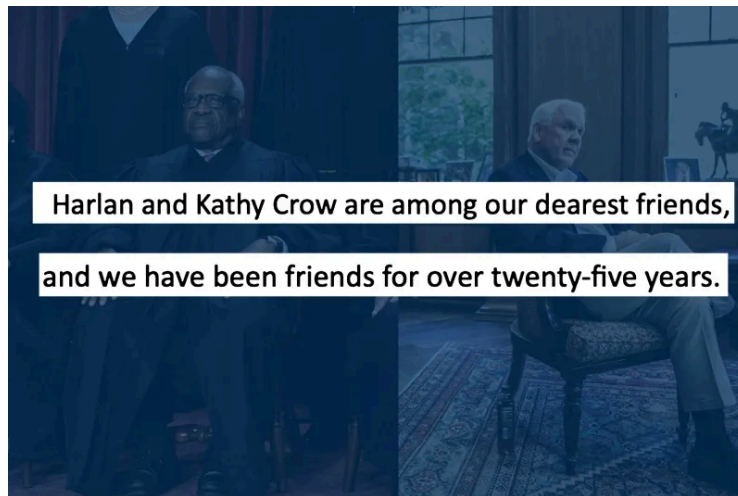


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### Clarence Thomas Defends Undisclosed “Family Trips” With GOP Megadonor. Here Are the Facts.



COLLAGE BY PROPUBLICA. SOURCE IMAGES: EXCERPT FROM A STATEMENT BY JUSTICE CLARENCE THOMAS, J. SCOTT APPLEWHITE/AP PHOTO AND CHRIS GOODNEY/BLOOMBERG/GETTY IMAGES

In response to a ProPublica report, Thomas explained why he did not disclose lavish travel provided by billionaire Harlan Crow. But legal experts maintain the justice was required to make these disclosures.



by [Joshua Kaplan](#), [Justin Elliott](#) and [Alex Mierjeski](#)

April 7, 2023, 8:20 pm

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In a rare public statement, Supreme Court Justice Clarence Thomas responded Friday to a ProPublica report that revealed that Thomas has, for decades, [accepted luxury travel from billionaire Republican megadonor Harlan Crow](#) and failed to disclose it.

[Thomas' brief statement](#) acknowledges joining Crow and his wife, who he described as among his “dearest friends,” on “a number of family trips” over the years. He also defended his failure to disclose them.

“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,” Thomas said in the statement. “I have endeavored to follow that counsel throughout my tenure, and have always sought to comply with the disclosure guidelines.”

But seven legal ethics experts consulted by ProPublica, including former ethics lawyers for Congress and the White House, said the law clearly requires that gifts of transportation, including private jet flights, be disclosed. If Thomas is arguing otherwise, the experts said, he is incorrect.

A Supreme Court spokesperson did not immediately respond to questions for Thomas about the specifics of the advice he was given or who he consulted.

Connecticut, then flew back three hours later.

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Thomas did not respond to detailed questions for that story. His statement Friday did not dispute ProPublica's reporting about his trips. It also did not address broader criticisms from ethics experts and other judges that by repeatedly accepting such trips, he broke long-standing ethical norms for judges' conduct.

In a previous statement to ProPublica, [Crow said](#) that Thomas "never asked for any of this hospitality" and that his treatment of the justice was "no different from the hospitality we have extended to our many other dear friends."

A law passed in the wake of the Watergate scandal, the Ethics in Government Act, requires Supreme Court justices and many other federal officials to report most gifts to the public. Justices are generally required to report all gifts worth more than \$415, defined as "anything of value" that they don't repay the full cost of. Gifts are disclosed in an annual financial report that is made public.

There are exceptions, and experts parsing the legality of Thomas' failure to disclose the travel have been focused on a carve-out known as the "personal hospitality" exemption.

The exemption states that gifts of "[food, lodging, or entertainment received as personal hospitality](#)" don't have to be disclosed. The law defines "[personal hospitality](#)" in a way that further limits the exception. It only applies to gifts received from an individual at that person's home or at properties that they or their family own.

**(A) Gifts.—**

The identity of the source, a brief description, and the [value](#) of all [gifts](#) aggregating more than the minimal [value](#) as established by [section 7342\(a\)\(5\) of this title](#), or \$250, whichever is greater, received from any source other than a [relative](#) of the reporting individual during the preceding calendar year, **except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported,** and any [gift](#) with a fair market [value](#) of \$100 or less, as adjusted at the same time and by the same percentage as the minimal [value](#) is adjusted, need not be aggregated for purposes of this subparagraph.

SOURCE: EXCERPT FROM THE ETHICS IN GOVERNMENT ACT. HIGHLIGHTED BY PROPUBLICA.

ProPublica asked the seven legal ethics experts about the exception and Thomas' statement. All said that the law's language clearly requires that gifts of transportation, such as private jet travel or cruises on a yacht, be disclosed and said Thomas appears to have violated the law by failing to report them.

"I don't think you can make an argument that private jet flights need not be included under the statute," said Stephen Gillers, a professor emeritus and ethics expert at New York University law school.

Richard Painter, who served as the chief ethics lawyer for the George W. Bush White House, said Thomas' explanation of why he didn't disclose the trips "makes absolutely no sense." Painter emphasized that the exemption only covers three categories: food, lodging and entertainment. Private jet flights would fall into none of those, he said.

"Justice Thomas likes to focus on the language of authoritative texts, and that's not what he's doing in this statement," said Kathleen Clark, a legal ethics expert at Washington University in St. Louis.

Thomas himself disclosed at least one private jet flight from Crow, in his financial disclosure for 1997. He has not disclosed a trip on Crow's plane in more than 20 years.

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Reviewing other federal judges' financial disclosure filings, ProPublica found [at least six examples](#) of judges disclosing gifts of private jet travel in recent years.

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In the Ethics in Government Act, Congress explicitly stated that the law covers Supreme Court justices. But Chief Justice John Roberts has raised questions about Congress' power to impose rules on the Supreme Court.

Thomas' statement Friday does not cite the law itself but rather "disclosure guidelines" for the judiciary. The guidelines elaborate on how the law applies to the courts and are issued by the policymaking arm of the judiciary.

Thomas' statement refers to [a March update of the judiciary's guidelines](#) for financial disclosure. "It is, of course, my intent to follow this guidance in the future," he said. The [new guidelines](#) explicitly say that transportation is not food, lodging or entertainment and so must be disclosed.

Questions about Thomas' compliance with the disclosure law have come up in the past. In 2011, he announced that he was [amending years' worth of his disclosure forms](#) because he had [failed to disclose the sources of his wife, Ginni's, income](#).

At the time, he cited a "misunderstanding of the filing instructions."



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