert E. ...

Signed:

1. Robert Andrews, Member of Congress
2. Karen Bass, Member of Congress
3. Earl Blumenauer, Member of Congress
4. Bruce L. Braley, Member of Congress
5. Kathy Castor, Member of Congress
6. David N. Cicilline, Member of Congress
7. Yvette D. Clarke, Member of Congress
8. James E. Clyburn, Member of Congress
9. Steve Cohen, Member of Congress
10. Gerald E. Connolly, Member of Congress
11. John Conyers Jr., Member of Congress
12. Pater A. DeFazio, Member of Congress
13. Theodore E. Deutch, Member of Congress
14. Lloyd Doggett, Member of Congress
15. Donna F. Edwards, Member of Congress
16. Keith Ellison, Member of Congress
17. Anna G. Eshoo, Member of Congress
18. Sam Farr, Member of Congress
19. Bob Filner, Member of Congress
20. Barney Frank, Member of Congress
21. Gene Green, , Member of Congress
22. Raúl M. Grijalva, Member of Congress
23. Alcee L. Hastings, Member of Congress
24. Maurice D. Hinchey, Member of Congress
25. Michael M. Honda, Member of Congress
26. Jesse L. Jackson Jr., Member of Congress
27. Henry C. "Hank" Johnson Jr. , Member of Congress
28. Barbara Lee, Member of Congress
29. John Lewis, Member of Congress
30. Ben Ray Luján, Member of Congress
31. Carolyn B. Maloney, Member of Congress
32. Jim McDermott, Member of Congress
33. James P. McGovern, Member of Congress
34. Brad Miller, Member of Congress
35. Gwen Moore, Member of Congress
36. James P. Moran, Member of Congress
37. Christopher S. Murphy, Member of Congress
38. Jerrold Nadler, Member of Congress
39. John W. Olver, Member of Congress
40. William L. Owens, Member of Congress
41. Frank Pallone Jr., Member of Congress
42. Chellie Pingree, Member of Congress
43. Jared Polis, Member of Congress
44. Steven R. Rothman, Member of Congress
45. Janice D. Schakowsky, Member of Congress
46. Louise M. Slaughter, Member of Congress
47. Jackie Speier, Member of Congress
48. Fortney Pete Stark, Member of Congress
49. Betty Sutton, Member of Congress
50. Paul Tonko, Member of Congress
51. Lynn C. Woolsey, Member of Congress
52. John A. Yarmuth, Member of Congress



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

**THE CHIEF JUSTICE
OF THE UNITED STATES**
Presiding

HONORABLE THOMAS F. HOGAN
Secretary

April 30, 2012

Honorable Louise M. Slaughter
United States House of Representatives
Washington, DC 20515

Dear Representative Slaughter:

I write in response to your September 29, 2011, letter to James Duff, former Director of the Administrative Office of the U.S. Courts, and your November 18, 2011, letter to Chief Justice John Roberts regarding Justice Clarence Thomas's financial disclosure report.

This matter has been reviewed by the Committee on Financial Disclosure of the Judicial Conference of the United States. It has concluded that nothing has been presented to support a determination that Justice Thomas's failure to report the source of his spouse's income was willful, or that Justice Thomas willfully or improperly failed to disclose information concerning travel reimbursements.

If we may be of any further assistance to you, please do not hesitate to contact our Office of Legislative Affairs at (202) 502-1700.

Sincerely,

Thomas F. Hogan
Secretary

116-1435

Honorable Louise M. Slaughter
Page 2

Identical Letter Sent to: Honorable Earl Blumenauer

cc: Honorable Robert Andrews
Honorable Karen Bass
Honorable Bruce L. Braley
Honorable Kathy Castor
Honorable David N. Cicilline
Honorable Yvette D. Clarke
Honorable James E. Clyburn
Honorable Steve Cohen
Honorable Gerald E. Connolly
Honorable John Conyers Jr.
Honorable Peter A. DeFazio
Honorable Theodore E. Deutch
Honorable Lloyd Doggett
Honorable Donna F. Edwards
Honorable Keith Ellison
Honorable Anna G. Eshoo
Honorable Sam Farr
Honorable Bob Filner
Honorable Barney Frank
Honorable John Garamendi
Honorable Gene Green
Honorable Raul M. Grijalva
Honorable Alcee L. Hastings
Honorable Maurice D. Hinchey
Honorable Michael M. Honda
Honorable Jesse L. Jackson Jr.
Honorable Henry C. "Hank"
Johnson Jr.
Honorable Barbara Lee
Honorable John Lewis
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Honorable Carolyn B. Maloney
Honorable Jim McDermott
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Honorable Brad Miller
Honorable Gwen Moore
Honorable James P. Moran
Honorable Christopher S. Murphy
Honorable Jerrold Nadler
Honorable John W. Oliver
Honorable William L. Owens
Honorable Frank Pallone Jr.
Honorable Ed Perlmutter
Honorable Chellie Pingree
Honorable Jared Polis
Honorable Steven R. Rothman
Honorable Janice Schakowsky
Honorable Robert Scott
Honorable Jackie Speier
Honorable Fortney Petc Stark
Honorable Betty Sutton
Honorable Paul Tonko
Honorable Peter Welch
Honorable Lynn C. Woolsey
Honorable John A. Yarmuth

Letter from Chief Judge Mark L. Wolf to
Judge Thomas F. Hogan, dated August 29, 2012

United States District Court

Boston, Massachusetts 02210

MARK L. WOLF
CHIEF JUDGE

August 29, 2012

Honorable Thomas F. Hogan
Secretary of the Judicial Conference
of the United States
One Columbus Circle, NE
Washington, DC 20544

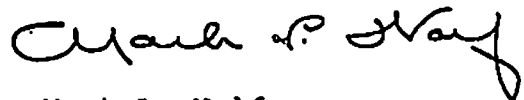
Dear Judge Hogan:

I am writing in response to your August 23, 2012 memorandum to the Members of the Judicial Conference to request that the Report of the Committee on Financial Disclosure be moved to the Discussion Calendar of the September 11, 2012 meeting of the Conference rather than kept on the Consent Calendar for approval by acclamation at that session. As we have discussed, I believe that the Report of the Committee on Financial Disclosure for the September 11, 2012 meeting, like its Reports for the previous three meetings of the Conference, omits what is at least an important information item concerning how the Conference discharges its statutory duty under 5 U.S.C. App. 4 §104(b). The significant issues of process and governance raised by this series of material omissions are described in my attached August 8 and 29, 2012 letters to Chief Judge David Sentelle. As I wrote Chief Judge Sentelle, I believe that it will be valuable for the Conference to begin a discussion of these issues on September 11, 2012. In any event, I object to the Report of the Committee on Financial Disclosure being approved by acclamation.

I will look forward to hearing whether the Report of the Committee on Financial Disclosure will, as I request, be placed on the Discussion Calendar. I would be pleased to speak with Chief Judge Sentelle and/or you about how the matter should be presented.

With best wishes,

Sincerely yours,



Mark L. Wolf

cc: Honorable David B. Sentelle, Chair
Members, Executive Committee
Honorable Joseph H. McKinley, Jr.

Congress of the United States
Washington, DC 20515

September 29, 2011

James C. Duff
Secretary to the Judicial Conference of the United States
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, DC 20544

Dear Mr. Duff:

Widespread reporting, including a recent report in *The New York Times* titled "Friendship of Justice and Magnate Puts Focus on Ethics," raise grave concerns about the failure of Justice Clarence Thomas to meet various disclosure requirements under the Ethics in Government Act of 1978. Based upon the multiple public reports, Justice Thomas's actions may constitute a willful failure to disclose, which would warrant a referral by the Judicial Conference to the Department of Justice, so that appropriate civil or criminal actions can be taken.

Due to the simplicity of the disclosure requirements, along with Justice Thomas's high level of legal training and experience, it is reasonable to infer that his failure to disclose his wife's income for two decades was willful, and the Judicial Conference has a non-discretionary duty to refer this case to the Department of Justice.

Throughout his entire tenure on the Supreme Court, Justice Thomas checked a box titled "none" on his annual financial disclosure forms, indicating that his wife had received no income, despite the fact that his wife had in fact earned nearly \$700,000 from the Heritage Foundation from 2003-2007 alone.

Furthermore, an investigation conducted by *The New York Times* has revealed that Justice Thomas may have, on several occasions, benefited from use of a private yacht and airplane owned by Harlan Crowe, and again failed to disclose this travel as a gift or travel reimbursement on his federal disclosure forms as required by the Ethics in Government Act of 1978.

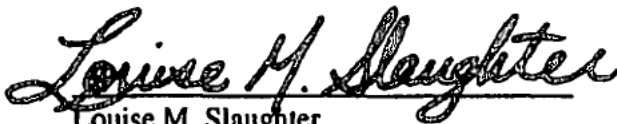
Justice Thomas's failure to disclose his wife's income for his entire tenure on the federal bench and indications that he may have failed to file additional disclosure regarding his travels require the Judicial Conference to refer this matter to the Department of Justice.

Section 104(b) of the Ethics Act requires the Judicial Conference to refer to the Attorney General of the United States any judge who the Conference "has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported." If the Judicial Conference finds reasonable cause to believe that Justice Thomas has "willfully falsified or willfully failed to file information to be reported," it must, pursuant to §104, refer the case to the Attorney General for further determination of possible criminal or civil legal sanctions.

Particularly as questions surrounding the integrity and fairness of the Supreme Court continue to grow, it is vital that the Judicial Conference actively pursue any suspicious actions by Supreme Court Justices. While we continue to advocate for the creation of binding ethical standards for the Supreme Court, it is important the Judicial Conference exercise its current powers to ensure that Supreme Court Justices are held accountable to the current law.

As a result, we respectfully request that the Judicial Conference follow the law and refer the matter of Justice Thomas's non-compliance with the Ethics in Government Act to the Department of Justice. We eagerly await your reply.

Sincerely,



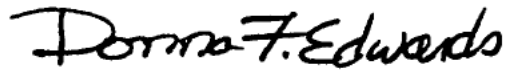
Louise M. Slaughter
Member of Congress



Earl Blumenauer
Member of Congress



John Conyers, Jr.
Member of Congress



Donna F. Edwards
Member of Congress



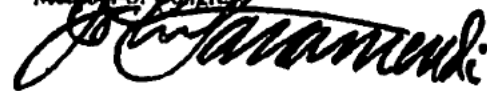
Keith Ellison
Member of Congress



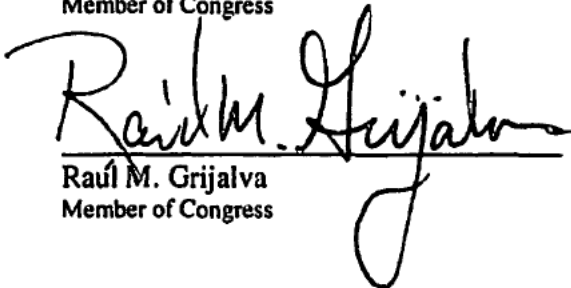
Anna G. Eshoo
Member of Congress



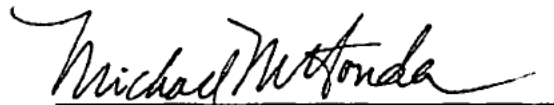
Bob Filner
Member of Congress



John Garamendi
Member of Congress




Raúl M. Grijalva
Member of Congress



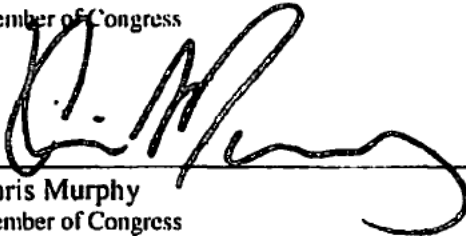
Mike Honda
Member of Congress



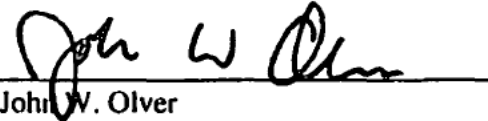
Jesse L. Jackson, Jr.
Member of Congress



Owen Moore
Member of Congress



Chris Murphy
Member of Congress



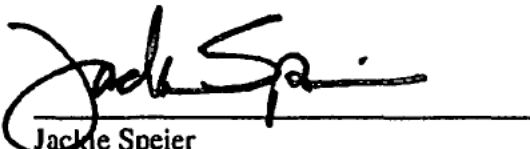
John W. Olver
Member of Congress



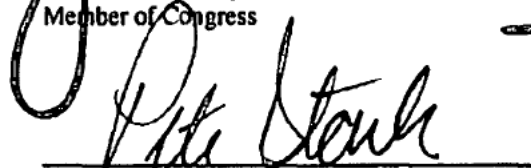
Ed Perlmutter
Member of Congress



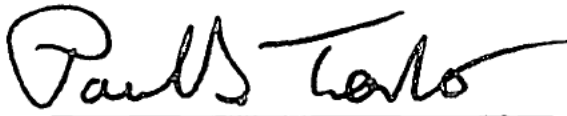
Jan Schakowsky
Member of Congress



Jackie Speier
Member of Congress



Pete Stark
Member of Congress



Paul D. Tonko
Member of Congress



Peter Welch
Member of Congress

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JILL C. SAYENGA
Acting Director

WASHINGTON, D.C. 20544

October 14, 2011

Honorable Louise M. Slaughter
United States House of Representatives
Washington, DC 20515

Dear Representative Slaughter:

Thank you for your letter of September 29, 2011, to former Administrative Office Director James Duff concerning your request that the Judicial Conference make a determination as to whether Justice Clarence Thomas' actions with respect to his financial disclosure reports give rise to "reasonable cause" under section 104 of the Ethics in Government Act of 1978 (5 U.S.C. app. § 104) that would require referral of the matter to the Department of Justice. I have forwarded your letter to the Judicial Conference Committee on Financial Disclosure, which is responsible for implementing the disclosure provisions of the Ethics in Government Act and addressing allegations of errors or omissions in the filing of financial disclosure reports.

If we may be of additional assistance to you, please do not hesitate to contact our Office of Legislative Affairs at (202) 502-1700.

Sincerely,



Jill C. Sayenga
Acting Director

Identical letter sent to:

Honorable Earl Blumenauer	Honorable Gwen Moore
Honorable John Conyers, Jr.	Honorable Chris Murphy
Honorable Donna F. Edwards	Honorable John W. Olver
Honorable Keith Ellison	Honorable Ed Perlmutter
Honorable Anna G. Eshoo	Honorable Jan Schakowsky
Honorable Bob Filner	Honorable Jackie Speier
Honorable John Garamendi	Honorable Pete Stark
Honorable Raúl M. Grijalva	Honorable Paul D. Tonko
Honorable Mike Honda	Honorable Peter Welch
Honorable Jesse L. Jackson, Jr.	



January 21, 2011

James C. Duff
Secretary to the Judicial Conference of the United States
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, DC 20544

Dear Mr. Duff:

It has come to our attention that Justice Thomas has failed to disclose the non-investment income of his spouse, Virginia Thomas, for her employment at the Heritage Foundation in 2003-2007, and at Liberty Central in 2009.

According to the Heritage Foundation's Form 990s filed with the Internal Revenue Service, Ms. Thomas earned a salary in excess of \$120,000 each year between 2003 and 2007. In 2009, Ms. Thomas became the founding CEO of a new 501(c)(4) organization, Liberty Central. The current CEO, Sarah Field, told the *New York Times* that Ms. Thomas was compensated for her work at Liberty Central at a salary set by the board.

Nonetheless, for each year from 2003 to 2009, Justice Thomas checked the box for "None" for "Spouse's Non-Investment Income" on his annual disclosure forms. (See attached table and links.)

The Ethics in Government Act of 1978 requires federal officials, including Supreme Court justices, to disclose their spouse's income. *See* 5 U.S.C. § 102(e)(1)(A). The statute requires the Judicial Conference to refer to the Attorney General the name of any federal judge that it "has reasonable cause to believe has...willfully falsified or willfully failed to file information to be reported." 5 U.S.C. § 104.

Common Cause respectfully requests 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.

Without disclosure, the public and litigants appearing before the Court do not have adequate information to assess potential conflicts of interest, and disclosure is needed to promote the public's interest in open, honest and accountable government.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Bob Edgar". The signature is written in a cursive style with a large, prominent "B" and "E".

Bob Edgar
President and CEO

A handwritten signature in black ink that reads "Arn H. Pearson". The signature is written in a cursive style with a large, prominent "A" and "P".

Arn H. Pearson, Esq.
Vice President for Programs

Common Cause Letters

September 13, 2011

James Duff
Director
Administrative Head of the United States Courts
One Columbus Circle NE
Washington, DC 20544

Dear Mr. Duff,

Common Cause and Alliance for Justice write jointly to request that you investigate whether Justice Clarence Thomas's apparent violations of the Ethics in Government Act necessitate referral to the Department of Justice under the Act. This issue was previously brought to the Judicial Conference's attention in a January 21, 2011, letter from Common Cause. Since then, new information has come to light that increases the need for Judicial Conference to resolve this issue.

Between 1997-2007, Justice Thomas checked the box "none" for spousal income on his annual financial disclosure forms, despite the fact that Virginia Thomas earned nearly \$700,000 from the Heritage Foundation from 2003-2007 alone. Shortly after this failure was noted, Justice Thomas amended his forms and stated that he had misunderstood the reporting requirement.

More recently, a June 19, 2011, New York Times article raised questions as to whether Justice Clarence Thomas may have also failed to disclose or misreported travel reimbursements. The New York Times story indicates that Justice Thomas may have, on several occasions, benefitted from use of Harlan Crow's jets to travel to speaking engagements and other events, yet on two of those occasions Justice Thomas' forms indicate a different source of reimbursement, and on one occasion there is no reimbursement reported.

Section 104(b) of the Act requires the Judicial Conference to refer to the Attorney General any judge whom the Conference "has reasonable cause to believe has willfully falsified or willfully failed to file information required to be reported."

We respectfully request that the Judicial Conference make a public determination as to whether Justice Thomas' failure to report his wife's income, and or failing to disclose travel reimbursements, give rise to "reasonable cause" under §104, and refer the matter to the Department of Justice if appropriate.

Sincerely,

Bob Edgar
President and CEO
Common Cause

Nan Aron
President

Alliance for Justice

Common Cause Letters

October 5, 2011

James Duff
Director
Administrative Head of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

George Reynolds
Counsel
Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, NE
Washington, DC 20544

Dear Mr. Duff and Mr. Reynolds:

This letter is to follow-up on the Common Cause and Alliance for Justice letter dated September 13, 2011, requesting that the Judicial Conference take action on Justice Clarence Thomas's apparent violations of the Ethics in Government Act. The letter was forwarded to the Judicial Conference Committee on Financial Disclosure on September 26, 2011. Since then, new information has come to light that makes more clear and compelling the Judicial Conference's statutory obligation to refer the matter to the Department of Justice. ✓

As we detailed in our previous letter, between 1997-2007 Justice Thomas checked the box "none" for spousal income on his annual financial disclosure forms, despite the fact that Virginia Thomas earned income from several organizations during this time period, including the Heritage Foundation. When the inaccurate disclosures were made public, the Justice amended his forms and stated that he had misunderstood the reporting requirement.

Since last we wrote, our organizations have learned that Justice Thomas correctly disclosed his wife's income for as many as ten years before he began to file inaccurate disclosure forms. Our newly discovered evidence shows that Justice Thomas properly filled out his forms and accurately disclosed his wife's income as early as 1987, while the Chair of the EEOC, continuing as a judge on the DC Circuit Court of Appeals, and for five years as a Justice on the Supreme Court. These revelations call into question Justice Thomas' explanation that his omissions were due to a misunderstanding of the filing instructions.

Additionally, we have since learned that the amount earned by Virginia Thomas during the years that Justice Thomas failed to report her income exceeds \$1.6 million. Both of these newly discovered facts increase the gravity of the situation and make more urgent the Judicial Conference's need to take action.

Section 104(b) of the Act requires the Judicial Conference to refer to the Attorney General any judge whom the Conference "has reasonable cause to believe has willfully falsified or willfully failed to file information required to be reported." Given that Justice Thomas correctly disclosed his wife's income for a decade while serving in three federal positions before ✓

- beginning to report inaccurately in 1997, we believe that Justice Thomas' omissions meet that standard.
- We respectfully request that the Judicial Conference make a timely and public determination that Justice Thomas' misreporting of his wife's income, gives rise to "reasonable cause" under §104, and refer the matter to the Department of Justice.

Sincerely,

Nan Aron
President
Alliance for Justice
Bob Edgar
President and CEO
Common Cause

[Click for the press release](#)