

United States Senate

WASHINGTON, DC 20510

February 7, 2024

Lee Ann Bennett
Acting Director, Administrative Office of the United States Courts
Acting Secretary, Judicial Conference of the United States
One Columbus Circle, NE
Washington, D.C. 20544

Dear Acting Director Bennett:

As the Judicial Conference reviews matters related to the accuracy of financial disclosure by Justice Clarence Thomas, we write to bring to the attention of the Committee on Financial Disclosure another seeming failure by Justice Thomas to disclose information required under the Ethics in Government Act.

On October 25, 2023, the Senate Finance Committee released a memorandum concluding that in November 2008, Anthony Welters ceased collecting principal or interest on a \$267,230.00 loan issued to Justice Thomas and his wife for the purchase of a 1991 Prevost Marathon RV. It appears that no principal was ever repaid on the loan before all payments ceased. Justice Thomas did not report any such forgiveness as income on his financial disclosure report covering the year 2008. The Ethics in Government Act requires disclosure of any “income from discharge of indebtedness.”

A lawyer for Justice Thomas has claimed that “[t]he loan was never forgiven” and “[t]he Thomases made all payments to Mr. Welters on a regular basis until the terms of the agreement were satisfied in full.”¹ However, Justice Thomas has made no such statement himself, and his representative has produced no documents to support those assertions. The lawyer’s unsworn assertion is contradicted by the records reviewed by the Senate Finance Committee and by the individual who provided the loan, which indicate the principal was not repaid and interest payments ceased. The Finance Committee obtained evidence indicating that Justice Thomas had hundreds of thousands of dollars in debt forgiven by a wealthy benefactor, yet failed to report this transaction on any financial disclosure forms. We are willing to share any evidence the Committee on Financial Disclosure may request.

This discrepancy raises multiple issues of judicial integrity. A financial disclosure omission can also indicate a failure to report the same information for tax purposes. If it was a gift, there likely should be a related gift tax return by the donor. If it was income to the recipient, that income should likely be reflected in related income tax filings. Even gifts that qualify as “personal hospitality”—which this would not seem to—are nevertheless reportable for tax purposes. In any event, cross-referencing between judicial financial disclosures and related tax filings, including efforts to amend financial disclosures or tax filings after the fact, can provide important information about the accuracy of claims and shed light on “willfulness.”

¹ Ariane de Vogue & Devan Cole, *Senate Finance Committee probe into Clarence Thomas finds that he didn’t disclose loan for RV*, CNN (Oct. 25, 2023), <https://www.cnn.com/2023/10/25/politics/senate-finance-clarence-thomas-forgiven-loan/index.html>.

Given the unexplained discrepancy between Justice Thomas's claims and documents reviewed by the Senate Finance Committee, the serious implications of a potential disclosure violation, and past financial disclosure omissions by Justice Thomas, we believe this additional matter warrants inclusion in the investigation by the Committee on Financial Disclosure. We request that the Committee on Financial Disclosure review this matter in conjunction with other potential disclosure violations currently being reviewed by the Committee.

We believe this additional evidence could be highly relevant in determining what all the facts are, and whether there is a reasonable likelihood that incomplete or inaccurate filings were "willful." If the evidence provides reasonable cause to believe that Justice Thomas willfully omitted income from his financial disclosure reports, the law requires referral to the U.S. Attorney General pursuant to 5 U.S.C. § 13106(b) for the willfulness determination. If tax law violations or false sworn statements are revealed, it becomes even more important that the proper law enforcement authorities be notified. The duty to meticulously obey the law is at its highest where the individual in question holds high judicial office.

We hope the Committee on Financial Disclosure will move quickly to resolve this and other similar matters pending before it.

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, Committee on
Finance

Enclosure

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.