

May 26, 2023

Harlan Crow  
Chairman of the Board  
Crow Holdings Securities, LLC  
3819 Maple Ave.  
Dallas, TX 75219

Dear Mr. Crow:

This letter follows up on the Senate Judiciary Committee's May 8, 2023, request for information in your possession that is highly relevant to the Committee's ongoing efforts to craft judicial ethics reform legislation. Investigative reporting has exposed serious shortcomings in the ethical standards that apply to Supreme Court justices and has highlighted ethical lapses by justices that the American people would not tolerate from any public servant, let alone a justice on the nation's highest Court. Chief Justice Roberts could take action today to help restore trust in the Court by adopting binding ethics reforms, including a credible, transparent, and enforceable code of conduct for the justices. However, he has repeatedly declined to do so, and in the face of this lack of accountability, public confidence in the Court continues to plummet. Consequently, Congress must act to ensure the highest Court in the land does not continue to have the lowest ethical standards.

In your letter dated May 22, 2023, you declined to provide the information the Committee requested to inform its legislative efforts in these areas. Your explanation rested on a flawed assessment of Congress's Article I oversight authority; a cramped reading of Congress's constitutional authority to legislate in the area of government ethics; and a wholly misplaced view of the separation of powers, a doctrine that is implicated when Congress requests information from coordinate branches of government, not private individuals. You also repeatedly conflated personal hospitality with the use of corporate-owned property, which highlights one of the key issues the Committee seeks to address through legislation. We respond below to your contentions, and request that you provide the information sought in our May 8 letter no later than June 5, 2023.

***The Committee's Request Is Well Within the Scope of Its Oversight Authority and Supported by a Clear Legislative Purpose***

Your primary rationale for refusing to produce the requested information appears to be that the Committee lacks a valid legislative purpose for inquiring into matters of judicial ethics. That contention contravenes decades of Supreme Court precedent recognizing the breadth of Congress's Article I oversight powers and is at odds with Congress's long history of legislating to ensure federal government officials, including Supreme Court justices, are held to high ethical standards.

It is well established that Congress has the “broad” and “indispensable”<sup>1</sup> authority “to secure needed information” to legislate.<sup>2</sup> This “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function,”<sup>3</sup> is “deeply rooted in American and English institutions,”<sup>4</sup> and extends to any “subject on which legislation ‘could be had.’”<sup>5</sup> The Supreme Court has made clear that this congressional oversight authority “encompasses inquiries into the administration of existing laws, studies of proposed laws, and ‘surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.’”<sup>6</sup> This power is broad for good reason: “Without information, Congress would be shooting in the dark, unable to legislate ‘wisely or effectively.’”<sup>7</sup>

The Committee’s request for information to aid its consideration of legislation reforming judicial ethics laws falls comfortably within the bounds of this well-established authority. Congress has long legislated in the area of government ethics, and laws regulating the conduct of the federal judiciary—including the Supreme Court—have been on the books for decades.<sup>8</sup> The Committee’s current inquiry, which focuses on whether these laws need to be strengthened or supplemented in light of recent reporting of ethical transgressions at the Supreme Court, is of a piece with this long history of ensuring the ethics and integrity of our federal judiciary through legislation. This unquestionably constitutes a valid legislative purpose.

### **The Contrary Arguments in Your May 22 Letter Lack Merit**

Your arguments to the contrary lack merit and are insufficient bases on which to decline to provide the information the Committee has requested. *First*, you claim that our May 8 information requests are improper because Congress “lacks the authority” under the Constitution to enact “legislation strengthening the ethical rules and standards that apply to the Justices of the Supreme Court.” This assertion likely comes as a surprise to the Supreme Court justices themselves, who have complied with many such laws for decades.<sup>9</sup>

Congress has substantial legislative authority over the administrative aspects of the federal courts generally and the Supreme Court in particular. Congress controls the size of the Supreme Court.<sup>10</sup> Congress controls the time and place of the Court’s sitting.<sup>11</sup> Congress dictates the seniority of justices.<sup>12</sup> Congress establishes the words of the oath that justices swear to

---

<sup>1</sup> *Watkins v. United States*, 354 U.S. 178, 187, 215 (1957).

<sup>2</sup> *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

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

<sup>4</sup> *Quinn v. United States*, 349 U.S. 155, 160 (1955).

<sup>5</sup> *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 506 (1975) (quoting *McGrain*, 273 U.S. at 177).

<sup>6</sup> *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (quoting *Watkins*, 354 U.S. at 187).

<sup>7</sup> *Id.* (quoting *McGrain*, 273 U.S. at 175).

<sup>8</sup> *See, e.g.*, 5 U.S.C. §§ 13101, et seq. (Ethics in Government Act of 1978); P.L. 101-194 (Ethics Reform Act of 1989); 28 U.S.C. § 455 (federal recusal laws).

<sup>9</sup> *See* “Statement on Ethics Principles and Practices,” Letter from Chief Justice John Roberts, U.S. Supreme Court, to Senator Richard Durbin, Chair of the Senate Judiciary Committee (Apr. 25, 2023), at pp. 4-5, listing congressionally enacted statutes that expressly apply to justices and noting that the justices “comply with” and “follow” the statutes.

<sup>10</sup> 28 U.S.C. § 1.

<sup>11</sup> 28 U.S.C. § 2.

<sup>12</sup> 28 U.S.C. § 4.

uphold.<sup>13</sup> Congress also controls almost the entirety of the Supreme Court’s jurisdiction; outside of the Court’s narrow original jurisdiction over “Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party,” the Constitution grants Congress the authority to control the Supreme Court’s power to hear appeals in all other cases and controversies.<sup>14</sup>

Consistent with this broad authority to control the administrative aspects of the federal courts, Congress has enacted ethics legislation that applies to the justices on numerous occasions, as noted above. Examples include the Ethics in Government Act,<sup>15</sup> the Federal Gift Statute,<sup>16</sup> the Foreign Gifts and Decorations Act,<sup>17</sup> the Federal Recusal Statute,<sup>18</sup> and more. Supreme Court justices have complied with these and similar laws for decades without complaint or suggestion that they encroach on the Supreme Court’s core Article III judicial powers. Indeed, Chief Justice Roberts stressed that the justices adhere to such statutes in the *Statement on Ethics Principles and Practices* that he transmitted to the Committee on April 25, 2023.<sup>19</sup> As recently as last year, Congress enacted bipartisan ethics reform legislation, the Courthouse Ethics and Transparency Act,<sup>20</sup> which applies to the justices and whose constitutionality the *Statement on Ethics Principles and Practices* does not question. Congress can enact, has enacted, and will continue to enact ethics legislation that applies to Supreme Court justices, and Congress has shown it can do so without posing any risk to the justices’ decisional independence.

*Second*, even if there were some question about whether Congress can constitutionally legislate in this area—and there is not—your hypothetical constitutional objection to legislation that is still under development would be an insufficient excuse for failing to comply with the Committee’s information request. In particular, your reliance on a 2021 district court case for the proposition that “[a] congressional investigation ostensibly carried out for the purpose of crafting legislation is . . . impermissible where the legislation . . . would be unconstitutional” is misplaced. Contrary to your characterization, that case makes clear that “[a] long line of Supreme Court cases requires great deference to facially valid congressional inquiries.”<sup>21</sup> This deference extends to circumstances where legislation could take multiple forms, some of which may be constitutionally suspect. Even in such a case, the district court made clear, “the Committee need not say exactly what legislation it intends to enact” for its inquiry to be valid.<sup>22</sup> The D.C. Circuit reiterated this point last year, emphasizing that “the Supreme Court [in *Trump v. Mazars*] did not suggest that a court examining a [congressional] subpoena . . . would be

---

<sup>13</sup> 28 U.S.C. § 453. With this authority, Congress can require all future justices to swear to an oath that outlines the precise ethical obligations Congress wishes.

<sup>14</sup> U.S. Const. art. III, § 2, cl. 2. (“In all the other cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.”)

<sup>15</sup> 5 U.S.C. §§ 13101, et seq.

<sup>16</sup> 5 U.S.C. § 7353.

<sup>17</sup> 5 U.S.C. § 7342.

<sup>18</sup> 28 U.S.C. § 455.

<sup>19</sup> Letter from Chief Justice John Roberts, U.S. Supreme Court, to Senator Richard Durbin, Chairman of the Senate Judiciary Committee (Apr. 25, 2023).

<sup>20</sup> Courthouse Ethics and Transparency Act, P.L. 117-125.

<sup>21</sup> *Comm. on Ways & Means, U.S. House of Representatives v. U.S. Dep’t of the Treasury*, 575 F. Supp. 3d 53, 59 (D.D.C. 2021).

<sup>22</sup> *Id.* at 67 (citing *In re Chapman*, 166 U.S. 661, 669-70 (1897)).

expected to pronounce in advance on whether contemplated legislation addressing such ‘sensitive constitutional issues’ passes constitutional muster.”<sup>23</sup> As explained above, the Supreme Court has long recognized that Congress may use its inherent investigatory powers “‘to secure needed information’ in order to legislate”<sup>24</sup> on a “subject on which legislation ‘could be had.’”<sup>25</sup> This Committee is still exploring a range of appropriate legislative solutions to address ethics reform for the Supreme Court and unquestionably has authority to request information to support this purpose.<sup>26</sup>

*Third*, you claim the Committee’s inquiry is invalid because “[i]t is clear that the Committee’s investigation is part of a larger campaign to target and intimidate Justice Thomas and unearth what the Committee apparently believes will be embarrassing details of the Justice’s personal life.” This contention mischaracterizes the Committee’s work on this issue, which has spanned multiple Congresses and administrations.

The efforts by members of this Committee to ensure that the justices abide by a binding code of conduct and follow existing ethics laws are longstanding. In February, 2012, we, joined by then-Chairman Leahy, Senator Blumenthal, and then-Senator Franken, wrote to Chief Justice Roberts asking the Court to adopt the Judicial Code of Conduct as binding on the justices.<sup>27</sup> As that letter noted, our interest in this topic arose from years-long efforts to “increase public trust and confidence in all of our institutions, including the Supreme Court.”<sup>28</sup> In addition, as Chair of the Federal Courts Subcommittee, Senator Whitehouse has led a longstanding inquiry into the judiciary’s interpretation of the “personal hospitality” exemption to the federal gift reporting requirements that all federal judges, including Supreme Court justices, must follow. This oversight matter—which concerns the same provision that Justice Thomas has now been accused of abusing—encompassed multiple letters to the Judicial Conference and the Supreme Court and began well before the recent reports about Justice Thomas.<sup>29</sup> The Committee’s efforts since then, including our May 8 requests, have built on all of this prior work.

This year, *ProPublica* released not one,<sup>30</sup> not two,<sup>31</sup> but three<sup>32</sup> different reports about unreported gifts or transactions Justice Thomas has received from or engaged in with you or corporate entities in your orbit. These gifts are orders of magnitude above the value of gifts that

---

<sup>23</sup> *Trump v. Mazars USA, LLP*, 39 F.4th 774, 809 (D.C. Cir. 2022).

<sup>24</sup> *Mazars*, 140 S. Ct. at 2031 (citing *McGrain*, 273 U.S. at 161).

<sup>25</sup> *Id.* (citing *Eastland*, 421 U.S. at 506).

<sup>26</sup> *Cf. Eastland*, 421 U.S. at 509 (“The very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.”).

<sup>27</sup> [Letter from Five Senate Judiciary Committee Members to Chief Justice Roberts](#), U.S. Supreme Court (Feb. 13, 2012).

<sup>28</sup> *Id.*

<sup>29</sup> See Press Release, [After Whitehouse Spotlights Loopholes, Federal Judiciary Announces Tightening of Personal Hospitality Exceptions, Strengthening Ethics Standards for Justices & Judges](#) (Mar. 28, 2023).

<sup>30</sup> Joshua Kaplan, Justin Elliott, & Alex Mierjeski, [Clarence Thomas and the Billionaire](#), PROPUBLICA (Apr. 6, 2023).

<sup>31</sup> Joshua Kaplan, Justin Elliott, & Alex Mierjeski, [Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn’t Disclose the Deal.](#), PROPUBLICA (Apr. 13, 2023).

<sup>32</sup> Joshua Kaplan, Justin Elliott, & Alex Mierjeski, [Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition](#), PROPUBLICA (May 4, 2023).

any other justice has been known to accept, including Justice Fortas, who resigned over similar revelations.<sup>33</sup> That several members of the Committee have commented specifically on Justice Thomas’s conduct is understandable, given how such conduct demonstrates the ineffectiveness of the Court’s current ethical standards and illustrates the gaps that Supreme Court ethics legislation must address. Highlighting current dysfunction is one of many methods legislators use to make the case for specific legislative solutions and to strengthen the political will to pass such legislation. Contrary to your claims, these statements do not undermine the valid legislative purpose the Committee has identified in our letters. As the D.C. Circuit has recognized, “[t]he mere prospect that misconduct might be exposed does not make the Committee’s request prosecutorial. Missteps and misbehavior are common fodder for legislation.”<sup>34</sup>

**The Committee’s Request for Personal and Business Records from a Private Citizen and Private Corporations Poses No Separation-of-Powers Concerns**

Your additional argument that the separation of powers prevents you and three private holding companies from providing your own personal records and the companies’ business records in response to a lawful request from Congress is equally misplaced. In particular, your attempt to analogize the Committee’s request to the subpoenas at issue in *Trump v. Mazars* is unavailing. The Court in *Mazars* applied a balancing test designed to account for separation-of-powers concerns where House committees had subpoenaed the personal financial records of a sitting President—“the only person who alone composes a branch of government”—and the President sued to block the congressional subpoenas.<sup>35</sup> Although the subpoenas were directed to financial firms, the information sought included the personal financial records of the President, which these firms held as service providers to him, his family, and his businesses.<sup>36</sup>

By contrast, here, the Committee has directed its inquiry to you and several private entities, not a coequal branch of government with separation-of-powers equities. Nor has the Committee requested that you or the three holding companies produce any private records of the justices. The Committee’s May 8 letters concern only your personal records and the business records of the holding companies. Accordingly, the same “clash between rival branches of government” and corresponding “weighty concerns regarding the separation of powers” that the Court identified in *Mazars* simply are not present here.<sup>37</sup> These requests do not present any intrusion, much less the “unnecessary intrusion” that *Mazars* sought to guard against,<sup>38</sup> into the operation of the Supreme Court. Indeed, your own letter suggests that, when Congress wishes to avoid separation-of-powers questions, it may seek information from “other sources” before it requests information from a coordinate branch of government. You and the holding companies, as a private individual and private entities, are those “other sources.”

---

<sup>33</sup> John P. MacKenzie, [The Supreme Court justice who resigned in disgrace over his finances](#), WASH. POST (Apr. 17, 2023).

<sup>34</sup> *Trump v. Thompson*, 20 F.4th 10, 42 (D.C. Cir. 2021); see also *Trump v. Mazars USA, LLP*, 940 F.3d 710, 728-29 (D.C. Cir. 2019) (recognizing that a congressional committee’s “interest in past illegality can be wholly consistent with an intent to enact remedial legislation”).

<sup>35</sup> *Mazars*, 140 S. Ct. at 2034.

<sup>36</sup> *Id.* at 2027-28.

<sup>37</sup> *Id.* at 2034-35.

<sup>38</sup> *Id.* at 2036.

### *Conflation of Personal Friendship with Corporate Gifts*

In addition to the issues above, by responding on behalf of yourself, as well as HRZNAR LLC, Rochelle Marine Ltd., and Topridge Holdings, LLC, you are highlighting your treatment of corporate interests as coextensive with your own. This strikes at the heart of one area where ethics reform is needed: the conflation of personal friendship and corporate gifts of travel and lodging. Characterizing the gifts provided to Justice Thomas as “personal hospitality” does not make it so, especially when those gifts are from corporate entities. Accordingly, we have requested the relevant business records of these entities to help determine the full scope of the ethical problems in the federal judiciary that legislation must address.

The Ethics in Government Act currently requires filers (including Supreme Court justices) to disclose gifts valued over \$415, “except that any **food, lodging, or entertainment** received as personal hospitality of an individual need not be reported.”<sup>39</sup> The Act defines “personal hospitality” as “hospitality extended for a nonbusiness purpose by an individual, **not a corporation or organization**, at the personal residence of that individual or the individual’s family or on property owned by the individual or the individual’s family.”<sup>40</sup> As these definitions make clear, personal hospitality can be extended only at a personal residence or other property owned by the individual or family, and does not include transportation, which is not “food, lodging, or entertainment.” Despite the plain language of this statute, for years, certain Supreme Court justices had apparently been applying an overly expansive definition of “personal hospitality” that allowed them to avoid reporting gifts of luxury travel and vacations.

In response to long-running oversight from Senator Whitehouse, the *Guide to Judiciary Policy for Financial Disclosure* was updated on March 23, 2023, to clarify that the “personal hospitality” should be interpreted consistent with the plain text of the statute. Congress has a continuing role to assess whether that clarification is sufficient to address the full scope of the problem and whether more stringent standards should be codified into federal law. The information requested in our May 8 letters is directly relevant to that inquiry.

\* \* \*

Without a proper basis to withhold information from Congress, we request that you provide the Committee with all of the information requested in our May 8 letter by June 5, 2023.

Thank you for your prompt attention to this matter.

Sincerely,

---

<sup>39</sup> 5 U.S.C. § 13104(a)(2) (emphasis added).

<sup>40</sup> 5 U.S.C. § 13101(14) (emphasis added).



Richard J. Durbin  
Chair, Senate Committee  
on the Judiciary



Sheldon Whitehouse  
Chair, Subcommittee on  
Federal Courts, Oversight,  
Agency Action, and Federal  
Rights

cc: The Honorable Lindsey O. Graham  
Ranking Member, Senate Committee on the Judiciary

cc: The Honorable John N. Kennedy  
Ranking Member, Subcommittee on Federal Courts, Oversight, Agency Action, and  
Federal Rights