

United States Senate

WASHINGTON, DC 20510-6200

May 15, 2024

Elliot Berke
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Washington, DC 20001

Dear Mr. Berke,

We write to offer Supreme Court Justice Clarence Thomas an opportunity to clarify whether he repaid any of the principal on a \$267,000 loan (“the loan”) from Tony Welters used to purchase a luxury motorcoach.

As you are aware, on October 25, 2023, the Senate Finance Committee (“the Committee”) released a memorandum concluding that in November 2008, Anthony Welters ceased collecting principal or interest on a \$267,230.00 loan issued to Justice Thomas and his wife for the purchase of a 1991 Prevost Marathon RV.¹ It appears that no principal was ever repaid on the loan before all payments ceased. Justice Thomas did not report any such forgiveness as income on his financial disclosure report covering the year 2008. The Ethics in Government Act requires disclosure of any “income from discharge of indebtedness.” That such income from the forgiven debt was not reported on any of Justice Thomas’s financial disclosure reports raises the possibility that Justice Thomas also did not report such forgiveness as income for tax purposes, as federal law requires.²

On December 19, 2023, we invited Justice Thomas to clarify discrepancies between his public statements regarding the treatment of the loan, and the evidence obtained by the Committee.³ That letter offered Justice Thomas an opportunity to state clearly, in plain terms, how much in principal and interest on the loan he repaid to Welters. We also offered Justice Thomas an opportunity to clearly state how much of the loan was forgiven or discharged by Welters.

¹*Justice Thomas Did Not Repay Substantial Portion of \$267,230 Loan, Finance Committee Investigation Reveals; Failed to Report Forgiven Debt on Ethics Filings, Raising Questions About Tax Compliance*, U.S. Senate Committee on Finance, Oct. 25, 2023 available online at <https://www.finance.senate.gov/chairmans-news/justice-thomas-did-not-repay-substantial-portion-of-267230-loan-finance-committee-investigation-reveals-failed-to-report-forgiven-debt-on-ethics-filings-raising-questions-about-tax-compliance>

² 26 U.S.C. § 61; 26 U.S.C. § 108.

³ *Finance Committee Invites Justice Thomas to Clarify Remarks Regarding \$267,000 Luxury Motor Coach Loan From Wealthy Businessman*, U.S. Senate Committee on Finance, Dec. 19, 2023 available online at <https://www.finance.senate.gov/chairmans-news/finance-committee-invites-justice-thomas-to-clarify-remarks-regarding-267000-luxury-motor-coach-loan-from-wealthy-businessman>

Unfortunately, the response you provided on Justice Thomas's behalf was a non-answer. Instead of clearly stating the extent to which Justice Thomas repaid the loan, you stated that Justice Thomas made "payments to Mr. Welters on a regular basis until the terms of the agreement were satisfied in full."⁴ As I'm sure you are aware, "satisfied" could have any number of meanings in the context of repayment, forgiveness, or discharge of debt. There should be a simple answer as to whether Justice Thomas had hundreds of thousands in debt forgiven so that he could retain possession of a luxury motor coach that doubles as a second home.

At the time the loan to Justice Thomas was forgiven, unprecedented numbers of American families were losing their homes as the nation faced a devastating housing market crisis. In 2007 and 2008, 1.2 million American families lost their homes to foreclosure.⁵ It is a gross coincidence that at a time when so many American families had their lives upended because they couldn't pay their debts, a Supreme Court Justice secretly had a loan forgiven that exceeded the value of the median home price in the United States. In November 2008, the median sales price of a house in the U.S. was \$222,000, which is less than the \$267,230 loaned to Justice Thomas to buy his luxury RV.⁶ Unlike the millions of Americans who lost their homes, Justice Thomas was able keep sleeping peacefully in his RV as he drove it around the country.⁷

Your client's refusal to clarify how the loan was resolved raises serious concerns regarding violations of federal tax laws. As you are aware, the failure to repay the entire principal of the loan would have generated a significant amount of taxable income for Justice Thomas. The tax code makes clear that in instances where debt is canceled, forgiven or discharged for less than the amount owed, the borrower must report the amount canceled or forgiven as income on federal tax returns. At the moment, Justice Thomas has done absolutely nothing to address the perception that he may have failed to report hundreds of thousands of dollars in forgiven debt on his federal income tax returns and pay the income taxes owed.

The possibility of a serious tax violation of this kind by a member of the Supreme Court warrants investigation, even as the Senate continues to consider potential legislative solutions to better prevent and expose these tax and ethical violations in the future. Accordingly, please respond to the following questions no later than June 3, 2024:

1. What was the total amount in principal and interest on the loan repaid by Justice Thomas to Tony Welters? When was the last payment made?

⁴ Letter from Elliot Berke on behalf of client, Justice Clarence Thomas, to Senators Wyden and Whitehouse, Jan. 1, 2024.

⁵ *Foreclosures up 75% in 2007*, CNN, Jan. 29, 2008 available online at https://money.cnn.com/2008/01/29/real_estate/foreclosure_filings_2007/; *Foreclosures more than doubled in 2008*, NBC News, Jan. 15, 2009 available online at <https://www.nbcnews.com/id/wbna28663624>

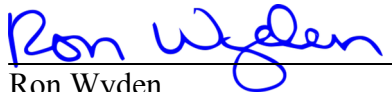
⁶ *Median Sales Price of Houses Sold in the United States*, Federal Reserve Bank of St. Louis, available online at <https://fred.stlouisfed.org/series/MSPUS>

⁷ Materials obtained by the Senate Finance Committee indicate that as part of the loan agreement, Justice Thomas and his wife Virginia Thomas signed a security agreement on December 6, 1999 stating that as a condition of the loan by Welters, the Thomases granted Welters a security interest in a 1991 Prevost by Marathon, in order to secure the payment of all amounts owed to Welters under the promissory note.

2. Were any payments of principal or interest made by other individuals? If so, please clarify how much was repaid by Justice Thomas and how much was repaid by any third parties (and who those third parties were).
3. Was any portion of the principal on the loan canceled, forgiven or discharged by Tony Welters? If so, how much? Please also state how much of this canceled, forgiven or discharged debt was reported as taxable income by Justice Thomas on his federal tax returns, and the related income taxes paid by Justice Thomas for that tax year.
4. If a tax return was later amended to include this canceled, forgiven or discharged debt, please provide the date on which the amended return was filed, the amount of the tax payment, and whether that tax payment was made by Justice Thomas out of his own funds or by any third parties (and who those third parties were).
5. If any portion of the principal on the loan was canceled, forgiven or discharged by Tony Welters, why did Justice Thomas fail to disclose the canceled, forgiven or discharged debt on his financial disclosure report(s)?

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Sheldon Whitehouse
United States Senator
Chairman, Subcommittee on
Federal Courts, Oversight,
Agency Action, and Federal
Rights