

United States Senate

WASHINGTON, DC 20510

July 3, 2024

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

Dear Attorney General Garland:

We write to request that you appoint a Special Counsel to investigate possible violations of federal ethics and tax laws by Associate Justice of the Supreme Court Clarence Thomas. Over the past year, public reporting and Senate investigations have uncovered evidence of repeated and willful omissions of gifts and income from Justice Thomas's financial disclosure reports required by the Ethics in Government Act. The Senate is investigating these omissions as it considers improvements to ethics and tax laws.

The scale of the potential ethics violations by Justice Thomas, and the willful pattern of disregard for ethics laws, exceeds the conduct of other government officials investigated by the Department of Justice for similar violations. The breadth of the omissions uncovered to date, and the serious possibility of additional tax fraud and false statement violations by Justice Thomas and his associates, warrant the appointment of a Special Counsel to investigate this misconduct. The Senate is not a prosecutorial body, and the Supreme Court has no fact-finding function of its own, making the executive role all the more important if there is ever to be any complete determination of the facts.

I. The Evidence of Misconduct by Justice Thomas Warrants Criminal Investigation

Senate investigations and public reporting have uncovered evidence that Justice Thomas likely violated federal law by accepting lavish gifts from wealthy benefactors and failing to report them. The full scope of Justice Thomas's non-disclosures is still unknown, but the evidence assembled thus far suggests that, since his appointment to the Supreme Court, Justice Thomas has secretly accepted gifts and income potentially worth millions of dollars.

This conduct likely violates the Ethics in Government Act, which requires government officials, including Supreme Court justices, to file annual reports disclosing gifts and income accepted from outside sources.¹ It is a crime "to knowingly and willfully . . . fail to file or report" such information.² Justice Thomas's disclosure omissions also implicate federal prohibitions against making false statements to the government,³ and raise questions about Justice Thomas's and his benefactors' compliance with federal tax laws.⁴

¹ 5 U.S.C. §§ 13101-13105.

² 5 U.S.C. § 13106(a)(2).

³ 18 U.S.C. § 1001.

⁴ See *infra* notes 10, 26 and accompanying text.

A. *Justice Thomas Failed to Report More than \$267,000 in Income from Forgiven Debt*

Since last year, the Senate Finance Committee and Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights have been investigating a loan of more than \$267,000 connected to Justice Thomas’s purchase of a luxury motor coach. On October 25, 2023, the Senate Finance Committee released a memorandum, a copy of which is appended to this letter, concluding that in November 2008 the provider of the loan, Anthony Welters, ceased collecting principal or interest on \$267,230.00 he loaned to Justice Thomas and his wife for the purchase of a 1991 Prevost Marathon motor coach.⁵ Documents obtained by the Senate Finance Committee indicate that no principal was ever repaid on the loan and that Justice Thomas only made interest payments on the loan prior to all payments ceasing on the loan. Forgiven or discharged debt is taxable income, and the Ethics in Government Act requires justices to disclose any “income from discharge of indebtedness.”⁶ Justice Thomas did not report any such forgiveness as income on his financial disclosure report covering the year 2008, or for any other year.

On December 19, 2023, and again on May 15, 2024, we invited Justice Thomas to address the evidence obtained by the Finance Committee.⁷ Those letters offered Justice Thomas an opportunity to state in plain terms how much in principal and interest on the loan he ever repaid to Welters. We also offered Justice Thomas an opportunity to state how the loan was forgiven or discharged. On both occasions, counsel for Justice Thomas provided an uninformative response. Justice Thomas’s counsel stated that Justice Thomas “made payments to Mr. Welters on a regular basis until the terms of the agreement were satisfied in full.”⁸ As we stressed to Justice Thomas’s counsel, “satisfied” could have any number of meanings in the context of repayment, forgiveness, or discharge of debt. The Finance Committee has still received no satisfactory response.

The Ethics in Government Act requires disclosure of any “income from discharge of indebtedness,”⁹ and the Tax Code treats discharge of indebtedness as taxable income; when debt is canceled, forgiven, or discharged for less than the amount owed, the borrower must report that difference as income on federal tax returns.¹⁰ Failure to repay any amount of the principal of the loan would almost certainly create commensurate taxable income for Justice Thomas. Justice Thomas failed to clarify whether or why he failed to report hundreds of thousands of dollars in

⁵ Mem. from Democratic Staff, S. Comm. on Fin., to Chairman Ron Wyden, S. Comm. on Fin., *Clarence Thomas Did Not Repay Entire Principal on \$267,230 Loan from Tony Welters, Finance Committee Investigation Reveals; Failed to Report Forgiven Debt on Ethics Filings, Raising Questions About Tax Compliance* (Oct. 25, 2023), https://www.finance.senate.gov/imo/media/doc/senate_finance_committee_welters_thomas_memo_102523.pdf.

⁶ 26 U.S.C. §§ 61, 108; 5 U.S.C. § 13101(7).

⁷ Letter from Sen. Ron Wyden & Sen. Sheldon Whitehouse to Elliot S. Berke, Partner, Berke Farah LLC (Dec. 19, 2023), https://www.finance.senate.gov/imo/media/doc/follow_up_thomas_attorney_letter_121923.pdf; Letter from Sen. Ron Wyden & Sen. Sheldon Whitehouse to Elliot Berke (May 15, 2024), https://www.finance.senate.gov/imo/media/doc/senators_wyden_whitehouse_letter_to_elliott_berke_inquiring_whether_justice_thomas_repaid_for_luxury_motorcoachpdf.pdf.

⁸ Letter from Elliot Burke to Sen. Ron Wyden & Sen. Sheldon Whitehouse (Jan. 19, 2024), https://www.finance.senate.gov/imo/media/doc/berke_farah_response_letter_to_senators_wyden_and_whitehouse_on_justice_thomaspdf.pdf.

⁹ 5 U.S.C. § 13101(7).

¹⁰ 26 U.S.C. §§ 61, 108.

forgiven debt on his federal income tax returns and pay the income taxes owed. We submit that the facts we have developed, combined with strategically evasive answers, creates predication for further investigation by relevant authorities.

B. Justice Thomas Has Failed to Report Gifts He Accepted from Wealthy Benefactors and Associated Companies

Public investigative reporting and information obtained by the Senate Judiciary Committee has revealed that billionaire Harlan Crow has donated to Justice Thomas numerous gifts over the past twenty years, almost none of which were disclosed by Justice Thomas as the Ethics in Government Act requires. These gifts include multiple instances of free private jet travel, yacht travel, and lodging, as well as gifts of tuition for Justice Thomas’s grandnephew,¹¹ and (through intermediate entities) real estate transactions, home renovations, and free rent for Justice Thomas’s mother, all of which Justice Thomas failed to disclose.¹²

Justice Thomas has accepted a pattern of similar, undisclosed gifts from other wealthy donors as well, including private jet travel from Paul Anthony Novelly; private jet travel and country club membership from the late Wayne Huizenga; and private jet travel, luxury sports tickets, and lodging at a ranch from David Sokol.¹³ Our current list of publicly reported but not yet disclosed gifts and income is attached as an appendix to this letter.

The Ethics in Government Act required Justice Thomas to disclose these gifts. The Act requires disclosure of gifts, outside income, real estate transactions above certain monetary thresholds—which all of the gifts, outside income, and transactions detailed above appear to satisfy.¹⁴ None of these gifts seems to fall plausibly within the Act’s disclosure exception for “food, lodging, or entertainment received as personal hospitality.”¹⁵ As its plain text shows, the “personal hospitality” exception has never permitted nondisclosure of gifts of transportation, like private jet flights.¹⁶ Moreover, the “personal hospitality” exception applies only to hospitality “extended . . . by an individual, not a corporation or organization, at the personal residence of that individual or the individual’s family or on property or facilities owned by that individual or the

¹¹ Joshua Kaplan et al., *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>; Joshua Kaplan et al., *Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition*, PROPUBLICA (May 4, 2023), <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus>; Antonio Pequeño IV, *Senate Finds Clarence Thomas Received Three More Undisclosed Trips From GOP Megadonor Harlan Crow*, FORBES (June 13, 2024), <https://www.forbes.com/sites/antoniopequenoiv/2024/06/13/senate-finds-clarence-thomas-received-three-more-undisclosed-trips-from-gop-megadonor-harlan-crow>.

¹² Justin Elliot et al., *Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn’t Disclose the Deal*, PROPUBLICA (Apr. 13, 2023), <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus>.

¹³ Brett Murphy & Alex Mierjeski, *Clarence Thomas’ 38 Vacations: The Other Billionaires Who Have Treated the Supreme Court Justice to Luxury Travel*, PROPUBLICA (Aug. 10, 2023), <https://www.propublica.org/article/clarence-thomas-other-billionaires-sokol-huizenga-novelly-supreme-court>.

¹⁴ 5 U.S.C. § 13104(a)(2)(A) (requiring disclosure of gifts other than personal hospitality valued at the greater of \$250 or the minimal value as established by 5 U.S.C. § 7342(a)(5)); 5 U.S.C. § 13104(a)(1)(A) (requiring disclosure of outside income valued at \$200 or greater); 5 U.S.C. § 13104(a)(5) (requiring disclosure of real property transactions exceeding \$1,000).

¹⁵ 5 U.S.C. § 13104(a)(2)(A).

¹⁶ *Id.*

individual’s family,”¹⁷ yet many of the gifts discussed above were provided not by individuals but by corporate entities connected to those individuals.¹⁸ As legal guardian, Justice Thomas was presumably responsible for his grandnephew’s education expenses, making tuition payments gifts to Justice Thomas himself—a commonsense understanding of federal law confirmed by legislative and executive branch guidance.¹⁹

Justice Thomas has claimed that some omissions were “inadvertent,” and he has amended some past reports accordingly.²⁰ However, Justice Thomas has not disclosed all of the gifts that have been uncovered, and there may well be more. His long history of omissions indicates a pattern of willfulness meriting investigation under the Ethics in Government Act. In 2011, Justice Thomas admitted to omitting hundreds of thousands of dollars of his spouse’s income from his disclosures, averring a “misunderstanding of the filing instructions” (despite accurately filing disclosure forms regarding his spouse’s employment for as many as ten years beginning in 1987).²¹ Similarly, earlier in his tenure on the Court, Justice Thomas properly reported transportation, including complimentary private jet travel and gifts to defray tuition expenses like those he subsequently omitted.²² Justice Thomas’s own past financial disclosure reports, combined with his later revisions, belie the notion that he was not aware of the simple requirements he was required to meet. We contend that this pattern of filings, misfilings, and corrections provides adequate predication for further investigation by relevant authorities.

We note that a similar referral may come your way through the Judicial Conference, which has an independent obligation to refer to you the question of whether disclosure violations are “willful,” if it finds reasonable cause to believe violations may have been willful, and which appears to be presently investigating Justice Thomas’s disclosures.

¹⁷ 5 U.S.C. § 13101(14).

¹⁸ See *supra* notes 11, 13; Letter from Walter Shaub & Sarah Turberville, Project on Gov. Oversight, to Brian Boynton, Dep’t of Justice (Apr. 16, 2023), <https://www.pogo.org/policy-letters/pogo-calls-for-doj-to-investigate-clarence-thomas-seek-civil-penalties>.

¹⁹ Senate Rule XXXV(2)(A) (“A gift to a family member of a Member . . . , or a gift to any other individual based on that individual’s relationship with the Member . . . , shall be considered a gift to the Member . . . if it is given with the knowledge and acquiescence of the Member . . . and the Member . . . has reason to believe the gift was given because of the official position of the Member, officer, or employee.”); House Rule 25, cl. 5(a)(2)(B)(i) (“[A] gift to a family member or another individual will be deemed to be a gift to the official when two circumstances are present: The gift was given with the knowledge and acquiescence of the Member or staff person; and [t]he Member or staff person has . . . reason to believe the gift was given because of his official position with the House.”). 5 C.F.R. § 2365.203(f) (2016) (stating that an indirectly accepted gift includes a gift “[g]iven with the employee’s knowledge and acquiescence to the employee’s parent, sibling, spouse, child, dependent relative, or a member of the employee’s household because of that person’s relationship to the employee”).

²⁰ Abbie VanSickle, *Justice Thomas Reports Private Trips With Harlan Crow*, N.Y. TIMES (Aug. 31, 2023), <https://www.nytimes.com/2023/08/31/us/thomas-financial-disclosures-scotus.html>; Abbie VanSickle, *Clarence Thomas, in Financial Disclosure, Acknowledges 2019 Trips Paid by Harlan Crow*, N.Y. TIMES (June 7, 2024), <https://www.nytimes.com/2024/06/07/us/supreme-court-disclosures-gifts.html>.

²¹ Jennifer Epstein, *Thomas revises disclosure forms*, POLITICO (Jan. 24, 2011), <https://www.politico.com/story/2011/01/thomas-revises-disclosure-forms-048086>.

²² Richard Serrano & David Savage, *Justice Thomas Reports Wealth of Gifts*, L.A. TIMES (Dec. 31, 2004), <https://www.latimes.com/archives/la-xpm-2004-dec-31-na-gifts31-story.html>; Joshua Kaplan et al., *Clarence Thomas Had a Child in Private School*, *supra* note 11.

Separately, payments reportedly facilitated by Leonard Leo, who has been involved in arranging some of these free gifts for Justice Thomas and others, and is devoted to influencing the Supreme Court through other means, provide further grounds for investigation.²³ Last year, the Washington Post reported that Leo directed payments of at least \$25,000 to a consulting firm run by Justice Thomas's spouse, with Leo specifying that the documents related to the payments should make "[n]o mention" of Mrs. Thomas.²⁴ The furtive nature of the payments raises further questions about how many such payments were orchestrated, whether legitimate services were actually rendered, and whether such payments required additional reporting by Justice Thomas. We have not yet adequately been able to investigate the extent to which any or all these undisclosed gifts were part of a coordinated gifts program to reward recipient justices.

In addition to possible disclosure violations under the Ethics in Government Act, each of the undisclosed transactions discussed above implicates federal laws against making false statements to the government.²⁵ Moreover, these gifts raise the possibility of related tax violations by Justice Thomas's benefactors if they failed to report or pay any required gift tax.²⁶ Because prosecutions have resulted of officials in other branches of government, relevant authorities should review this conduct in light of that prosecutorial precedent.

C. Justice Thomas's Potential Misconduct Exceeds Past Examples of Misconduct by Other Government Officials Investigated by the Department of Justice

Investigation of these matters by the Department of Justice is appropriate and consistent with the severity of the evidence of misconduct presented here. Indeed, the Department of Justice has charged other government officials for less serious violations than the evidence suggests Justice Thomas committed.

For example, in 2016, the Department prosecuted a former Drug Enforcement Agency official for false statements under 18 U.S.C. § 1001 for failing to disclose gifts of private air travel received from 2010 through 2014.²⁷ Also in 2016, the Department of Justice charged a Department of Veterans Affairs official under § 1001 for failing to disclose approximately \$21,000 in gifts consisting in part of airline tickets and resort services.²⁸ In 2010, the Department of Justice prosecuted a Department of Housing and Urban Development official under 18 U.S.C. § 1018 for his failure to disclose luxury sports tickets from someone with business before his agency.²⁹ The officials pleaded guilty and received criminal sentences. The

²³ Emma Brown et al., *Judicial activist directed fees to Clarence Thomas's wife, urged 'no mention of Ginni,'* WASH. POST (May 4, 2023), <https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/>.

²⁴ *Id.*

²⁵ 18 U.S.C. § 1001.

²⁶ *See, e.g.*, Letter from Sen. Ron Wyden to Harlan Crow (Apr. 24, 2023), <https://www.finance.senate.gov/chairmans-news/wyden-letter-to-harlan-crow-seeks-complete-account-of-gifts-to-justice-clarence-thomas>.

²⁷ Press release, Dep't of Justice, Former DEA Supervisory Agent Pleads Guilty to Federal Charge Involving His Personal Use of Free Air Travel (May 18, 2016), <https://oig.justice.gov/sites/default/files/2019-12/2016-05-18.pdf>.

²⁸ Press release, U.S. Attorney's Office, District of Arizona, Former Director of Phoenix VA Hospital Pleads Guilty (Mar. 2, 2016) <https://www.justice.gov/usao-az/pr/former-director-phoenix-va-hospital-pleads-guilty>).

²⁹ Mem. from Don Fox, Acting Director, Office of Government Ethics, to Designated Agency Ethics Officials and Inspectors General. 9 (Nov. 15, 2011),

value, scope, and duration of the undisclosed gifts accepted by Justice Thomas dwarf the undisclosed gifts for which the Department of Justice prosecuted these officials, who entered pleas of guilty.

II. Appointment of a Special Counsel to Investigate These Extraordinary Circumstances Would Be in the Public Interest

Appointment of a Special Counsel is justified under Department of Justice regulations. Under those regulations, the appointment of a Special Counsel is appropriate when “criminal investigation . . . is warranted”; the “investigation or prosecution . . . by a United States Attorney’s Office or litigating Division of the Department of Justice would present . . . extraordinary circumstances”; and “under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.”³⁰ This matter meets those standards.

The evidence documented above suggests the strong possibility of multiple federal ethics, tax, and false statement violations by a Supreme Court justice and associated individuals. When the Department of Justice has conducted criminal investigations of a high-ranking government official, in several cases, the Department appointed Special Counsels.³¹

Since no litigant appears before the Supreme Court more frequently than the United States government, represented by the Department of Justice,³² the Department may understandably hesitate to offend a member of that Court. Appointment of a special counsel would ensure proper, impartial investigation, separate from the Department’s broader litigating interests.

Appointment of a Special Counsel would serve the public interest. The public must have confidence that the judiciary and the Department of Justice execute their responsibilities fairly, impartially, and without respect to political expedience or partisan interests. Accordingly, any investigation by the Department of a sitting judge—especially a member of the highest court—must be conducted in a manner free of political motive. While we trust that the Department’s public servants would never succumb to such pressure, appointment of a Special Counsel would reinforce confidence in the independence, thoroughness, and reliability of any investigation. These same considerations counsel in favor of appointing a Special Counsel to investigate potential tax law violations without awaiting an IRS referral.

* * *

We do not make this request lightly. The evidence assembled thus far plainly suggests that Justice Thomas has committed numerous willful violations of federal ethics and false-statement laws and raises significant questions about whether he and his wealthy benefactors have

[https://www.oge.gov/web/OGE.nsf/0/C5880F8A6CE5BAE3852585BA005BEC97/\\$FILE/a20fbf3ea105448a8df16457fcfbab51.pdf](https://www.oge.gov/web/OGE.nsf/0/C5880F8A6CE5BAE3852585BA005BEC97/$FILE/a20fbf3ea105448a8df16457fcfbab51.pdf).

³⁰ 21 C.F.R. § 600.1 (2024).

³¹ See Peter Baker, *Presidents and Their Prosecutors*, N.Y. TIMES (Jan. 13, 2023),

<https://www.nytimes.com/2023/01/13/us/politics/presidents-prosecutors-special-counsel.html>.

³² Margaret Meriwether Cordray & Richard Cordray, *The Solicitor General’s Changing Role in Supreme Court Litigation*, 51 B.C. L. REV. 1323, 1338 (2010).

complied with their federal tax obligations. Presented with opportunities to resolve questions about his conduct, Justice Thomas has maintained a suspicious silence.

No government official should be above the law. Supreme Court justices are properly expected to obey laws designed to prevent conflicts of interest and the appearance of impropriety and to comply with the federal tax code. We therefore request that you appoint a Special Counsel authorized to investigate potential criminal violations by Justice Thomas under the disclosure, false statement, and tax laws; pursue leads of related criminal violations by donors, lenders, and intermediate corporate entities; and determine whether any such loans and gifts were provided pursuant to a coordinated enterprise or plan.

We thank you for your attention to these matters.

Sincerely,



SHELDON WHITEHOUSE
United States Senator
Chairman, Senate Judiciary Subcommittee on
Federal Courts, Oversight, Agency Action,
and Federal Rights



RON WYDEN
United States Senator
Chairman, Senate Committee on
Finance

Enclosures

APPENDIX A

MEMORANDUM

To: Chairman Ron Wyden, Senate Committee on Finance

From: Finance Committee Democratic Staff

Date: October 25, 2023

Re: Clarence Thomas did not repay entire principal on \$267,230 loan from Tony Welters

Executive Summary:

The Democratic staff of the Senate Committee on Finance reviewed loan documentation indicating that Justice Clarence Thomas received a \$267,230.00 loan from Tony Welters, which Thomas used to purchase a luxury motorcoach. While additional documents pertaining to the loan agreement may exist, documents reviewed by Democratic staff suggest that Justice Thomas did not repay a significant portion of the loan principal. In fact, none of the documents reviewed by Committee staff indicated that Thomas ever made payments to Welters in excess of the annual interest on the loan.

Forgiveness of the loan results in a taxable event for Justice Thomas. Under tax rules, forgiveness of the entire principal by Welters requires Justice Thomas to include up to \$267,230.00 in taxable income and report the amount on his tax filings. Justice Thomas did not disclose this forgiven debt on his ethics filings, raising questions as to whether Thomas properly reported the associated income on his tax returns.

Background:

On August 5th 2023, reporting from the New York Times revealed the existence of an undisclosed financial arrangement involving Supreme Court Justice Clarence Thomas and Anthony Welters.¹ According to these reports, in 1999 Welters personally loaned Justice Thomas an unspecified amount of money to help finance the purchase of a luxury recreational vehicle, which he still owns today. Justice Thomas used the proceeds of this loan to buy a Prevost Marathon motor coach for a price of \$267,230.00. Additionally, local department of motor vehicle records listed Welters as a lienholder on the original title certificate of the vehicle.

These reports raised serious questions regarding the terms of the loan agreement between Welters and Justice Thomas and the manner in which the debt was resolved. These questions included the dollar value of the loan, the interest rate charged on the loan, and the amounts of the loan that were repaid, forgiven or discharged. In response to questions from the New York Times, Welters stated that the loan was “satisfied” in 2008, but did not address whether it was repaid.

¹ *Clarence Thomas's \$267,230 R.V. and the Friend Who Financed It*, The New York Times, Aug. 5, 2023 available online at <https://www.nytimes.com/2023/08/05/us/clarence-thomas-rv-anthony-welters.html>. As noted in the story, the relationship between Welters and Thomas predates Thomas's time on the federal bench.

New evidence indicates that Justice Thomas failed to repay a significant portion of the principal of the \$267,230.00 loan from Tony Welters

In order to understand the loan arrangement between Welters and Justice Thomas, Committee staff requested, and Tony Welters voluntarily provided, information about the loan. Committee staff reviewed several documents made available by Welters' counsel related to the 1999 loan from Welters to Justice Thomas and obtained the following new information:

1. **A Handwritten Note from Justice Thomas on Supreme Court Stationery Dated December 6, 1999.** Committee staff reviewed a handwritten note dated December 6, 1999 from Thomas to Welters, written on the Supreme Court stationery from the Chambers of Clarence Thomas. The note references a Promissory Note and Security Agreement, and says the documents should accurately reflect the understanding of Thomas and Welters. Justice Thomas's note further states the agreements will be complied with to the letter.
2. **A Promissory Note Dated December 6, 1999.** Committee staff reviewed a Promissory Note ("Note") dated December 6, 1999. According to the Note, Clarence Thomas and Virginia Lamp Thomas, together as "Makers," executed an agreement to pay Anthony Welters, as "Payee," the principal sum of \$267,230.00.² The principal balance of the Note had an interest rate of 7.5% per annum. Interest payments on the note were due and payable annually each year on December 31, and the principal and all accrued unpaid interest was due no later than the maturity date of the Note. The stated maturity date of the Note was December 31, 2004. The Note included a referenced Security Agreement of the same date covering a "motor vehicle," and characterizes the Note together with the Security Agreement as the "Loan Documents."
3. **A Security Agreement Dated December 6, 1999.** Committee staff reviewed a Security Agreement ("Security") dated December 6, 1999 between Clarence and Virginia L. Thomas, together as "Grantors," and Anthony Welters as "Grantee." The Security describes a loan made by Welters to the Thomases for the original principal amount of \$267,230.00. According to the document, as a condition of the loan by Welters, the Thomases granted Welters a security interest in a 1991 Prevost by Marathon, in order to secure the payment of all amounts owed to Welters under the Promissory Note.
4. **Addendum to December 6, 1999 Promissory Note Dated December 31, 2004.** Committee staff reviewed an Addendum to the December 6, 1999 Promissory Note. The addendum, dated December 31, 2004, extended the maturity date of the Promissory Note by ten years, from December 31, 2004 to December 31, 2014. This

² The loan documents were executed jointly by Clarence Thomas and his wife Virginia Lamp Thomas. However, for simplicity this memo will sometimes refer to the loan agreement as between Clarence Thomas and Anthony Welters.

addendum was signed by Clarence Thomas and Virginia L. Thomas, together as “Makers,” and described Anthony Welters as “Payee.” The addendum made clear that the unpaid principal on the loan continued to bear interest and that annual interest payments would be due. It also specified that all other provisions of the original loan agreement remained in force.

5. **Bank Check from Clarence Thomas to Anthony Welters, Dated December 21, 2000, for Motorcoach Payment.** Committee staff reviewed a check from First Union National Bank dated December 21, 2000. The check was from Clarence Thomas to Anthony Welters in the amount of \$20,042.23. The check’s memo line stated it was for a motorcoach payment. According to Committee staff calculations, the annual interest payment on a \$267,230.00 loan at 7.5% interest is \$20,042.25.
6. **A Handwritten Note from Anthony Welters to Clarence Thomas, Dated November 22, 2008.** Committee staff reviewed a handwritten note dated November 22, 2008 from Anthony Welters to Justice Thomas. Welters’ note states that Thomas has been paying Welters interest only on Thomas’s bus for many years.³ Welters’ note indicates that after Thomas’s upcoming payment, Welters would no longer seek further payments from Justice Thomas on the loan because, according to Welters’ note, Welters believed that Thomas had paid interest greater than the purchase price of the bus, and that Welters did not feel it was appropriate to continue to accept payments even though he had the right to them.

Analysis

Based on the documents reviewed by Committee staff, staff confirmed that on or around December 6, 1999, Anthony Welters loaned Justice Clarence Thomas and his wife Virginia L. Thomas \$267,230.00 for the purchase of a 1991 Prevost Marathon. The loan agreement between Welters and Thomas consisted of a Promissory Note and Security Agreement, and constituted an “interest only” loan with an annual interest rate of 7.5%.

In a handwritten note on Supreme Court stationery, Justice Thomas indicated that he would comply with the terms of the loan agreement to the letter. Thomas made at least one annual payment to Welters in an amount almost exactly equal to the annual interest due to Welters. On the original maturity date of the loan agreement, Thomas executed an extension of the agreement extending the note an additional ten years.

In November 2008, 9 years after the loan agreement was executed, Welters forgave the balance of the loan to Thomas in recognition of the payments made by Thomas which Welters characterized as interest only payments that exceeded the amount of the original loan. While additional documents pertaining to the loan agreement may exist and provide more clarity to the

³ The note states that Thomas had been making payments to Welters for “ten plus” years, however at the time Welters’ note was written the agreement had only been in place for nine years.

agreement, none of the documents reviewed by Committee staff indicated that Thomas ever made payments to Welters in excess of the annual interest on the loan.⁴

Based on the documents reviewed by Committee staff, Anthony Welters forgave a substantial amount, or even all of the principal balance of his loan to Clarence Thomas, constituting of the forgiveness of approximately \$267,230.00 of debt owed by Justice Thomas.

Tax consequences for Justice Thomas arising from hundreds of thousands of dollars in forgiven debt

The new evidence obtained by the Committee raises a number of potentially serious tax questions for Justice Thomas. The revelation that Justice Thomas had up to \$267,000 in debt forgiven and failed to repay the entire principal of the loan would have generated a significant amount of taxable income for Justice Thomas.

The tax code makes clear that in instances where debt is canceled, forgiven, or discharged for less than the amount owed, the borrower must report the amount canceled or forgiven as income for tax purposes.^{5, 6} The November 22, 2008 handwritten note from Welters to Justice Thomas indicated that Welters felt that Justice Thomas had made interest payments over and above the purchase price of the motorcoach when Welters stopped collecting any further payments from Justice Thomas.

Justice Thomas did not report the forgiven debt on his 2008 Financial Disclosure Report. Since the loan agreement with Welters was first reported in August 2023, Justice Thomas has not provided any information on loan payments made to Welters, or stated whether he properly reported the income from the forgiven debt on his tax returns.

⁴ Representatives for Welters also indicated that they were not currently aware of documents indicating whether Thomas had made payments to Welters in excess of the annual interest payments.

⁵ 26 USC 61 “income from discharge of indebtedness” defined as taxable income; 26 USC 108 “Income from Discharge of Indebtedness.”

⁶ In certain cases, a forgiven loan may be recharacterized as a taxable gift; however, documents reviewed by the Committee indicate that the loan was intended to be established at arm’s length. Under federal tax law and regulations, bona fide business transfers are presumed not to be taxable gifts, if they are made at arm’s length and free from donative intent. See Treas. Reg. 25.2512-8.

APPENDIX B

Likely Undisclosed Gifts and Income from Harlan Crow and Affiliated Companies

YEAR	DESCRIPTION
2003	Yacht trip to Russia and the Baltics
2003	Helicopter ride to Yusupov Palace, St. Petersburg
2006	Tuition for grandnephew at Randolph-Macon Academy
2007	Tuition for grandnephew at Randolph-Macon Academy
2007	Yacht cruise around Greek islands
2008	Tuition for grandnephew at Hidden Lake Academy
2008	Roundtrip flight on private plane from Washington, D.C., to Savannah, GA
2008	Yacht trip between Savannah, GA and Charleston, SC
2009	Tuition for grandnephew at Hidden Lake Academy
2010	Roundtrip flight on private plane from Washington, D.C., to Savannah, GA
2016	Roundtrip private plane flight from Washington, D.C., to New Haven, CT
2017	Roundtrip flight on private plane from Washington, D.C., to Keese Mill, NY
2017	Meals and lodging at Camp Topridge
2017	Flight on private plane from St. Louis, MO, to Kalispell, MT, and return flight to Dallas, TX
2018	Roundtrip flight on private plane from Washington, D.C., to Dallas, TX
2018	Roundtrip flight on private plane from Washington, D.C., to Dallas, TX
2018	Roundtrip private plane flight from Washington, D.C., to Keese Mill, NY
2018	Meals and lodging at Camp Topridge
2019	Roundtrip flight on private plane from Washington, D.C., to Savannah, GA
2019	Roundtrip flight on private plane to Indonesia, and related yacht travel
2019	Roundtrip flight on private plane to Santa Rosa, CA
2021	Roundtrip flight on private plane from Washington, D.C., to NY
2021	Roundtrip flight on private plane from Washington, D.C., to San Jose, CA

Likely Undisclosed Gifts and Income from Other Donors

YEAR	DESCRIPTION	DONOR
2003	Flight on private plane from South Florida to Tampa, FL	Wayne Huizenga or an affiliated company
2004	Flights from Washington, D.C., to Ft. Lauderdale, FL	Miami Dolphins, Ltd. (Wayne Huizenga)
2004	Flights from Washington, D.C., to Ft. Lauderdale, FL	Miami Dolphins, Ltd. (Wayne Huizenga)
2008	Balance of loan for Prevost Marathon Le Mirage XL RV	Anthony Welters
2010	Roundtrip flight on plane from Washington, D.C. to Port of Spain, Trinidad	Anthony Welters
2015	Meals and lodging at ranch outside Jackson Hole, WY	David Sokol
2016	Flight on private plane from Jackson Hole to Washington, D.C.	Paul Anthony Novelty
2018	Flight on private plane from Ft. Lauderdale, FL, to Washington, D.C.	Paul Anthony Novelty
2019	Private plane flight from Washington, D.C., to NE to WY, to Washington, D.C.	David Sokol or an affiliated company
2019	Meals and lodging at ranch outside Jackson Hole, WY	David Sokol
2019	Tickets to Nebraska football game	David Sokol
2019	Tickets to Nebraska volleyball game	David Sokol

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