

*Holding Power Accountable*

The Honorable Dick Durbin (D-IL)  
Chairman, U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lindsey Graham (R-SC)  
Ranking Member, U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

April 11, 2023

Dear Chairman Durbin and Ranking Member Graham:

No American is above the law, including the justices of the United States Supreme Court. Recent reporting by ProPublica revealed that for years Justice Clarence Thomas accepted luxury trips and gifts from a billionaire donor without reporting a dime of them on his personal financial disclosure forms for more than 20 years.<sup>1</sup> This latest incident is another example of how a lack of clear ethical rules has permitted conduct that over time undermines trust and confidence in the judiciary and requires immediate Congressional attention.<sup>2</sup> The Supreme Court should abide by the highest ethical standards, and what has been publicly reported falls woefully short.

We were encouraged to see a statement indicating that the Committee will hold a hearing “in the coming days” on “the need to restore confidence in the Supreme Court’s ethical standards.” On behalf of Common Cause’s more than 1.5 million members, we strongly urge you, when Congress returns from its recess, to hold hearings that examine exactly what happened – including testimony from Justice Thomas – and put it on the record for the American people. But this is about much more than the latest reporting from ProPublica. The issue of judicial ethics (or lack thereof) is far broader, and it is why we also urge you to consider inviting Chief Justice John Roberts to answer questions from the Committee about whether and how the Court’s members uphold their obligation to comply with the law (including the Ethics in Government Act of 1978) and judicial ethics generally.

Common Cause has a long history of supporting comprehensive efforts to enforce and strengthen judicial ethics because it goes to the heart of upholding the rule of law. We have supported legislation such as the Supreme Court Ethics Act; the Supreme Court Ethics, Recusal, and Transparency Act; and the Judicial Ethics and Anti-Corruption Act to ensure that the Supreme Court is bound by a judicial code of conduct like all other courts in the United States.

In 2011, after Common Cause initially discovered that Justice Thomas’ financial disclosure forms were incomplete, Justice Thomas amended 21 years’ worth of returns.<sup>3</sup> Additionally, following a 2011 article by the *New York Times* detailing Justice Thomas’ close relationship with Harlan Crow,<sup>4</sup> Common Cause wrote to the Judicial Conference of the United States to ask it to examine whether Justice Thomas failed to comply with the Ethics in Government Act of 1978 and whether the Department of Justice should investigate.

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<sup>1</sup> Joshua Kaplan et al., “Clarence Thomas and the Billionaire,” *ProPublica*, April 6, 2023,

<https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

<sup>2</sup> “Supreme Conflict,” Common Cause, <https://www.commoncause.org/resource/supreme-conflict/>.

<sup>3</sup> “Evidence suggests Justice Thomas flouted federal ethics law,”

<https://www.commoncause.org/media/evidence-suggests-justice-thomas-flouted-federal-ethics-law/>.

<sup>4</sup> 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>



It has been twelve years since Chief Justice Roberts dedicated his year-end report on the federal judiciary to the issue of judicial ethics, writing that the justices “consult a wide variety of other authorities to resolve specific ethical issues,” even if they are not bound by the same Code of Conduct as all other federal judges.<sup>5</sup> Put simply: the American people need more information about how they consult these authorities and abide by them – including what those authorities are in the first place. What you uncover in your hearings will bolster the record for steps that Congress must take to close any loopholes and strengthen the law.

We appreciate that the House and Senate have held hearings focused on judicial ethics in the last year, but more must be done. This is not a partisan issue – the Supreme Court should be an independent arbiter, free from the special access and influence that too often undermine the rule of law. We respectfully call on your Committee to hold additional hearings to examine the facts and take any necessary action to strengthen the law on judicial ethics and accountability.

Sincerely,

Marilyn Carpinteyro  
Interim Co-President  
Common Cause

cc: All Members of the Senate Judiciary Committee

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<sup>5</sup> Chief Justice John Roberts, 2011 Year-End Report on the Federal Judiciary, December 31, 2011, <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

