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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR  
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August 5, 2024

Michael D. Bopp  
Partner  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

Dear Mr. Bopp,

Thank you for your February 29<sup>th</sup> letter on behalf of your client, Harlan Crow, replying to requests for information related to the Senate Committee on Finance's ("The Committee") investigation into the tax treatment of the use of Mr. Crow's superyacht and private aircraft. Unfortunately, your evasive response has only heightened my concerns that Mr. Crow and his associates were involved in a scheme to avoid paying taxes by claiming business deductions on personal travel. In particular, your response did not address the simple question of whether Mr. Crow claimed any tax deductions on expenses related to yacht and private aircraft use by Supreme Court Justice Clarence Thomas that you have stated were for "personal hospitality".

I am deeply concerned that Mr. Crow may have been showering a public official with extravagant gifts, then writing off those gifts to lower his tax bill. This concern is only heightened by the Committee's recent discovery of additional undisclosed international travel on Mr. Crow's private jet by Justice Thomas. As I consider legislative solutions to curb potentially abusive deductions, I am offering you one final opportunity to address the tax treatment of yacht and jet trips involving Justice Thomas. I am also offering you the chance to substantiate that the holding company for your client's yacht, Rochelle Charter, was genuinely engaged in for profit yacht chartering activities and not merely an entity used to write off the cost of the Crow family's luxurious lifestyle.

**I. Refusal to clarify the tax treatment of yacht and private jet trips lavished on a public official in the context of "personal hospitality"**

As you are aware, your prior responses to the Committee state that all trips Justice Thomas took on the Michaela Rose and private jets owned or chartered by Mr. Crow were in the context of "personal hospitality". Personal trips do not serve as a business purpose, which is required under tax laws to permit costs associated with the trips to be tax deductible. On several occasions, I have asked directly how many times Justice Thomas traveled aboard the Michaela Rose and private jets paid for by Mr. Crow, and whether Mr. Crow deducted the costs of these particular trips on tax filings. These should not be difficult questions to answer. The possibility that Mr. Crow may have lavished secret gifts on a sitting Supreme

Court justice and then impermissibly reduced his taxable income by millions of dollars with impunity requires legislative scrutiny.

I am also concerned that I have so far been unable to even determine the full extent of the potential tax abuse at issue. Neither Mr. Crow nor Justice Thomas have disclosed the full scale of the Thomas's use of the Michaela Rose and private jets courtesy of Mr. Crow, even as the Congress continues to uncover additional international private jet travel with Mr. Crow that Justice Thomas failed to disclose on his ethics filings. For example, the Committee obtained international flight records showing that on November 19, 2010, Justice Thomas and his wife flew from Hawaii to New Zealand on Mr. Crow's private jet, before flying back from New Zealand to Hawaii on the jet a week later on November 27, 2010.<sup>1</sup> Mr. Crow was also a passenger on these flights. To date, Justice Thomas has never disclosed this private jet travel on any financial disclosure forms, even though Justice Thomas has amended disclosures to reflect other international travel on Mr. Crow's private jet.

Furthermore, it was revealed just a few weeks ago that Justice Thomas enjoyed complimentary use of private jets paid for by Mr. Crow on 17 different occasions since 2016, with 9 of those flights coming in the last three years.<sup>2</sup> While Justice Thomas has only recently updated his financial disclosures to include an eight-day voyage aboard the Michaela Rose in Indonesia in 2019, Justice Thomas still has not disclosed other trips on the Michaela Rose. Public reports show evidence that Justice Thomas was a passenger aboard the Michaela Rose in Greece, New Zealand and elsewhere.<sup>3</sup>

Additionally, a relative of Justice Thomas has stated that he personally witnessed Justice Thomas travel aboard the Michaela Rose in the Caribbean, Russia and the Baltics, with the trip to Russia also including helicopter ride(s).<sup>4</sup> The fact a Supreme Court Justice accepted free travel to Russia paid for by a billionaire and failed to disclose the trip as required by law is undoubtedly concerning and merits continued investigation. Other government officials have been charged for making false statements on financial disclosures for less serious violations than the evidence suggests Justice Thomas committed.<sup>5</sup> I seek to understand the means and scale of Mr. Crow's undisclosed largesse to Justice Thomas to inform several pieces of legislation that the Committee is drafting, including but not limited to: reforms to the tax code concerning filing requirements for gift tax returns, audit requirements for Supreme Court Justices, and comprehensive ethics reform that would strengthen the Ethics in Government Act and other laws related to the disclosure of complimentary private jet and yacht travel by Supreme Court Justices.

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<sup>1</sup> Manifest, Arrivals and Departure Information for Private Aircraft N-900GX Housed in U.S. Customs and Border Protection's Automated Targeting System (ATS). Senate Finance Committee staff reviewed these records, which identified Justice Clarence Thomas and his wife Virginia Thomas as passengers on N-900GX private aircraft departing on November 19, 2010 from PHOG airport in Hawaii and landing in NZAA airport in New Zealand and returning on November 27, 2010 from NZAA airport in New Zealand to PHOG airport in Hawaii.

<sup>2</sup> U.S. Senate Committee on the Judiciary, *Durbin Reveals Omissions of Gifted Private Travel to Justice Clarence Thomas from Harlan Crow* (June 2024) <https://www.judiciary.senate.gov/press/releases/durbin-reveals-omissions-of-gifted-private-travel-to-justice-clarence-thomas-from-harlan-crow>.

<sup>3</sup> ProPublica, *Clarence Thomas and the Billionaire* (Apr. 2023) <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

<sup>4</sup> ProPublica, *Clarence Thomas had a Child in Private School. Harlan Crow Paid the Tuition.* (May 2023) <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus>

<sup>5</sup> In 2016, the Department of Justice prosecuted a former Drug Enforcement Agency official for false statements under 18 U.S.C. § 1001 for failing to disclose gifts of private air travel received from 2010 through 2014. Also in 2016, the Department of Justice charged a Department of Veterans Affairs official under § 1001 for failing to disclose approximately \$21,000 in gifts consisting in part of airline tickets and resort services. In 2010, the Department of Justice prosecuted a Department of Housing and Urban Development official under U.S.C. § 1018 for his failure to disclose luxury sports tickets from someone with business before his agency. The officials pleaded guilty and received criminal sentences.

## **II. Ample evidence indicates that Mr. Crow's yacht chartering business has long lacked a for profit motive**

Second, I'd like to address your admission that the Michaela Rose has never been chartered out to any individuals or entities unrelated to Mr. Crow.<sup>6</sup> In fact, based on the Committee's investigation, it appears that the Michaela Rose has never been available for charter to any potential customers that did not include Mr. Crow's family or businesses owned and controlled by the Crow family.<sup>7</sup> This is not how a conventional business operates and casts doubt on whether Rochelle Charter was in fact engaged in for-profit activities as defined by the tax code. Furthermore, such a payment structure raises questions as to whether payments made by Crow affiliated entities to use the yacht were truly arm's length transactions.

For example, according to reports Rochelle Charter reported losses for more than 10 years, each year from 2003 – 2015, while it was still organized as an S corporation, racking up \$8 million in losses during that period.<sup>8</sup> In turn, those losses were then used to help Mr. Crow avoid paying millions in taxes by offsetting income.<sup>9</sup> It remains unclear whether Rochelle Charter ever turned a profit during that period, and how Rochelle Charter's gross income compared to its losses over the same period. Additionally, it remains unclear what business income supports Mr. Crow's efforts to write off \$1.8 million worth of expenses, including renovations, in 2014.<sup>10</sup> Simply put, a business owner with a genuine profit motive would not operate a business at a loss for more than a decade with no potential for growth and no discernable effort to turn a profit.

As it stands, IRS regulations specify that the history of income, losses and profits is a key factor used to determine whether a chartering business has a profit motive. While the regulations recognize that profitable businesses may suffer periods of losses, particularly at the start of an enterprise or unforeseen natural disasters or depressed economic conditions, sustained losses over a long period may suggest a lack of a profit motive.<sup>11</sup> In *Hylton v. Commissioner*, the court wrote that "a record of large losses over many years and the unlikelihood of achieving profitability are persuasive evidence that a taxpayer did not have such an [for profit] objective."<sup>12</sup>

These factors have played a major role in previous efforts by the IRS to successfully disallow large deductions associated with yachting and other business associated with activities that have a heavy

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<sup>6</sup> Letter from Michael Bopp on behalf of client, Harlan Crow, to Senator Ron Wyden, Chairman, Senate Committee on Finance, Feb. 29, 2024. (At pg. 3: "Rochelle Charter's business has historically involved chartering the Michaela Rose to the extensive network of entities affiliated with the Crow family, as well as to members of the Crow family on occasions when they choose to charter the boat for personal or other non-business purposes.")

<sup>7</sup> *Id.* (At pg. 7. "As discussed above, Rochelle Charter offers chartering services at fair market rates to both members of the Crow family and to various affiliated businesses for use by them and their employees.")

<sup>8</sup> ProPublica, *How Harlan Crow Slashed his Tax Bill by Taking Clarence Thomas on Superyacht Cruises* (July 2023) <https://www.propublica.org/article/harlan-crow-slashed-tax-bill-clarence-thomas-superyacht>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 26 CFR § 1.183-2 (Activity not Engaged in for Profit Defined - (6) The taxpayer's history of income or losses with respect to the activity. A series of losses during the initial or start-up stage of an activity may not necessarily be an indication that the activity is not engaged in for profit. However, where losses continue to be sustained beyond the period which customarily is necessary to bring the operation to profitable status such continued losses, if not explainable, as due to customary business risks or reverses, may be indicative that the activity is not being engaged in for profit. If losses are sustained because of unforeseen or fortuitous circumstances which are beyond the control of the taxpayer, such as drought, disease, fire, theft, weather damages, other involuntary conversions, or depressed market conditions, such losses would not be an indication that the activity is not engaged in for profit. A series of years in which net income was realized would of course be strong evidence that the activity is engaged in for profit.)

<sup>12</sup> *Hylton v. Comm'r*, 112 T.C.M. (CCH) 701, 729 (2016).

element of personal enjoyment and recreation. For example, in *Steiner v. Commissioner*, the IRS disallowed large income tax deductions for expenses associated with a couple's yacht charter activity. Among the reasons cited by the IRS was that "the charter activity was unprofitable each year of its operation."<sup>13</sup> Similarly, in *Hylton v. Commissioner*, the court disallowed large deductions from horse breeding expenses in large part because the business generated losses of \$17 million compared gross income of just \$1.2 million over a 17 year period.<sup>14</sup>

Additionally, IRS regulations specify that if a taxpayer has substantial income from sources other than the charter activity (particularly if the losses from the activity generate substantial tax benefits), such facts may also indicate that the yacht chartering activity may lack a for profit motive.<sup>15</sup> In *Steiner*, the court wrote that during the years at issue, the family had "significant income and claimed sizable tax benefits from the losses generated by the charter activity."<sup>16</sup> Similarly, in *Hylton* the court wrote that the individual received \$89 million in other income while claiming tax benefits from losses related to the horse breeding business.<sup>17</sup>

I believe these fact patterns mirror that of Rochelle Charter's own financial record of sustained losses and lack of profits over the course of a decade, but I am writing to offer you another chance to credibly distinguish this conduct from that disallowed by the courts. Absent further explanation, the information that has emerged involving Rochelle Charter and Mr. Crow has all the markings of a tax scheme to write off the cost of operating and maintaining a pleasure yacht used entirely for the Crow family's enjoyment. Rochelle Charter racked up losses over a decade and then used those losses to generate a tax benefit for Mr. Crow by reducing his taxable income by millions of dollars. To any objective observer, these facts do not paint a picture of a legitimate yacht charter business engaged in for profit. As it stands, I believe these facts may constitute either unacceptable tax avoidance, or worse, outright tax evasion. It is of the utmost importance that this Committee continue to investigate and close off opportunities for the ultra-wealthy to gain dubious tax breaks on their luxury spending.

### **III. Conclusion**

As Chairman of the Senate Committee on Finance, I have long been concerned that the ultra-wealthy may be engaged in abusive tax schemes to use luxury assets like superyachts and private aircrafts to illegally or inappropriately reduce their taxable income. The tax code makes clear that the use of a superyacht or private jet for personal purposes is not a legitimate business use and therefore any related costs cannot be claimed as a deduction. Any effort to mischaracterize expenses from trips involving personal hospitality as business expenses is a run of the mill tax scam, plain and simple.

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<sup>13</sup> *Steiner v. Comm'r*, 117 T.C.M. (CCH) 1114, 1119 (2019).

<sup>14</sup> *Hylton v. Comm'r*, 112 T.C.M. (CCH) 701, 729 (2016) "Petitioner's ownership and operation of HQH generated substantial losses from 1998 – 2014, which she used to offset taxable income from other sources. Although losses in the formative years of a business are not inconsistent with a profit objective, the goal must be to realize a profit on the entire operation, which presupposes sufficient future net earnings from the activity to recoup the losses. In the present case, petitioner owned and operated HQH for 17 years and claimed losses of \$17.378 million compared with reporting gross income before expenses of \$1.279 million over the same period."

<sup>15</sup> 26 CFR § 1.183-2 - Activity not engaged in for profit defined. ((b) (8) The financial status of the taxpayer. The fact that the taxpayer does not have substantial income or capital from sources other than the activity may indicate that an activity is engaged in for profit. Substantial income from sources other than the activity (particularly if the losses from the activity generate substantial tax benefits) may indicate that the activity is not engaged in for profit especially if there are personal or recreational elements involved.)

<sup>16</sup> *Steiner v. Comm'r*, 117 T.C.M. (CCH) 1114, 1119 (2019).

<sup>17</sup> *Hylton v. Comm'r*, 112 T.C.M. (CCH) 701, 729 (2016)

Unfortunately, your prior responses to the Committee have done nothing to address concerns that personal trips aboard Mr. Crow's superyacht and private jets for lavish vacations, including complimentary private jet travel for Justice Thomas, may have been used to help Mr. Crow avoid or evade paying federal taxes. This is not a particularly complicated matter. Mr. Crow could easily clarify for the Committee whether tax deductions were claimed on superyacht and private jet use by Justice Thomas, but he refuses to do so.

This is particularly troubling in light of the Committee's discovery of additional lavish international travel by Justice Thomas at Mr. Crow's expense that Justice Thomas has failed to properly disclose. This is unfortunately a situation without precedent in our nation's history. For decades, Justice Thomas has failed to disclose complimentary use of Mr. Crow's superyacht and private jet(s), concealing from the American people millions of dollars' worth of gifts in a manner that likely violated federal law. These trips may have also been used to help Mr. Crow avoid or evade paying a substantial amount of federal income taxes.

Accordingly, the Committee seeks to understand the means and scale of Mr. Crow's undisclosed largesse to Justice Thomas to inform several pieces of legislation that the Committee is drafting. This legislation includes, but is not limited to: reforms to the tax code concerning filing requirements for gift tax returns, audit requirements for Supreme Court Justices, and comprehensive ethics reform that would strengthen the Ethics in Government Act and other laws related to the disclosure of complimentary private jet and yacht travel by Supreme Court Justices. Please provide answers to the following questions no later than August 26, 2024:

1. For tax year 2010 – 2022, please provide any financial statements for Rochelle Charter prepared for creditors, shareholders or other stakeholders. If financial statements are not available, please provide a copy of the trial balance or profit and loss statement for the years at issue.
2. For tax years 2010 – 2022 please identify the revenue reported by Rochelle Charter attributable to unrelated third parties (here meaning any individuals or entities that do not include related parties as identified under section 267 of the Internal Revenue Code).
3. For tax years 2020 – 2022, for each year please provide gross income before expenses, expenses and losses reported on Form 1120S, 1120, 1065 and 1040, as applicable.
4. For all years between 2010 and 2014 provide copies of all yacht charter agreements or contracts to charter out the Michaela Rose. This should include the price charged for each charter, the individual or entity chartering the yacht, as well as the method used to determine the price charged.
5. Please provide copies of any service agreements or contracts that govern related-party charters for the Michaela Rose including agreements to charter the Michaela Rose for use by any Crow family members, Crow family businesses or their employees.
6. Has Rochelle Charter ever formally engaged any yacht brokers, charter brokerage companies or other agents with the intent to charter the Michaela Rose out to any parties unrelated to Crow family or Crow family businesses? If so, please identify them, when they were first engaged and whether those services ever resulted in any yacht chartering business with individuals or entities unrelated to the Crow family.

7. While Rochelle Charter was still an S corporation did it ever report a profit? If so, for each year Rochelle Charter reported a profit please specify how much.
8. Did Justice Thomas ever reimburse Mr. Crow for November 2010 round trip flights aboard Mr. Crow's private jet from Hawaii to New Zealand? Please also clarify whether Justice Thomas also traveled on any private jets paid for by Mr. Crow from Washington, D.C. or elsewhere in the U.S. to Hawaii prior to departing to New Zealand.
9. When Justice Thomas traveled with Mr. Crow to New Zealand in November 2010, did the trip to New Zealand also include Justice Thomas as a passenger on any voyages aboard the Michaela Rose or any other yachts owned or chartered by Mr. Crow?
10. Has Mr. Crow ever paid for Justice Thomas and his family to travel to Russia? If so, please provide a detailed description of the trip, including a list of countries visited (including any nations in the Baltics), whether the trip involved any private jet, yacht and helicopter travel. Please also provide a cost estimate for the trip.
11. Please provide a detailed list of all instances in which Justice Clarence Thomas has been a guest aboard Mr. Crow's superyacht, the Michaela Rose. For each of these trips, please provide the following:
  - a. The date, location and duration of stay for each instance in which Justice Thomas was a guest aboard the Michaela Rose
  - b. For each instance in which Justice Thomas traveled aboard the Michaela Rose, please indicate whether any trade or business:
    - i. Included the value of the use of the yacht as a taxable fringe benefit to the owner(s)
    - ii. Depreciated the yacht to the extent of qualified business use
    - iii. Deducted operating costs (e.g. fuel, labor, food, renovations/upgrades, etc.) attributable to these particular trips; or,
12. Please provide a detailed list of all flights Justice Clarence Thomas has taken on any private jets under Mr. Crow's ownership or control or under the ownership and control of any entities in which Mr. Crow is a partner, director or officer, including Crow Holdings and its subsidiaries. For each of these flights, please include the following information:
  - a. The date, point of departure and final destination for each flight.
  - b. Whether Justice Thomas ever made any reimbursements for his travel on the private jet to the individual or entity that paid for the flight.
  - c. For each flight on which Justice Thomas was a passenger, please indicate whether any trade or business:
    - i. Included the value of the flights as a taxable fringe benefit to the owner(s),
    - ii. Depreciated the private jet to the extent of qualified business use,
    - iii. Deducted operating costs (e.g., fuel, labor, food, etc.) attributable to these particular trips; or,
    - iv. For flights that are used for personal reasons as well as mixed use reasons (i.e., both personal and business reasons), whether logs were kept to determine and

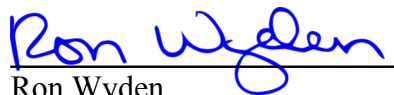
substantiate proper income inclusion (e.g., all employee travelers, number of family members or guests accompanying the employee, weight class of the aircraft, distance flown, flight hours, etc.).

13. For each of the following instances where Mr. Crow paid for Justice Thomas to travel by private jet, please indicate whether any trade or business affiliated with Mr. Crow or members of the Crow family deducted any costs attributable to these particular trips:
- a. November 2010 private jet flight from Hawaii to New Zealand
  - b. November 2010 private jet flight from New Zealand to Hawaii
  - c. February 2016 private jet flight from Washington, D.C. to New Haven, CT
  - d. February 2016 private jet flight from New Haven, CT to Washington, D.C.
  - e. May 2017 private jet flight from St. Louis, MO, to Kalispell, MT
  - f. May 2017 private jet flight from Kalispell, MT to Dallas, TX
  - g. March 2019 private jet flight from Washington, DC, to Savannah, GA
  - h. March 2019 private jet flight from Savannah, GA to Washington, D.C.
  - i. June 2019 private jet flight(s) from Washington D.C. to Indonesia (CBP flight records reviewed by the Committee indicate there was a stopover at PGUM airport in Guam before reaching final destination)
  - j. July 2019 private flight(s) from Indonesia to Washington, D.C. (CBP flight records reviewed by the Committee indicate there was a stopover at PGUM airport in Guam before reaching final destination).
  - k. June 2021 private jet flight from Washington, DC, to San Jose, CA
  - l. June 2021 private jet flight from San Jose, CA to Washington D.C.
  - m. October 2021 private jet flight from Washington, D.C. to New York City
  - n. October 2021 private jet flight from New York City to Washington, D.C.
  - o. February 2022 private jet flight from Dallas, TX to Washington, D.C.
  - p. May 2022 private jet flight from Washington, D.C. to Dallas, TX
  - q. May 2022 private jet flight from Dallas, TX to Washington, D.C.
  - r. July 2022 private jet flight from Washington, D.C. to upstate New York

s. July 2022 private jet flight from upstate New York to Washington, D.C.

Thank you for your attention to this important matter. Please don't hesitate to contact Patricio Gonzalez from my staff if you have any questions or wish to discuss this request.

Sincerely,



Ron Wyden  
United States Senator  
Chairman, Committee on  
Finance