

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 18, 2023

Chairman Dick Durbin
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin:

On May 8th, you and your Democratic colleagues on the Senate Judiciary Committee wrote several letters demanding information of a private citizen related to travel and hospitality provided to a Supreme Court justice. Your stated concern was the “appearance of undue influence that undermines the public’s trust in the Court’s impartiality.”¹ We write with grave concerns about your demands. Consistent with its Article I powers and the Rules of the Senate, the Committee must have a legitimate legislative purpose for its inquiry into Mr. Crow’s affairs, and the scope of the inquiry must be reasonably related to its purpose. There appears to be neither here.

These demands are especially troubling given the significant separation of powers concerns at issue and the relentless political campaign to attack and undermine confidence in the Court. As former Attorney General Michael Mukasey recently testified before the Judiciary Committee, “the public is being asked to hallucinate misconduct.”²

Your requests appear misaligned and political. Further, they only target conservative members of the Supreme Court. To start, your letters claim that you believe “private access” to justices—seemingly when justices socialize with anyone not on the Court—“creates an appearance of undue influence that undermines the public’s trust in the Court’s impartiality.” But judges, justices, politicians, and other public figures engage with friends in private settings every day—just as anyone else. Congress does not have the authority to demand to know each person with whom a justice engages. Indeed, “there is no congressional power to expose for the sake of exposure.” *Watkins v. United States*, 354 U.S. 178, 200 (1957).

Even considering that purported purpose, your requests appear misaligned. We are unable to discern any relationship between where other people travel before or after meeting with Justice Thomas and your purported concern with “private access” to a justice.³

Moreover, numerous examples strongly imply that you do not believe your own claims about the dangers of “private access,” *i.e.*, socializing. Justices Breyer, Kagan, Kennedy, Ginsburg, and Sotomayor were given free trips to the Aspen Institute, “the mountain retreat for the liberal

¹ Letter, Chairman Durbin to Topridge Holdings, LLC, May 8, 2023.

² Michael B. Mukasey, Testimony before the Senate Judiciary Committee, May 2, 2023.

³ See Letters, Chairman Durbin to HRZNAR LLC and Rochelle Marine Ltd., May 8, 2023.

elite.”⁴ Justice Breyer traveled for free on several occasions for the Pritzker Prize for Architecture, which is associated with one of the wealthiest families in America. Justices also frequently visit law schools and socialize with the legal academy, including on international trips. However, none of you lodged complaints about those justices or their interactions with politically active groups of Americans. If any member of the Judiciary Committee had concerns that those activities influenced the justices’ opinions or undermined public confidence in the Court, they likely would not have been shy about saying so.

Our concerns about the purpose of these inquiries are magnified by the fact the inquiries appear to be part of a larger coordinated effort to pressure Mr. Crow and Justice Thomas. In fact, another Senate committee seems to have placed itself squarely within that political scheme. Democrats on the Senate Finance Committee sent a letter asking for information that amounted to a tax audit of Mr. Crow. He rebuffed those inquiries as exceeding that committee’s authority.

Again, this appears to be a political effort not only to attack Justice Thomas because you don’t like his judicial philosophy, but also to restructure the Court. A number of signatories to your letter have been quite explicit in calling for the Court to be more politically responsive and less independent. Concerned that the Court might uphold citizens’ Second Amendment rights despite efforts by New York to evade judicial review, several senators wrote in an amicus brief, “The Supreme Court is not well. And the people know it.”⁵ The senators went on to suggest the Court should “heal itself” before it needs to be “restructured.” Seeking information to aid in a campaign to restructure the Court by definition raises separation of powers concerns.

The ill fit between your requests and your proffered goal supports the conclusion that political motivations are at play. Fervent disagreement with the Supreme Court’s jurisprudence and a view that the proper role of a Court is to interpret the law as written, not to enact policy, appears to drive this effort. As one liberal commentator has opined, the goal of such assertions “isn’t to secure ethics reforms.”⁶ Instead, “[t]he point is . . . to *promote* the perception of judicial corruption.” These letters appear to serve that goal much more directly than purported concerns about “private access” to a *single* justice on vacation.

Indeed, the letters to Mr. Crow appear to be another page out of the political playbook used for decades to damage conservative judges. It’s been used to attack Judge Robert Bork, Justice Clarence Thomas, and Justice Brett Kavanaugh. The recent episode with Justice Kavanaugh shows how partisan and disconnected from legitimate inquiry these efforts have become. Rather than exercising independent judgment, every Democrat on this Committee treated as credible Michael Avenatti and Julie Swetnick’s fantastical claims. This history adds to our concerns that this process is driven by a political purpose. Harassing a private citizen premised on a contrived narrative of ethical lapses is not an appropriate use of this Committee’s power.

⁴ Linda Kinstler, *Inside Aspen: the mountain retreat for the liberal elite*, THE ECONOMIST, Sept. 6, 2019, available at <https://www.economist.com/1843/2019/09/06/inside-aspen-the-mountain-retreat-for-the-liberal-elite>.

⁵ Garrett Epps, ‘*The Supreme Court Is Not Well. And the People Know It*,’ THE ATLANTIC, Sept. 2, 2019, available at <https://www.theatlantic.com/ideas/archive/2019/09/requiem-supreme-court/597238/>.

⁶ Eric Levitz, *What Conservatives Can’t Say About Clarence Thomas*, NEW YORK MAGAZINE, May 7, 2023, available at <https://nymag.com/intelligencer/2023/05/what-conservatives-cant-say-about-clarence-thomas.html>.

This coordinated campaign against the Court is not without consequence. Discontent with the Court's rulings motivated the leaking of the *Dobbs* opinion. It made the justices targets of assassination.⁷ This required unprecedented, around the clock security, straining federal law enforcement agencies. The leak "change[d] the institution fundamentally."⁸ The fallout from the *Dobbs* leak peaked with an attempted assassination of a sitting justice. Despite the serious harm done by the leak, the left has continued with its attempts at character assassinations, both through "destroying Clarence Thomas's reputation"⁹ and through branding the Court as an ethically dubious institution.

In the Court's long history, before taking the bench justices have previously served as preeminent cause-oriented advocates and as elected officials. But, they have donned the black robe and sworn an oath to administer justice without respect to persons, and do equal right to the poor and to the rich in an impartial manner. Neither the Justices' private friendships nor their spouses' careers alone undermine confidence in the Court's legitimacy.

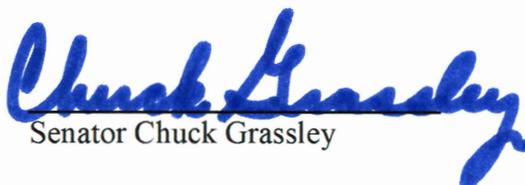
Those who are concerned with preserving the integrity of the Court should oppose this campaign to promote the perception of judicial corruption. We should respect the judicial independence of the Supreme Court, no matter any distaste for its rulings. Likewise, we should not weaponize the powers of the Committee in a political campaign of partisan destruction.

We urge you to withdraw your May 8th letters to Mr. Crow and his entities and to refocus the Judiciary Committee's efforts on legitimate inquiries. With the country confronting a fentanyl epidemic and a crisis on our border due to illegal immigration, there are many issues worthy of this Committee's time and efforts.

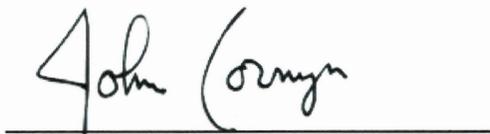
Sincerely,



Ranking Member Lindsey Graham



Senator Chuck Grassley



Senator John Cornyn

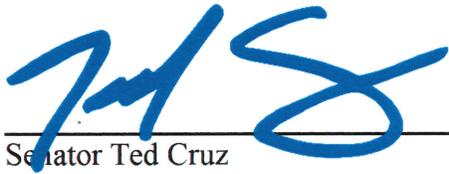


Senator Mike Lee

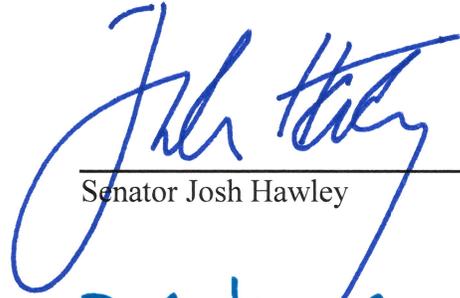
⁷ James Taranto, *Justice Samuel Alito: 'This Made Us Targets of Assassination'*, WALL STREET JOURNAL, Apr. 28, 2023, available at <https://www.wsj.com/articles/justice-samuel-alito-this-made-us-targets-of-assassination-dobbs-leak-abortion-court-74624ef9>.

⁸ Jessica Gresko, *Clarence Thomas says abortion leak has changed Supreme Court*, AP NEWS, May 14, 2022, available at <https://apnews.com/article/abortion-us-supreme-court-clarence-thomas-e08bbdfbe48d33171fa6f2a17931da63>.

⁹ Michael Tomasky, *The Democrats Need to Destroy Clarence Thomas's Reputation*, NEW REPUBLIC, Apr. 10, 2023, available at <https://newrepublic.com/article/171754/democrats-need-destroy-clarence-thomas-reputation>.

A stylized, cursive handwritten signature in blue ink, consisting of the letters 'T', 'C', and 'S'.

Senator Ted Cruz

A cursive handwritten signature in blue ink, appearing to read 'Josh Hawley'.

Senator Josh Hawley

A cursive handwritten signature in blue ink, appearing to read 'Tom Cotton'.

Senator Tom Cotton

A cursive handwritten signature in blue ink, appearing to read 'John Kennedy'.

Senator John Kennedy

A cursive handwritten signature in blue ink, appearing to read 'Thom Tillis'.

Senator Thom Tillis

A cursive handwritten signature in blue ink, appearing to read 'Marsha Blackburn'.

Senator Marsha Blackburn