



April 16, 2023

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Civil Division
U.S. Department of Justice
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Via email to civil.feedback@usdoj.gov and United States mail

Dear Principal Deputy Assistant Attorney General Boynton:

On behalf of the Project On Government Oversight (POGO), we write to urge the Department of Justice to investigate the recently reported decades-long failure of Supreme Court Justice Clarence Thomas to disclose his receipt of gifts potentially worth millions of dollars.

Unless the investigation reveals that the facts differ radically from what has been reported, the Department of Justice should thereafter initiate an action against Justice Thomas under the Ethics in Government Act seeking a civil monetary penalty for each knowing and willful omission from his financial disclosure reports. The penalty is \$71,316 per omission.¹

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

For over two decades, Justice Thomas accepted gifts of luxury vacation packages potentially worth millions of dollars from a billionaire political activist he met only after his appointment to the Supreme Court. He completed a strange real estate transaction with this same benefactor in 2014.

The Ethics in Government Act required Justice Thomas to disclose these gifts and the transaction. He did not. His public explanation suggested that he thought the gifts qualified for a disclosure exception. They did not. Contrary to what Justice Thomas and his defenders would have you believe, limitations on use of that exception, which render it inapplicable to the gifts he received, are not new.

¹ Judicial Conference of the United States, *Guide to Judiciary Policy*, vol. 2, pt. D, § 620.10(a), <https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf>; 5 C.F.R. § 2634.701, Table 1 (2023), <https://www.law.cornell.edu/cfr/text/5/2634.701>.

Circumstances surrounding the concealment of these reportable items strongly support the conclusion that these violations of the law were knowing and willful. The law was clear. All four federal supervising ethics offices had issued helpful explanations of the law. Three other justices showed they knew to disclose these types of gifts. Justice Thomas himself has disclosed such gifts in the past. He stopped after they prompted embarrassing media coverage in 2004. Furthermore, this is not the first time Justice Thomas has been caught failing to disclose information he should have: In 2011, he had to amend 20 years' worth of disclosures because he had not reported his wife's employment information.

The Department of Justice has a duty to hold Justice Thomas accountable for this flagrant and repeated law breaking, unless an investigation reveals that the facts radically differ from what has been reported. The department has enforced the disclosure law against other federal officials. There is no reason to treat Justice Thomas differently.

The Gifts, the Sale, and the Reporting Requirements

Justice Thomas accepted gifts of luxury vacations potentially worth millions of dollars that, under the Ethics in Government Act, should have been disclosed in his annual financial disclosure forms.

According to a shocking April 6, 2023, report by *ProPublica*, Justice Thomas and his wife, Virginia Thomas, have accepted luxury vacation packages from a man named Harlan Crow “virtually every year” for over 20 years.² According to *ProPublica*, these vacations included flights on private luxury jets, all-inclusive stays at exclusive resorts, guided tours, cruises, food, drink, clothing, and, based on the news outlet’s reference to an interview of a scuba diving instructor, possibly various excursions.

In a rare public statement on April 7, 2023, Justice Thomas confirmed that the couple had accepted vacations from Mr. Crow and that those gifts were not reported in his annual financial disclosure report.³

The cost of the gifts is breathtaking. As *ProPublica* wrote, the “extent and frequency of Crow’s apparent gifts to Thomas have no known precedent in the modern history of the U.S. Supreme Court.”⁴ According to the news outlet, to charter a plane and yacht comparable to those used on just one of the trips could have cost Justice Thomas more than \$500,000 if he had spent his own money. Extrapolating from this reporting, the full tally of Mr. Crow’s gifts may well have been worth millions of dollars.

The gifts Justice Thomas accepted from Mr. Crow in most of the last 20 years vastly exceed the reporting thresholds. Applying the legal requirements, Justice Thomas clearly had a duty to disclose these gifts.⁵ But despite having accepted Mr. Crow’s extraordinary gifts, Justice Thomas failed to disclose them in his annual financial disclosure reports. Instead, he affirmatively declared

² Joshua Kaplan, Justin Elliott, and Alex Mierjeski, “Clarence Thomas and the Billionaire,” *ProPublica*, April 6, 2023, <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

³ “Statement from Justice Clarence Thomas,” April 7, 2023, <https://www.documentcloud.org/documents/23745868-clarence-thomas-statement-4-7-23>.

⁴ Kaplan, Elliott, and Mierjeski, “Clarence Thomas and the Billionaire” [see note 2].

⁵ 5 U.S.C. § 13104 (2023), <https://www.law.cornell.edu/uscode/text/5/13104>.

that he had no gifts to report in his disclosure for calendar year 2019, which was the year of a trip to Indonesia that *ProPublica* described.⁶

After Justice Thomas issued his April 7 statement, *ProPublica* published another startling revelation: Justice Thomas also did not disclose a 2014 sale of real estate to a company owned by Mr. Crow.⁷ This sale, as reported, resembles a gift more than it does an arms-length transaction. The sale included a house and two vacant lots in which Justice Thomas had inherited a one-third interest. Though Justice Thomas had previously valued that one-third interest as worth \$15,000 or less, Mr. Crow reportedly purchased the properties for \$133,363.⁸ According to *ProPublica*, Justice Thomas' mother lived in the house before the sale and continued living there after the sale, and it is unclear whether she paid rent. Workers undertook tens of thousands of dollars' worth of renovations soon after the sale.⁹ As of the date of this letter, Justice Thomas has not issued a public statement explaining his nondisclosure of the unusual transaction.

The public financial disclosure provisions of the Ethics In Government Act of 1978 apply to Supreme Court justices, just as they do to officials in all three branches of government.¹⁰ Congress enacted that law to “preserve and promote the accountability and integrity of public officials.”¹¹ One section of the law requires covered officials to file annual financial disclosure reports on May 15 each year; another establishes detailed requirements for the contents of those reports.¹² The requirements include an obligation to disclose real estate transactions exceeding \$1,000 and gifts worth more than \$166 from any source whose gifts during the calendar year were worth more than \$415 in the aggregate.¹³

⁶ Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2019 [filer: Clarence Thomas]), at 3 (section V), May 14, 2020,

<https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2019.pdf>; Kaplan, Elliott, and Mierjeski, “Clarence Thomas and the Billionaire” [see note 2].

⁷ Justin Elliott, Joshua Kaplan, and Alex Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas. The Justice Didn’t Disclose the Deal.” *ProPublica*, April 13, 2023, <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus>.

⁸ Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2014 [filer: Clarence Thomas]), at 5 (section VII, line 1), May 15, 2015,

<https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2014.pdf>; Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7].

⁹ Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7].

¹⁰ 5 U.S.C. § 13101(11), 13103(f)(11) (2023), <https://www.law.cornell.edu/uscode/text/5/part-IV/chapter-131/subchapter-1>.

¹¹ Senate Committee on Governmental Affairs, *Report of the Committee on Governmental Affairs United States Senate to Accompany S. 555*, S. Rep. No. 95-170, 1 (1977), <https://www.ojp.gov/pdffiles1/Digitization/63796NCJRS.pdf>.

¹² 5 U.S.C. § 13103 (2023) (Persons required to file), <https://www.law.cornell.edu/uscode/text/5/13103>; 5 U.S.C. § 13104 (2023) (Contents of report) [see note 5].

¹³ 5 U.S.C. § 13104(a)(2) (2023) [see note 5]. Note that these reporting thresholds applied to gifts received in 2020 through 2022, and the aggregate threshold calculation excludes gifts worth \$166 or less. See Office of Government Ethics, “Increased Gifts and Travel Reimbursements Reporting Thresholds for Financial Disclosure Reports and Nonsponsor Widely Attended Gatherings Gift Exception Ceiling,” LA-20-04, June 25, 2020, [https://www.oge.gov/Web/oge.nsf/Legal%20Docs/43795F3BAF869CE3852585BB005DA325/\\$FILE/LA-20-04%20Increased%20Gifts%20and%20Travel%20Reimbursements%20Thresholds%20and%20WAG%20Exception%20Ceiling.pdf?open](https://www.oge.gov/Web/oge.nsf/Legal%20Docs/43795F3BAF869CE3852585BB005DA325/$FILE/LA-20-04%20Increased%20Gifts%20and%20Travel%20Reimbursements%20Thresholds%20and%20WAG%20Exception%20Ceiling.pdf?open). For gifts received in 2018 and 2019, the aggregate threshold was \$390, and the individual gift threshold was \$156. See Office of Government Ethics, “Increased Gifts and Travel Reimbursements Reporting Threshold for Financial Disclosure Reports and Nonsponsor Widely Attended Gatherings Gift Exception Ceiling,” Legal Advisory LA-17-07, June 8, 2017, [https://www.oge.gov/Web/oge.nsf/Legal%20Docs/EA746350CB2EE66F852585BA005BEC40/\\$FILE/LA-17-](https://www.oge.gov/Web/oge.nsf/Legal%20Docs/EA746350CB2EE66F852585BA005BEC40/$FILE/LA-17-)

While the Ethics in Government Act provides a disclosure exception for “personal hospitality,” the gifts that Justice Thomas accepted do not qualify for that exception.

A statutory exception to the disclosure requirement does exempt gifts of “personal hospitality.” Crucially, however, the statutory language limits this exception to gifts of “food, lodging, or entertainment.”¹⁴ The language further limits this exception to gifts provided by an “individual.”¹⁵ The Ethics in Government Act reiterates this latter limitation in a separate statutory definition of “personal hospitality,” which states that gifts from “a corporation or organization” are ineligible for the exception.¹⁶ As we explain in this section, Justice Thomas has always been required to disclose any such gifts under the Ethics in Government Act, which applies to Supreme Court justices.

Several gifts described in *ProPublica*’s story failed to qualify for the “personal hospitality” exception because they did not constitute “food, lodging, or entertainment.”¹⁷ Gifts of clothing, excursions, and possibly activities reported in the *ProPublica* article were clearly not food, lodging, or entertainment. The flights on Mr. Crow’s personal jet would require reporting for the same reason, as illustrated by a 2011 federal appeals court decision upholding the conviction of a federal official who, among other things, failed to disclose gifts of chartered jet flights in his annual financial disclosure report.¹⁸ We view the yacht voyages as ineligible for the exception as well, since they were not food, lodging, or entertainment.

Even if one does not share this view, however, there is an additional reason Mr. Crow’s gifts of private flights and yacht trips would not qualify for the personal hospitality exception: They were provided by a corporation or other entity.¹⁹ Mr. Crow’s private jet was owned by HRZNAR LLC, according to Federal Aviation Administration data.²⁰ Mr. Crow’s 161-foot superyacht, the

[07%20Increased%20Gifts%20Threshold%20and%20Nonsponsor%20WAG%20Gift%20Exception%20Ceiling.pdf?open.](#)

¹⁴ 5 U.S.C. § 13104(a)(2)(A) (2023) [see note 5].

¹⁵ 5 U.S.C. § 13104(a)(2)(A) (2023) [see note 5].

¹⁶ 5 U.S.C. § 13101(14) (2023), <https://www.law.cornell.edu/uscode/text/5/13101>.

¹⁷ 5 U.S.C. § 13104(a)(2)(A) (2023) [see note 5].

¹⁸ See *U.S. v. Safavian*, 649 F.3d 688 (D.C. Cir. 2011) (upholding conviction based on the defendant’s failure to disclose a trip that included chartered jet flights in his annual financial disclosure report and rejecting the defendant’s argument that new evidence regarding the cost of the private plane charter should have been ruled inadmissible), [https://www.oge.gov/Web/OGEnsf/Resources/U.S.+v.+Safavian,+649+F.3d+688+\(D.C.+Cir.+2011\)](https://www.oge.gov/Web/OGEnsf/Resources/U.S.+v.+Safavian,+649+F.3d+688+(D.C.+Cir.+2011)); *U.S. v. Safavian*, 644 F. Supp. 2d 1 (D.D.C. 2009), <https://casetext.com/case/us-v-safavian-9>. *United States v. David Hossein Safavian*, Case 1:05-cr-00370-PLF, Document 167 (“Superseding Indictment”), sections 18, 21, 30-37, October 8, 2008, <https://www.govexec.com/pdfs/101008rb1.pdf>.

¹⁹ 5 U.S.C. § 13101(14) (2023) [see note 16].

²⁰ POGO identified the plane from the tail number in a *ProPublica* video. This tail number corresponds to an entry for a Bombardier Global 5000 jet in the FAA plane ownership registry, which identifies the owner as HRZNAR LLC. That company is owned by HRZN Global, Inc. Harlan Crow is CEO, director, and president of HRZN Global, Inc. In addition, public flight data from ADS-B Exchange, a repository of data broadcast from planes, shows flights that match the June 2019 trips described in *ProPublica*’s reporting. See *ProPublica* (@propublica), “Supreme Court Justice Clarence Thomas has been treated to luxury vacations by a GOP megadonor for years,” TikTok, April 7, 2023, <https://t.co/Mev3o83FCq>; Federal Aviation Administration, FAA Registry (serial no. 9298), issued January 30, 2009, <https://www.documentcloud.org/documents/23746099-faa-registration-n900gx-aircraft-inquiry>; Texas Comptroller of Public Accounts, Form 05-102, Texas Franchise Tax Public Report, November 9, 2021, <https://www.documentcloud.org/documents/23746098-hrznar-llc-tx-pif>; Texas Comptroller of Public Accounts, Form

Michaela Rose, is likewise registered to a business entity, Rochelle Marine Ltd.²¹ That means the flights and yacht cruises, including those *ProPublica* valued at \$500,000, were ineligible for the “personal hospitality” exception. *ProPublica*’s report also explained that at least one of the resorts at which Justice Thomas and his spouse stayed, Topridge, is owned by a company, and other facilities where they stayed may have similarly been owned by legal entities. That makes the stays at Topridge ineligible for the exception; stays at other locations may be ineligible for the same reason.

The law is clear: Justice Thomas had a duty to disclose these gifts. He did not do so.

Justice Thomas’ sale of real estate to Harlan Crow should have been reported as a transaction, and evidence appears to indicate that other aspects of that transaction should have been reported as gifts.

There is no doubt that the undisclosed 2014 real estate transaction was reportable, and (as of the date of this letter) Justice Thomas has not publicly denied that it was. The Ethics in Government Act requires disclosure of any transaction exceeding \$1,000 of real estate. The only exclusion from the disclosure requirement applies to the sale of a filer’s personal residence.²² The house and the two vacant lots in which Justice Thomas had a one-third investment interest were not his personal residence.²³ The sale, therefore, was unquestionably reportable.

05-102, Texas Franchise Tax Public Report, November 9, 2021, <https://www.documentcloud.org/documents/23746096-hrzn-global-inc-owner-of-hrznar-llc-harlan-crow>; Kaplan, Elliott, and Mierjeski, “Clarence Thomas and the Billionaire” [see note 2]; ADS-B Exchange (data for June 30, 2019, flight to Washington, DC), <https://globe.adsbexchange.com/?icao=ac6fd8&lat=35.526&lon=-88.140&zoom=5.8&showTrace=2019-06-29>, (data for June 30, 2019, flight to Hawaii and then toward Indonesia), <https://globe.adsbexchange.com/?icao=ac6fd8&lat=25.935&lon=-142.926&zoom=4.0&showTrace=2019-06-30>, and (data for June 30, 2019, flight to Hawaii and then toward Indonesia), <https://globe.adsbexchange.com/?icao=ac6fd8&lat=23.097&lon=-152.871&zoom=4.8&showTrace=2019-07-10>.

²¹ Documents retrieved from the public EQUASIS database by POGO’s Jason Paladino show that the *Michaela Rose* is registered to Rochelle Marine Ltd in Guernsey, an island jurisdiction known for minimal regulation and taxation, belonging to a British Crown dependency. A corporate registry in Guernsey identifies M. Kevin Bryant as a manager of Rochelle Marine Ltd. Mr. Bryant is the general counsel of Crow Holdings. See Electronic Quality Shipping Information System (EQUASIS), “Michaela Rose” (International Maritime Organization number 1002756), <https://www.documentcloud.org/documents/23746100-rochelle-marine-ltd-equasis-shipinfo>; Guernsey Registry, Annual Validation – 2019 (submission no. 863422), November 2, 2020, <https://www.documentcloud.org/documents/23746101-corp-doc-rochelle-marine>; Crow Holdings, “Kevin Bryant” <https://www.crowholdings.com/team/kevin-bryant/> (last viewed April 15, 2023). Revealing that the yacht is used for commercial purposes, another document, filed with the U.S. Patent and Trademark Office, shows that in 2021 a trademark for “Michaela Rose,” registered for “yacht charter services for entertainment,” was filed by “Rochelle Charter, Inc.,” a Delaware corporation that lists the same address as Crow Holdings headquarters in Dallas. U.S. Patent and Trademark Office, “Michaela Rose” (registration no. 6399377, serial no. 88648013), April 13, 2021, <https://www.documentcloud.org/documents/23779217-trademark-registration-michaela-rose>. In addition to a disqualification based on corporate ownership, use of the yacht for commercial purposes would further disqualify any reliance on the personal hospitality exception for “food, lodging, or entertainment.” See Administrative Office of the U.S. Courts, *Filing Instructions for Judicial Officers and Employees*, (March 2023), 25, https://www.uscourts.gov/sites/default/files/financial_disclosure_filing_instructions.pdf.

²² 5 U.S.C. § 13104(a)(5)(A) (2023) [see note 5].

²³ Justice Thomas was one of three owners, and the house was his mother’s residence. Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7].

Evidence reported by *ProPublica* appears to indicate that other aspects of the arrangement were also reportable — as gifts. *ProPublica* reported that Savannah Historic Developments, LLC, owned by Mr. Crow, agreed to pay \$133,000 for the properties in October 2014.²⁴ Inasmuch as Justice Thomas had a one-third share in the properties, the value of his interest was \$43,333. In his financial disclosure covering calendar year 2014, filed seven months after the sale, he reported that his interest was worth “\$15,000 or less.”²⁵ This discrepancy between the reported value and what Mr. Crow’s company actually paid is irreconcilable. If Justice Thomas believed he had sold his interest for far more than it was worth, he should have disclosed the difference as a gift from Mr. Crow’s company.

The evidence appears to indicate that Justice Thomas received additional gifts for the benefit of his mother. His mother continued living in the house after the sale. *ProPublica* indicates that Justice Thomas and Mr. Crow declined to say whether Justice Thomas’ mother paid rent after the sale. Whether she paid rent or not, she benefited from renovations to her home undertaken after the sale.²⁶ Any objective observer would conclude under the circumstances that the renovations benefiting Justice Thomas’ mother and the possibly free housing were gifts given to her by Mr. Crow for Justice Thomas. Justice Thomas showed he understood the legal concept of constructive receipt in the context of financial disclosure when he previously disclosed a gift of \$5,000 cash for his grandnephew’s education from someone who entered his life after he joined the Supreme Court.²⁷

Thus, the sale was reportable as a transaction, and the improvements to the home and any free rent were reportable as gifts, unless Mr. Crow’s company was paid rent and reimbursed for the improvements. But Justice Thomas did not report these items.

The circumstances also support the conclusion that Justice Thomas’ failure to disclose the sale of his real estate interest was knowing and willful.

Circumstances support the conclusion that Justice Thomas’ violation of the disclosure law with respect to the sale was also knowing and willful. The strongest evidence of his intent is an affirmative measure he took that hid his 2014 sale of property to Mr. Crow. In May 2016, Justice Thomas filed a financial disclosure report, again disclosing his one-third ownership of real estate in Liberty City, Georgia.²⁸ But, according to *ProPublica*, he had not owned the real estate

²⁴ Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7].

²⁵ Form AO-10 (Financial Disclosure Report for Calendar Year 2014 [filer: Clarence Thomas]), at 5 (section VII, line 1) [see note 8].

²⁶ Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7].

²⁷ Richard Serrano and David Savage, “Justice Thomas Reports Wealth of Gifts,” *Los Angeles Times*, December 31, 2004, <https://www.latimes.com/archives/la-xpm-2004-dec-31-na-gifts31-story.html>. Regulations of the Office of Government Ethics offer another example of the relevance of the concept of constructive receipt to government ethics. See 5 C.F.R. § 2635.807(a)(2)(iv) (2023) (“Receive means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use”), <https://www.law.cornell.edu/cfr/text/5/2635.807>.

²⁸ Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2015 [filer: Clarence Thomas]), May 15, 2016, <https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2015.pdf>.

properties since 2014.²⁹ That means his one-third interest in the properties should not have appeared in the report, which covered calendar year 2015.

The Ethics in Government Act requires disclosure of “The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year.”³⁰ This “interest in property” was no longer “held” by Justice Thomas in 2015. He had no interest in the properties that he could say “exceeds \$1,000” in 2015. Yet he included that interest in his 2016 report.³¹

On his disclosure form, Justice Thomas added a note reading “The asset ... does not receive any rental income for this property.”³² He had to know that readers would construe the note not as indicating that he sold the properties but only that the stream of income had ended, possibly because a renter had vacated the house.³³ No reasonable reader would conclude from this note that he had sold the properties.

Had he disclosed the sale of the real estate properties, Justice Thomas would have had to publicly disclose the purchaser’s identity.³⁴ His decision to continue reporting his interest in the properties after having sold them, and his obfuscating note, strongly support a conclusion that the failure to report the sale to Mr. Crow’s company was knowing and willful. One can reasonably infer that the failure to disclose the associated gifts also was knowing and willful.

Knowing and Willful Failure to Report Information Required to be Reported Under the Ethics in Government Act

The law is clear. And it is supported by guidance and additional examples provided by all four supervising ethics offices.

The Ethics in Government Act has designated four “supervising ethics office[s]” for the federal government: the Judicial Conference, the Select Committee on Ethics of the Senate, the Committee on Ethics of the House of Representatives, and the Office of Government Ethics.³⁵

²⁹ Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7].

³⁰ 5 U.S.C. § 13104(a)(3) (2023) [see note 5].

³¹ Form AO-10 (Financial Disclosure Report for Calendar Year 2015 [filer: Clarence Thomas]), at 4 (section VII, line 1) [see note 28].

³² Form AO-10 (Financial Disclosure Report for Calendar Year 2015 [filer: Clarence Thomas]), at 6 (section VIII) [see note 28].

³³ In 2013, for example, Justice Thomas reported that he had received between \$1,001 and \$2,500 in rent from the property. See Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2012 [filer: Clarence Thomas]), at 5 (section VII, line 2), May 15, 2013, <https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2012.pdf>.

³⁴ The form Justice Thomas filed in 2015 for calendar year 2014 included a field in which filers disclose the “purchaser” of any reported financial interest for private transactions of this sort. See Form AO-10 (Financial Disclosure Report for Calendar Year 2014 [filer: Clarence Thomas]), at 5 (section VII, line 1, column 5) [see note 8].

³⁵ 5 U.S.C. § 13101(18) (2023) [see note 16].

The Supreme Court has taken the position that the Judicial Conference, the judicial branch’s supervising ethics office, has no authority over the Supreme Court.³⁶ Whether or not it has authority over justices, the Judicial Conference has correctly emphasized that the Ethics in Government Act of 1978 applies to the justices.³⁷ The Ethics in Government Act covers “judicial officers,” and the statutory definition of that term begins with the following language: “The term ‘judicial officer’ means the Chief Justice of the United States, the Associate Justices of the Supreme Court ... [and additional officers].”³⁸ What matters, therefore, are the requirements of that law.

In addition to the plain language of the law, guidance on the scope of the personal hospitality exception is available from several sources. All four supervising ethics offices have developed a wealth of expertise in applying the Ethics in Government Act to over 25,000 public financial disclosure filers, and they routinely issue informational materials for public financial disclosure filers.³⁹ Inasmuch as two chief justices have contended that the Judicial Conference lacks authority over the justices, there is no reason they could not also turn to publications of the other supervising ethics offices for helpful explanations of the law.

These explanations make it clear that the gifts of private plane and yacht travel that Justice Thomas accepted do not qualify for the “personal hospitality” exception to the disclosure law.

The Senate Select Committee on Ethics explained in its 2003 ethics manual that the personal hospitality exception was unavailable for gifts of transportation accepted in lieu of commercial travel.⁴⁰ The 2008 *House Ethics Manual* offered the following example: “Member N obtains written permission from the Committee to accept from a personal friend \$500 in travel expenses to attend their college reunion. Member N must report the gift.”⁴¹ Discussing a related gift rule

³⁶ In 1991, Chief Justice William Rehnquist signed a “Resolution” declaring that regulations of the Judicial Conference pertaining to financial disclosure “do not apply to officers and employees of the Supreme Court.” In the document, he pledged they would comply with the “substance” of the regulations, but that compliance was voluntary. William H. Rehnquist, “Resolution,” January 18, 1991, https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2012/02/21/National-Politics/Graphics/1991_Resolution.pdf. Two decades later, Chief Justice John Roberts reiterated that the Judicial Conference has no authority over the justices: “Because the Judicial Conference is an instrument for the management of the lower federal courts, its committees have no mandate to prescribe rules or standards for any other body.” John Roberts, *2011 Year-End Report on the Federal Judiciary* (December 31, 2011), 4, <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>. Consistent with the Supreme Court’s position as to the Judicial Conference’s lack of authority, the landing page on the website of the Administrative Conference of the U.S. Courts states that its financial disclosure regulations apply only to “judges” and “judicial employees,” with no reference to justices. Administrative Office of the U.S. Courts, “Judiciary Financial Disclosure Regulations,” accessed April 15, 2023, <https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/financial-disclosure-report-regulations>.

³⁷ *Guide to Judiciary Policy*, vol. 2D, ch. 1, §§ 140, 170 [see note 1]; 5 U.S.C. § 13013(f)(10) (2003) [see note 12].

³⁸ The coverage of judicial officers is established in a section of the Ethics in Government Act establishing who must file disclosure under that law. 5 U.S.C. § 13101(10) (2023) [see note 16]; 5 U.S.C. § 13103(f)(11) (2023) [see note 12].

³⁹ Office of Government Ethics, *Fiscal Year 2009 Performance Accountability Report* (November 2009), i, [https://www.oge.gov/web/OGE.nsf/0/D8874CAFC5F3D5D9852585B6005A12CC/\\$FILE/c8baa1b845ee48b88ca898939504f7a62.pdf](https://www.oge.gov/web/OGE.nsf/0/D8874CAFC5F3D5D9852585B6005A12CC/$FILE/c8baa1b845ee48b88ca898939504f7a62.pdf).

⁴⁰ Senate Select Committee on Ethics, United States Senate, *Senate Ethics Manual*, S.Pub-108-1 (2003), 37, <https://www.ethics.senate.gov/downloads/pdf/files/manual.pdf>.

⁴¹ Committee on Standards of Official Conduct, *House Ethics Manual* (2008), 259, https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf.

exception, the 2008 manual emphasized that personal hospitality does not include private plane travel for a vacation.⁴² The executive branch’s 2004 financial disclosure manual likewise explained that the exception was inapplicable to transportation.⁴³

Both the disclosure law itself and the guidance of the supervising ethics offices further reaffirm that the personal hospitality exception is inapplicable to gifts from corporations and other legal entities. A March 2000 version of the executive branch financial disclosure form included a hypothetical that concluded, “A gift of this nature — hospitality at a lodge owned by a corporation rather than an individual — would not qualify as a ‘personal hospitality’ exclusion.”⁴⁴ The 2008 House ethics manual included discussion of a related gift rule permitting receipt of personal hospitality: “Property or facilities owned by a corporation or a firm may not be used under this provision, even if the corporation or firm is wholly owned by an individual.”⁴⁵ In a similar discussion of a related gift rule, the 2003 Senate ethics manual included two examples illustrating that the concept of “personal hospitality” did not include a stay at a property owned by a corporation or at a resort used for commercial purposes.⁴⁶

These materials can serve as good sources of information for the justices because the financial disclosure law covering the justices also covers other officials in all three branches of government.⁴⁷ Written for a large workforce, these materials have the added advantage of being drafted by authors who can be more objective about the filing requirements than one can be with respect to the one’s own disclosures or, as in the case of the Supreme Court, the disclosures of a small number of colleagues.

The claim by some commentators that these gifts were not reportable before 2023 is false.

Some commentators have incorrectly suggested that the gifts Justice Thomas accepted were not reportable before a “rule change” in 2023.⁴⁸ This commentary is wrong to the point of being sloppy.

There was no applicable rule to change because the reporting requirement does not come from a rule — it comes from the Ethics in Government Act, which has always required disclosure of the types of gifts Justice Thomas accepted. These mistaken arguments refer to financial disclosure guidance issued by the Judicial Conference in March 2023.⁴⁹

⁴² *House Ethics Manual* (2008), 62-63, Example 50 [see note 41].

⁴³ Office of Government Ethics, *Public Financial Disclosure: A Reviewer’s Reference* (November 2004), 3-22, https://permanent.fdlp.gov/lps57672/rf278guide_04.pdf.

⁴⁴ Office of Government Ethics, Standard Form 278, OMB No. 3209 – 0001, (2000), 9, https://web.archive.org/web/20040725102118/http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/forms/fr278_00.pdf.

⁴⁵ *House Ethics Manual* (2008), 62 [see note 41].

⁴⁶ *Senate Ethics Manual*, examples 18 and 20 [see note 40].

⁴⁷ See 5 U.S.C. § 13103(f) (2023) [see note 12].

⁴⁸ See Gail Collins and Brett Stephens, “Clarence Thomas Decided Against the Staycation,” *New York Times*, April 10, 2023, <https://www.nytimes.com/2023/04/10/opinion/clarence-thomas-harlan-crow-donald-trump.html>; Nina Totenberg, “Justice Thomas explains why he didn’t report trips paid for by billionaire,” *NPR*, April 7, 2023, <https://www.npr.org/2023/04/07/1168649656/justice-thomas-trips>; Abbie VanSickle, “Justice Thomas Says He Was Advised Lavish Gifts Did Not Need to Be Reported,” *New York Times*, April 7, 2023, <https://www.nytimes.com/2023/04/07/us/politics/clarence-thomas-supreme-court-travel.html>.

⁴⁹ *Filing Instructions for Judicial Officers and Employees*, 25 [see note 21].

But the Supreme Court has said the Judicial Conference has no authority over the nine justices.⁵⁰ Any rules or guidance issued by the Judicial Conference — while useful guidance for justices seeking to comport themselves ethically — are no more binding on the justices than are the rules and guidance of the Senate Select Committee on Ethics, the House Ethics Committee, or the Office of Government Ethics.

The notion that the judiciary substantively changed its regulations in March 2023 is also misguided. Limitations on the “personal hospitality” exception applied to the justices long before 2023. The Judicial Conference issued a new version of its financial disclosure instructions in March 2023, in part to expand the explanation of the exceptions that were contained in earlier versions of the instructions.⁵¹

The Judicial Conference explained in 2023 that personal hospitality excludes “gifts extended at property or facilities owned by an entity, rather than by an individual or an individual’s family, even if the entity is owned wholly or in part by an individual or an individual’s family” and “gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.”⁵²

In a recent letter to a senator, the Administrative Office of the U.S. Courts characterized the change as a clarification.⁵³ The new guidance merely expanded the discussion by adding specific examples of gifts that do not qualify for the personal hospitality exception. Though this level of detail in the Judicial Conference’s explanation of the law was new in 2023, the disclosure exception was unavailable for corporate gifts long before then. The 2018 version of the Judicial Conference’s instructions (the earliest version we could find) stated the exception plainly: “Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.”⁵⁴ That language tracks the limiting language in the disclosure law applicable to the justices.⁵⁵

The Judicial Conference itself has taken the position that these types of gifts were reportable prior to 2023. In 2008, the Judicial Conference recommended that the House of Representatives consider impeaching United States District Judge G. Thomas Porteous. Though not the primary focus of its referral, the Judicial Conference cited, as one of several bases for its recommendation, Judge Porteous’s failure to disclose gifts he had received.⁵⁶ Other allegations against Judge

⁵⁰ Roberts, *2011 Year-End Report*, 4 [see note 36].

⁵¹ *Filing Instructions for Judicial Officers and Employees*, 25 [see note 21]. See Kaplan, Elliott, and Mierjeski, “Clarence Thomas and the Billionaire” [see note 2].

⁵² *Filing Instructions for Judicial Officers and Employees*, 25 [see note 21].

⁵³ Roslynn R. Mauskopf, director, Administrative Office of the U.S. Courts, to Sheldon Whitehouse, senator, about actions taken by the Judicial Conference to clarify its regulations on “personal hospitality,” March 23, 2023, [https://www.whitehouse.senate.gov/imo/media/doc/Response%20to%20Senator%20Whitehouse's%20Letter%20of%2002-21-2023%20\(Final\).pdf](https://www.whitehouse.senate.gov/imo/media/doc/Response%20to%20Senator%20Whitehouse's%20Letter%20of%2002-21-2023%20(Final).pdf).

⁵⁴ *Guide to Judiciary Policy*, vol. 2, pt. D, § 330.30 [see note 1].

⁵⁵ 5 U.S.C. § 13104(a)(2)(A) (2023) [see note 5].

⁵⁶ The Judicial Conference wrote that, “Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him.” See letter from James C. Duff, secretary,

Porteous were even more serious. Nonetheless, drafters of the House report pertaining to the impeachment likewise considered his nondisclosure of gifts worth mentioning: “Judge Porteous did not disclose the 2000, 2001, or 2003 Diamond hunting trips on his Financial Disclosure Reports, nor did he disclose his 2002 Rowan hunting trip.”⁵⁷ The Senate later convicted and removed Judge Porteous, though for reasons that were broader than solely these nondisclosures.⁵⁸

The House of Representatives also demonstrated that these gifts were reportable when it took action against one of its own members who was covered by the same disclosure law applicable to Supreme Court justices. In 2014, the House Ethics Committee issued a report sanctioning Representative Don Young for improperly relying on a “personal hospitality” exception to a gift prohibition for gifts that included hunting trips, including free flights on private planes and stays at private resorts.⁵⁹ The House ethics manual cites the 2014 House report on Representative Young as illustrating limits of the disclosure exception for personal hospitality.⁶⁰ The 2014 House report faulted him for “failing to report certain gifts on his Financial Disclosure Statements.”⁶¹ Among other things, the report discussed gifts associated with “hunting trips,” which included “air travel provided by personal friends,” and concluded that “Representative Young had not reported any of the proper or improper gifts or trips that should have been reported on his Financial Disclosure Statements for the relevant periods.”⁶² Emphasizing that these items were reportable, the committee found that “Representative Young’s conduct violated the Ethics in Government Act,” citing the gift reporting threshold in a footnote.⁶³ A contemporaneous report in a news outlet from Representative Young’s home state shows that the value of these gifts was a fraction of the value of the gifts Justice Thomas accepted: “The House Ethics Committee said Friday that Rep. Don Young violated Congressional rules by improperly accepting nearly \$60,000 in hunting trips, rides on private planes and other gifts and failing to report them on his financial disclosure forms.”⁶⁴

As discussed above, the publications of other supervising ethics offices, which were equally available to Justice Thomas, have long provided explanations of the personal hospitality exception’s limitations.⁶⁵ But what matters most is that the plain language of the Ethics in

Judicial Conference of the United States, to Nancy Pelosi, speaker of the House, about the impeachment of United States District Judge G. Thomas Porteous, June 18, 2008, https://web.archive.org/web/20110522081532/http://blog.nola.com/news_impact/2008/06/porteous.pdf.

⁵⁷ U.S. House of Representatives, *Impeachment of G. Thomas Porteous, Jr., Judge of the United States District Court for the Eastern District of Louisiana*, H.R. Rep. 111-427, at 136 (2010), <https://www.congress.gov/111/crpt/hrpt427/CRPT-111hrpt427.pdf>.

⁵⁸ Jennifer Steinhauer, “Senate, for Just the 8th Time, Votes to Oust a Federal Judge,” *New York Times*, December 8, 2010, <https://www.nytimes.com/2010/12/09/us/politics/09judge.html>.

⁵⁹ Liz Ruskin, “House Ethics Committee says Rep. Don Young accepted improper gifts,” *KTOO Public Media*, June 20, 2014, <https://www.ktoo.org/2014/06/20/house-ethics-committee-says-rep-don-young-accepted-improper-gifts/>; House Committee on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H.R. Rep. No. 113-487, at 3, 8, 21, 67 (2014), <https://www.congress.gov/113/crpt/hrpt487/CRPT-113hrpt487.pdf>.

⁶⁰ Ethics Committee, U.S. House of Representatives, *House Ethics Manual*, Gifts-43 – Gifts-44, n. 51 (2022 print), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>.

⁶¹ *In the Matter of Allegations Relating to Representative Don Young*, 1 [see note 59].

⁶² *In the Matter of Allegations Relating to Representative Don Young*, 3 [see note 59].

⁶³ *In the Matter of Allegations Relating to Representative Don Young*, 3 [see note 59].

⁶⁴ Richard Mauer, “Alaska Rep. Don Young rebuked by ethics committee,” *Anchorage Daily News*, June 20, 2014, updated September 28, 2016, <https://www.adn.com/alaska-news/article/alaska-rep-don-young-rebuked-ethics-committee/2014/06/20/>.

⁶⁵ See *House Ethics Manual* (2008), 62-63, 259 [see note 41]; *Public Financial Disclosure: A Reviewer’s Reference*, 3-22 [see note 43]; *Senate Ethics Manual*, 37 [see note 40]; Office of Government Ethics, Standard Form 278, OMB

Government Act, which applies to the justices, is clear as to these limitations on the personal hospitality exception — and the statute unquestionably applies to the nine justices.⁶⁶ These gifts have always been reportable under the Ethics in Government Act, and commentators would do well to stop spreading the false narrative that these gifts were not reportable before 2023.

For all of these reasons, there can be no doubt that the disclosure law has long excluded from the coverage of its personal hospitality exception gifts of transportation and gifts from corporate entities. Such items must be disclosed. This guidance material has long been available to Justice Thomas and all other public filers in the three branches of government who are subject to the disclosure requirements of the Ethics in Government Act.

Other Supreme Court justices have shown they understood these types of gifts needed to be disclosed — and Justice Thomas has disclosed similar gifts in the past.

The justices demonstrated their understanding that these types of gifts were reportable before 2023. Justice Antonin Scalia wrote in 2004 about the requirement to disclose gifts of transportation. In a memorandum articulating his decision not to recuse from a case involving the vice president, Justice Scalia insisted that rides gifted to him on government aircraft did not need to be reported. He made this argument in part by noting that government aircraft were exempted from the Ethics in Government Act’s required “annual reporting of transportation provided or reimbursed.”⁶⁷

Justices Ruth Bader Ginsburg and Stephen Breyer both reported gifts of transportation in their disclosures.⁶⁸ In a disclosure for calendar year 2018, Justice Ginsburg disclosed a “tourist trip” to Israel funded by billionaire Morris Kahn. In 2013, Justice Breyer disclosed the gift of a trip to Nantucket on the private plane of hedge fund magnate David Rubenstein.⁶⁹

Past disclosures appear to confirm that Justice Thomas also understood the need to report gifts of private plane travel and other items. In financial disclosures for 2000 and 2002, Justice Thomas

No. 3209 – 0001, at 9 (2000),

https://web.archive.org/web/20040725102118/http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/forms/fr278_00.pdf.

⁶⁶ As explained earlier, the law itself limits the exception to gifts of “food, lodging, or entertainment” provided by an “individual,” with a definition section reiterating that gifts from a “corporation or organization” are ineligible for the exception. 5 U.S.C. §§ 13101(14), 13104(a)(2)(A) (2023), <https://www.law.cornell.edu/uscode/text/5/part-IV/chapter-131/subchapter-I>.

⁶⁷ Memorandum of Justice Scalia, *Richard B. Cheney, Vice President of the United States, et al. v. United States District Court for the District of Columbia et al.*, 542 U.S. 367 (2004), <https://www.law.cornell.edu/supct/html/03-475.ZA.html>.

⁶⁸ Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2018 [filer: Ruth Bader Ginsburg]), at 3 (section IV, line 9), May 15, 2019, <https://fixthecourt.com/wp-content/uploads/2019/06/Ginsburg-2018.pdf>; Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2013 [filer: Stephen Breyer]), at 3 (section IV, line 5), April 29, 2014, <https://www.documentcloud.org/documents/1202525-breyer-stephen-2013>.

⁶⁹ “Thanks to Private Jet Ride, Justice Breyer Makes Appearance at Private Wedding Public,” *Fix the Court*, December 2, 2014, <https://fixthecourt.com/2014/12/thanks-private-jet-ride-justice-breyer-makes-appearance-private-wedding-public/>; Form AO-10 (Financial Disclosure Report for Calendar Year 2013 [filer: Stephen Breyer]), at 3 (section IV, line 5) [see note 68].

disclosed free passage on private planes on five occasions.⁷⁰ A 2002 news report indicates that Justice Thomas previously disclosed Mr. Crow's gift of a Bible once owned by Fredrick Douglass and a free plane ride.⁷¹

A subsequent change in Justice Thomas' behavior makes a strong case that his conduct was knowing and willful. In 2004, the *Los Angeles Times* published a story about gifts Justice Thomas had disclosed.⁷² In a new piece on April 7, 2023, staff writer David Savage recalled Justice Thomas' reaction to this embarrassing media coverage: "Thomas refused to comment on the article, but it had an impact: Thomas appears to have continued accepting free trips from his wealthy friend. But he stopped disclosing them."⁷³ This timing suggests Justice Thomas stopped disclosing gifts because he wanted to avoid further negative media coverage of his receipt of gifts.

Whatever the nature of Justice Thomas' association with Mr. Crow may have been, Justice Thomas had ample incentive to conceal his acceptance of gifts of vacations that had the practical effect of giving a political activist extraordinary access to him. Mr. Crow is well known as a political funder, a man who *Insider* describes as a "major backer of libertarian think tanks and political action committees."⁷⁴ For years, his interests have intersected with the work of both Justice Thomas and Ms. Thomas. In 2011, for example, he gave \$500,000 to a group that, according to *ProPublica*, paid Ms. Thomas a salary of \$120,000.⁷⁵

In a 2011 article about Justice Thomas and Mr. Crow, the *New York Times* noted that at that time, Mr. Crow had not been personally involved as a party in a case before the Supreme Court litigation, but his companies had been "involved in federal court cases, including four that went to the appellate level. And he has served on the boards of two conservative organizations involved in filing supporting briefs in cases before the Supreme Court."⁷⁶ Mr. Crow has also served on the board of the Supreme Court Historical Society, which a recent headline characterized as a "back door" through which wealthy board members could gain access to justices.⁷⁷ It would be hard, too,

⁷⁰ Private flights included transportation for speeches at the Oklahoma Council of Public Affairs, the Greater Omaha Chamber of Commerce, and St. Benedict's Preparatory School. See Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2000 [filer: Clarence Thomas]), at 2 (section IV, lines 1, 2 and 7), May 15, 2001, <https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2000.pdf>; Administrative Conference of the U.S. Courts, Form AO-10 (Financial Disclosure Report for Calendar Year 2002 [filer: Clarence Thomas]), at 2 (section IV, lines 1, 2, 6, 7, and 8), May 15, 2003, <https://storage.courtlistener.com/us/federal/judicial/financial-disclosures/3200/clarence-thomas-disclosure.2002.pdf>.

⁷¹ Tony Mauro, "Retirement Rumors and Pricey Gifts Reach High Court; Are Protesters Next?" American Lawyer Media, June 10, 2002, <https://web.archive.org/web/20020804164356/http://www.law.com/jsp/article.jsp?id=1022954292436>.

⁷² Serrano and Savage, "Justice Thomas Reports Wealth of Gifts," [see note 27].

⁷³ David Savage, "Los Angeles Times reported about Justice Thomas' gifts 20 years ago. After that he stopped disclosing them," *Los Angeles Times*, April 7, 2023, <https://www.latimes.com/politics/story/2023-04-06/the-times-reported-about-justice-thomas-gifts-20-years-ago-after-he-just-stopped-disclosing-them>.

⁷⁴ Katherine Long and Jack Newsham, "The Supreme Court's back door," *Business Insider*, January 11, 2023, <https://www.businessinsider.com/supreme-court-nonprofit-anti-abortion-access-1>.

⁷⁵ Kaplan, Elliott, and Mierjeski, "Clarence Thomas and the Billionaire," [see note 2].

⁷⁶ Mike McIntire, "Friendship of Justice and Magnate Puts Focus on Ethics," *New York Times*, June 18, 2011, <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>.

⁷⁷ Long and Newsham, "The Supreme Court's back door," [see note 74]; Kenny Holston, "Former Anti-Abortion Leader Alleges Another Supreme Court Breach," *New York Times*, November 19, 2022, <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

to overlook the fact that Justice Thomas and Mr. Crow did not even know each other until after Justice Thomas joined the Supreme Court.⁷⁸

Though Mr. Crow insists he has never sought to influence the justice's rulings, these gifted vacation packages placed Mr. Crow and apparently other activists, including former Federalist Society Vice President Leonard Leo, in the company of Justice Thomas.⁷⁹ (*ProPublica* recently reported that “activist Leonard Leo and his associates are spending millions of dollars to influence some of the Supreme Court’s most consequential recent cases.”)⁸⁰ The public, which did not know until April 6, 2023, of the full extent of Justice Thomas’ acceptance of these gifts, has no way of knowing who else was present or what was discussed. It is easy to understand that the disclosure of these gifts is embarrassing to Justice Thomas. Contemporaneous disclosure in compliance with the law would have enabled years of public debate of the propriety of his actions and, likely, media investigations into the nature of communications occurring on these trips.

Justice Thomas’ public response to the reporting does not excuse his failure to disclose the gifts.

A day after *ProPublica* published its bombshell report, Justice Thomas issued a statement to explain his conduct: “Early in my tenure at the Court, I sought guidance from my colleagues and others in the judiciary, and was advised that this sort of personal hospitality from close personal friends, who did not have business before the Court, was not reportable.”⁸¹ This explanation fails to excuse his violations of law, and circumstances support a conclusion that his failure to disclose information that the Ethics in Government Act required him to disclose was knowing and willful. The explanation also appears to be contradicted by Justice Thomas’ earlier disclosures, as well as the disclosures of at least two other justices.

The clarity of the statutory language is, itself, evidence that Justice Thomas’ conduct was knowing and willful. He had no need to ask unnamed “colleagues” and “others in the judiciary” for guidance because the plain language of the law is not ambiguous; to know the exception is to know its limitations. The law states that the exception applies only to gifts provided by “individuals” and only to gifts of “food, lodging, and entertainment.”⁸² A statutory definition of “personal hospitality” reiterates that the exception is inapplicable to any gift from a “corporation or organization.”⁸³ These limitations preclude reliance on the exception for transportation, trips on vessels owned by corporations, or stays at resorts owned by corporations.

Justice Thomas’ claim that he relied on the bad advice of colleagues, presumably justices who are fellow financial disclosure filers, is no defense. The public has no way of knowing whom Justice

⁷⁸ McIntire, “Friendship of Justice and Magnate Puts Focus on Ethics,” [see note 76].

⁷⁹ Kaplan, Elliott, and Mierjeski, “Clarence Thomas and the Billionaire,” [see note 2].

⁸⁰ Andy Kroll, Andrew Perez, and Aditi Ramaswami, “Conservative Activist Poured Millions into Groups Seeking to Influence Supreme Court on Elections and Discrimination,” *ProPublica and the Lever*, December 14, 2022, <https://www.propublica.org/article/leonard-leo-scotus-elections-nonprofits-discrimination>.

⁸¹ Lawrence Hurley, “Clarence Thomas says trips paid for by billionaire were ‘personal hospitality,’ not business,” *NBC News*, April 7, 2023, <https://www.nbcnews.com/politics/supreme-court/justice-clarence-thomas-explains-failure-report-trips-paid-conservativ-rcna78696>.

⁸² 5 U.S.C. § 13104(a)(2)(A) (2023) [see note 5].

⁸³ 5 U.S.C. § 13101(14) (2023) [see note 16]; Justice Thomas is also acutely aware of the distinct legal personhood of corporate entities, which means he knew enough to ask if gifted items were corporate property. See *Citizens United v. FEC*, 558 U.S. 310 (2010), <https://www.law.cornell.edu/supct/pdf/08-205P.ZX1>.

Thomas consulted, how he may have characterized the facts, or whether he raised the issue in a way that signaled he was seeking thoughtful legal guidance requiring research. In a criminal case against David Safavian, a former top executive branch official, the court upheld Mr. Safavian's conviction on a count alleging that he had misled his agency's ethics official by omitting a relevant fact when he sought ethics advice.⁸⁴ Justice Thomas also had no right to rely on bad advice that ran contrary to the plain language of the statute.

Rather than consulting fellow financial disclosure filers, who may face similar temptation to minimize disclosure requirements, Justice Thomas could have consulted professional government ethics officials. The appropriate source for any filer seeking objective guidance would have been the experienced staff of any of the four supervising ethics offices. Their published guidance was readily available to Justice Thomas. As discussed earlier, that guidance explained that these types of gifts were reportable.

It bears noting that the statement Justice Thomas issued on April 7, 2023, in response to the *ProPublica* reporting was not the first time he pleaded ignorance of the rules. In 2011, he amended 20 years of financial disclosure reports from which he had omitted his spouse's employment information.⁸⁵ Justice Thomas asserted that the information was "inadvertently omitted due to a misunderstanding of the filing instructions."⁸⁶ The discovery that he had failed to comply with the law for so long put him on notice of the need to seek objective advice. In that context, his latest claim of ignorance of the rules is implausible.

Even if the plain language of the law, the guidance of four supervising ethics offices, the examples of his fellow justices, and his own past compliance with the law were not enough to inform Justice Thomas, common sense should have counseled him not to conceal his acceptance of gifts potentially worth millions of dollars. For context, the Senate ethics manual recounts words of Senator Paul Douglas from a 1951 Senate report that sounds like they were written for Justice Thomas himself:

What is it proper to offer to public officials, and what is it proper for them to receive? A cigar, a box of candy, a modest lunch ... Is any one of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become improper? Even small gratuities can be significant if they are repeated and come to be expected. ... Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category.⁸⁷

⁸⁴ *U.S. v. Safavian*, 649 F.3d 688 (DC Cir. 2011) [See note 18].

⁸⁵ Ariane de Vogue and Devin Dwyer, "Justice Clarence Thomas Amends 20 Years of Disclosure Forms with Wife's Employers," *ABC News*, January 24, 2011, https://abcnews.go.com/Politics/Supreme_Court/justice-clarence-thomas-amends-financial-disclosure-reports-virginia/story?id=12750650.

⁸⁶ Clarence Thomas, associate justice of the Supreme Court, to the Committee on Financial Disclosure, about calendar year 2009 financial disclosure report, January 21, 2011, https://www.politico.com/pdf/PPM153_clarence.pdf.

⁸⁷ *Senate Ethics Manual*, 21 [see note 40].

News stories about Justice Thomas' failures to comply with the Government in Ethics Act could not come at a worse time for the Supreme Court. With popular outrage over the Supreme Court's lack of an ethics code reaching an all-time high, the court is facing a crisis of public confidence. A resolution by the American Bar Association has proclaimed that the lack of an ethics code for the justices erodes trust in the Supreme Court, and "if the legitimacy of the Court is diminished, the legitimacy of all our courts and our entire judicial system is imperiled."⁸⁸ A recent news report cited the "drumbeat of criticism aimed at the court for perceived ethical lapses and failures to deal with them."⁸⁹ Bob Bauer, a former co-chair of the Presidential Commission on the Supreme Court of the United States, has warned that "[w]ithout the formal adoption of ethical standards, the Court may begin to seem more like a political body than a guardian of the rule of law."⁹⁰

Justice Thomas' recent refusal to recuse from at least one case affecting his spouse's interests heightened concerns and may well have violated the recusal law applicable to Supreme Court justices and all other federal judges.⁹¹ But this latest discovery of his pattern of concealing gifts and the sale of real estate, which in the aggregate are worth many times his annual salary, deals a crushing blow to whatever remains of public trust in the ethics of the high court's members.

The Role of the Department of Justice

The Department of Justice is responsible for enforcing the disclosure requirements. There are criminal penalties for knowing and willful omissions or false statements, but those provisions are not the subject of this letter.⁹² The law also authorizes the attorney general to file an action for civil monetary penalties against any person who knowingly and willfully fails to "report any information that such person is required to report" under the Ethics in Government Act.⁹³ The penalty per omission was originally \$50,000, but it has been adjusted periodically to account for inflation.⁹⁴ That penalty is \$71,316 per violation (\$50,000 for any violation occurring on or before

⁸⁸ Lydia Wheeler, "American Bar Association Urges Ethics Code for US Supreme Court," *Bloomberg Law*, February 7, 2023, <https://news.bloomberglaw.com/us-law-week/american-bar-association-urges-ethics-code-for-us-supreme-court>.

⁸⁹ Nina Totenberg, "Outside groups take a first stab at a Supreme Court ethics code," *NPR*, March 9, 2023, <https://www.npr.org/2023/03/09/1162324746/outside-groups-take-a-first-stab-at-a-supreme-court-ethics-codex>.

⁹⁰ Bob Bauer, "The Supreme Court Needs an Ethics Code," *Atlantic*, May 18, 2022, <https://www.theatlantic.com/ideas/archive/2022/05/supreme-court-roe-leak-ethics-code/629884/>.

⁹¹ Douglas Keith, Alicia Bannon, and Amanda Powers, "Ginni Thomas Texts Show Why the Supreme Court Needs a Code of Conduct," Brennan Center, April 13, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/ginni-thomas-texts-show-why-supreme-court-needs-code-conduct>.

⁹² 5 U.S.C. § 13106(a)(2)(A)(ii) (2023), <https://www.law.cornell.edu/uscode/text/5/13106>; 18 U.S.C. § 1001 (2023), <https://www.law.cornell.edu/uscode/text/18/1001>.

⁹³ 5 U.S.C. § 13106(a)(2)(B)(i) [see note 92].

⁹⁴ 5 U.S.C. § 13104(a)(2)(A) (2023) [see note 5]; Bipartisan Budget Act of 2015, Pub. L. 114-74, 129 Stat. 584, 599, § 701 (2015), <https://www.govinfo.gov/content/pkg/PLAW-114publ74/pdf/PLAW-114publ74.pdf>; Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890 (1990), <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg890.pdf#page=1>.

November 2, 2015).⁹⁵ A five-year statute of limitations may apply to a civil action for civil monetary penalties.⁹⁶

The Justice Department’s Civil Division could not have better circumstances laid before it to support a case for civil monetary penalties than those of a high official who discloses lavish gifts from a billionaire, suffers the humiliation of a news story about the disclosure, and then stops disclosing his continuing receipt of lavish gifts from that same billionaire. To shirk the responsibility of holding that official accountable would be an act of cowardice or bias in favor of the top tier of the political class.

The Department of Justice has demonstrated a willingness to enforce the financial disclosure law against federal officials, and there is no reason to treat Justice Thomas differently.

The Department of Justice has held other federal officials accountable for disclosure violations. These officials were subject to the same financial disclosure law that applies to Supreme Court justices. There would be no justification for holding Justice Thomas to a lower ethical standard than the rest of the federal government.

When the Department of Justice prosecuted a former high-ranking official of the General Services Administration, David Safavian, the indictment included a count predicated partly on his failure to disclose gifts of free flights on a chartered plane from lobbyist Jack Abramoff.⁹⁷ A federal appeals court for the DC Circuit upheld Mr. Safavian’s conviction on that count.⁹⁸ Notably, the department’s Criminal Division prosecuted Mr. Safavian under a false statements statute that required proof beyond a reasonable doubt. In a civil monetary penalties case against Justice Thomas, the Civil Division would have to meet only the burden of proving his guilt by a preponderance of the evidence.

The Department of Justice also prosecuted a Department of the Interior employee, Donald Howard, for failing to disclose gifts that included hunting trips. Unlike Justice Thomas, who failed to disclose what may have amounted to millions of dollars’ worth of gifts, Mr. Howard failed to disclose gifts valued in the aggregate at \$6,678. Mr. Howard ultimately pleaded guilty to just “one count of making false statements on a financial disclosure form.”⁹⁹

In 2021, the Department of Justice entered into a non-prosecution agreement with former Transportation Secretary Ray LaHood. Much like Justice Thomas, Secretary LaHood failed to disclose the largesse of a billionaire benefactor: News reports said that “Former Transportation Secretary Ray LaHood admitted to federal prosecutors that he intentionally excluded from his

⁹⁵ See *Guide to Judiciary Policy*, vol. 2, pt. D, § 620.10(a) (explaining that the penalty is “adjusted by the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended”) [see note 1]; 5 C.F.R. § 2634.701, Table 1 (2023) (listing the adjusted penalty amount), <https://www.law.cornell.edu/cfr/text/5/2634.701>.

⁹⁶ 28 U.S.C. § 2462 (2023), <https://www.law.cornell.edu/uscode/text/28/2462>.

⁹⁷ *United States v. David Hossein Safavian*, Document 167 (“Superseding Indictment”), 18, 21, 30-37 [see note 18].

⁹⁸ *U.S. v. Safavian*, 649 F.3d 688 [see note 18].

⁹⁹ Office of Government Ethics, “2009 Conflict of Interest Prosecution Survey,” Legal Advisory DO-10-017

(November 9, 2010), 11-12,

[https://www.oge.gov/Web/OGE.nsf/News+Releases/C4F8CD0D11A7BE3A852585BA005BECA6/\\$FILE/b3268d9bc79c44119ba12300ff80b36a1.pdf](https://www.oge.gov/Web/OGE.nsf/News+Releases/C4F8CD0D11A7BE3A852585BA005BECA6/$FILE/b3268d9bc79c44119ba12300ff80b36a1.pdf).

financial disclosures a \$50,000 loan he obtained while in office from a billionaire foreign donor.”¹⁰⁰ Under the agreement, former Secretary LaHood agreed to repay the loan and pay a fine.

The Department of Justice has also taken enforcement action against numerous other rank-and-file federal employees for disclosure violations.¹⁰¹ In 2021, the department’s Criminal Division prosecuted a Walter Reed Medical Center employee in part for failing to disclose travel provided by an outside source; an Army sergeant major in part for failing to disclose gifts and travel reimbursements; a senior project manager at the Tennessee Valley Authority for failing to disclose debts and income; and a National Aeronautics and Space Administration employee in part for failing to disclose payments he received as “either compensation, other assets and income, or a gift.”¹⁰²

From 2015 through 2020, the Criminal Division prosecuted employees of the Bureau of Prisons, the Centers for Disease Control, the Department of the Army, the Department of Energy, the Department of Health and Human Services, the Department of State, the Department of Veterans Affairs, the Drug Enforcement Agency, the Environmental Protection Agency, the Federal Aviation Administration, the Fish and Wildlife Service, the Indian Health Service, the Securities and Exchange Commission, and the U.S. Postal Service for omissions or false statements in their financial disclosures.¹⁰³ The department’s Civil Division has also pursued civil monetary penalty cases against numerous federal officials — including civil actions against a member of Congress and a former presidential aide.¹⁰⁴

¹⁰⁰ Josh Gerstein, “Ray LaHood admitted hiding \$50K loan from foreign billionaire,” *Politico*, March 31, 2021, updated April 1, 2021, <https://www.politico.com/news/2021/03/31/lahood-loan-foreign-billionaire-478813>.

¹⁰¹ In addition to lower-level officials, the Justice Department has also prosecuted a member of Congress on grounds that included omissions from financial disclosure reports. See Department of Justice, “Former U.S. Congresswoman Corrine Brown and Two Others Sentenced to Prison for Fraud Scheme Involving Bogus Non-Profit Scholarship,” December 4, 2017, <https://www.justice.gov/opa/pr/former-us-congresswoman-corrine-brown-and-two-others-sentenced-prison-fraud-scheme-involving>.

¹⁰² Office of Government Ethics, “2021 Conflict of Interest Prosecution Survey,” Legal Advisory LA-22-06, July 22, 2022, [https://www.oge.gov/Web/OGEnsf/0/69A64B4389390D0C85258887005CF4C0/\\$FILE/LA-22-06.pdf](https://www.oge.gov/Web/OGEnsf/0/69A64B4389390D0C85258887005CF4C0/$FILE/LA-22-06.pdf).

¹⁰³ Office of Government Ethics, “2020 Conflict of Interest Prosecution Survey,” Legal Advisory LA-21-08, August 2, 2021, [https://www.oge.gov/Web/OGEnsf/0/1B505A4C17E7289685258726004F63B7/\\$FILE/LA-21-08.pdf?open](https://www.oge.gov/Web/OGEnsf/0/1B505A4C17E7289685258726004F63B7/$FILE/LA-21-08.pdf?open);

Office of Government Ethics, “2019 Conflict of Interest Prosecution Survey,” Legal Advisory LA-20-05, July 20, 2020, [https://www.oge.gov/Web/OGEnsf/0/B9EB1903D588C162852585BB005DA326/\\$FILE/LA-20-05.pdf](https://www.oge.gov/Web/OGEnsf/0/B9EB1903D588C162852585BB005DA326/$FILE/LA-20-05.pdf);

Office of Government Ethics, “2018 Conflict of Interest Prosecution Survey,” Legal Advisory LA-19-05, July 24, 2019, [https://www.oge.gov/Web/OGEnsf/0/B915D6C37138F1D9852585BA005BEC19/\\$FILE/LA-19-05%202018%20Conflict%20of%20Interest%20Prosecution%20Survey.pdf](https://www.oge.gov/Web/OGEnsf/0/B915D6C37138F1D9852585BA005BEC19/$FILE/LA-19-05%202018%20Conflict%20of%20Interest%20Prosecution%20Survey.pdf);

Office of Government Ethics, “2017 Conflict of Interest Prosecution Survey,” Legal Advisory LA-18-09, July 17, 2018, [https://www.oge.gov/Web/OGEnsf/0/3AFEB8DA55B30DD0852585BA005BEC30/\\$FILE/LA-18-09%202017%20Conflict%20of%20Interest%20Prosecution%20Survey.pdf](https://www.oge.gov/Web/OGEnsf/0/3AFEB8DA55B30DD0852585BA005BEC30/$FILE/LA-18-09%202017%20Conflict%20of%20Interest%20Prosecution%20Survey.pdf);

Office of Government Ethics, “2016 Conflict of Interest Prosecution Survey,” Legal Advisory LA-17-08, August 7, 2017, [https://www.oge.gov/Web/OGEnsf/0/E15D086E908893B1852585BA005BEC3F/\\$FILE/FINAL%202016%20Prosecution%20Survey%20LA.pdf](https://www.oge.gov/Web/OGEnsf/0/E15D086E908893B1852585BA005BEC3F/$FILE/FINAL%202016%20Prosecution%20Survey%20LA.pdf);

Office of Government Ethics, “2015 Conflict of Interest Prosecution Survey,” Legal Advisory LA-16-05, July 27, 2016, [https://www.oge.gov/web/oge.nsf/0/39588D5F785A0A0A852585BA005BEC59/\\$FILE/Clean%20FINAL%202015%20Prosecution%20Survey%207_26_16.pdf](https://www.oge.gov/web/oge.nsf/0/39588D5F785A0A0A852585BA005BEC59/$FILE/Clean%20FINAL%202015%20Prosecution%20Survey%207_26_16.pdf).

¹⁰⁴ See *United States v. Lairy*, 19-2488 (RC) (D.D.C. July 17, 2020), <https://casetext.com/case/united-states-v-lairy>;

United States v. Dozier, 1:14-cv-01778 (D.D.C. Complaint 2014), <https://www.courtlistener.com/docket/4213128/1/united-states-v-dozier/>;

United States v. Harrison, 1:06-cv-02107 (D.D.C. Complaint 2006), <https://www.courtlistener.com/docket/4206160/1/united-states-v-harrison/>;

United States v.

Conclusion

If recent news reporting is correct, Justice Thomas has violated the disclosure requirements of the Ethics in Government Act in nearly all of the last 20 years. Until April 6, the public had no knowledge of the sheer volume of vacation packages that Justice Thomas chose to omit from his annual disclosures. Nor did it have knowledge of his sale of real estate to Mr. Crow. These are not the only problems with his disclosures.¹⁰⁵ Circumstances support a conclusion that these omissions were knowing and willful.

Justice Thomas had ample incentive to hide these gifts from the public. Whatever motive Mr. Crow may have had for gifting these vacations, they had the effect of placing Mr. Crow and other political activists in the company of a Supreme Court justice and placing their conversations with him out of view of the public. Even if, as Mr. Crow insists, the conversations were innocuous, the appearance of a Supreme Court justice luxuriating in the splendor provided by a billionaire political activist whom he only met after joining the Supreme Court is destructive of public trust in the court and embarrassing to Justice Thomas. His receipt of gifts potentially worth millions is a shocking revelation.

A justice of the Supreme Court could not have failed to understand that these extraordinary gifts were reportable. To know that the “personal hospitality” exception exists is to know its limitations, for they are spelled out in the plain text and reinforced by a statutory definition. Justice Thomas’ colleagues, Justices Breyer, Ginsburg, and Scalia, demonstrated an understanding that these types of gifts were reportable. And the *Los Angeles Times* has observed that Justice Thomas used to report these types of gifts — that is, until they became the subject of embarrassing media scrutiny.

The nondisclosure of the sale of property partly owned by Justice Thomas is equally suspicious. Abundant motivation for Justice Thomas to hide this sale can be found in the strange story of his mother’s continued residence in that home after the sale, Mr. Crow’s magnanimous renovation of the property while she remained there, and questions about the sale price.

Gant, 268 F. Supp. 2d 29 (D.D.C. 2003), <https://www.casemine.com/judgement/us/5914793badd7b049343f3df6>; *United States v. Chaney*, No. 04-cv-2219, Mem. Op. (D.D.C. Feb. 28, 2005), <https://www.documentcloud.org/documents/23780092-chaney-v-united-states>. The Office of Government Ethics has also highlighted some civil monetary penalty settlements negotiated by the Civil Division. See Office of Government Ethics, “2015 Conflict of Interest Prosecution Survey,” LA-16-05, July 27, 2016, 11-12, [https://www.oge.gov/web/oge.nsf/0/39588D5F785A0A0A852585BA005BEC59/\\$FILE/Clean%20FINAL%202015%20Proseuction%20Survey%207_26_16.pdf](https://www.oge.gov/web/oge.nsf/0/39588D5F785A0A0A852585BA005BEC59/$FILE/Clean%20FINAL%202015%20Proseuction%20Survey%207_26_16.pdf); Office of Government Ethics, “2014 Conflict of Interest Prosecution Survey,” LA-15-10, July 27, 2015, [https://www.oge.gov/Web/OGE.nsf/0/1E0C2218B69EDD3C852585BA005BEC62/\\$FILE/LA-15-10.pdf](https://www.oge.gov/Web/OGE.nsf/0/1E0C2218B69EDD3C852585BA005BEC62/$FILE/LA-15-10.pdf); *United States v. Rose*, 28 F.3d 181 (D.D.C. 1994), <https://casetext.com/case/us-v-rose-35>; Josh Gerstein, “Judge imposes \$61K penalty on Omarosa for failing to file financial disclosure,” *Politico*, March 15, 2022, <https://www.politico.com/news/2022/03/15/judge-imposes-61k-penalty-omarosa-financial-disclosures-00017539>.

¹⁰⁵ Since *ProPublica* broke the news of Justice Thomas’ undisclosed vacations on April 6, 2023, additional stories about Justice Thomas’ failures to disclose have made news, including the revelation of his real estate sale and — as recently as the date of this letter — a new report of problems with Justice Thomas’ income reporting. Kaplan, Elliott, and Mierjeski, “Clarence Thomas and the Billionaire,” [see note 2]; Elliott, Kaplan, and Mierjeski, “Billionaire Harlan Crow Bought Property from Clarence Thomas” [see note 7]; Shawn Boburg and Emma Brown, “Clarence Thomas has for years claimed income from a defunct real estate firm,” *Washington Post*, April 16, 2023, <https://www.washingtonpost.com/investigations/2023/04/16/clarence-thomas-ginger-financial-disclosure/>.

Basic common sense should have counseled Justice Thomas on the need for scrupulous attention to disclosure requirements when one of the highest officials in the land is accepting what may have amounted to millions of dollars in gifts or selling the home in which his mother resided to the same benefactor. For further guidance, he could have turned to the publications of the federal government's supervising ethics offices, which addressed limitations on the "personal hospitality" exception.

The nondisclosure of these gifts and the sale was no mere oversight of bureaucratic protocol: Financial disclosure serves a crucial function in our system of governance. As another Supreme Court justice, Louis Brandeis, famously wrote: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."¹⁰⁶

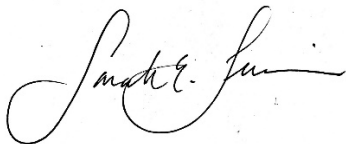
Justice Thomas has betrayed a fundamental duty of high office: the duty of transparency.

This disgraceful lawbreaking is precisely the sort of thing Congress has charged the attorney general with responsibility for addressing. It would be an absolute dereliction of duty if the Department of Justice were to fail to investigate these omissions. And, unless the reporting is incorrect, it would be a dangerous declaration of impunity for high officials if the department failed to seek civil monetary penalties for these flagrant and repeated violations of the Ethics in Government Act.

Sincerely,



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Sarah Turberville
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¹⁰⁶ Louis Brandeis, *Other Peoples' Money and How the Bankers Use It*, (New York: The McClure Publications, 1913), 92.