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STATEMENT AND EXECUTIVE SUMMARY BY ELLIOT S. BERKE ON BEHALF OF ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES CLARENCE THOMAS

Statement

Over the course of his 44 years in public service in all three branches of government, Justice Thomas has always strived for full transparency and adherence to the law, including with respect to what personal travel needed to be reported. Justice Clarence Thomas engaged my law firm Berke Farah LLP and the Certified Public Accounting firm Flynn Abell Nixon LLC to assist him with Financial Disclosure Report compliance under the Ethics in Government Act of 1978, 5 U.S.C. app. §§ 101-111, after new guidance to the corresponding judicial regulations were issued by the Judicial Conference of the United States Committee on Financial Disclosure effective March 14, 2023. *Guide to Judiciary Policy, Vol. 2D, Ch. 1 at 6.* At our request, Justice Thomas applied for a filing extension for Calendar Year 2022, which was granted by the Judicial Conference, to provide us with time to evaluate the revised reporting requirements and to also review past Financial Disclosure Reports to determine if any required information was inadvertently omitted or filed in error. After reviewing Justice Thomas’s records, I am confident there has been no willful ethics transgression, and any prior reporting errors were strictly inadvertent.

We recognize that the Judicial Conference is in receipt of ethics complaints filed against Justice Thomas by left wing organizations with largely undisclosed supporters that stand diametrically opposed to his judicial philosophy. We look forward to answering any additional questions or addressing any remaining issues with it and its staff in the wake of these sensationalized allegations. The financial disclosure process should never be weaponized against any Justice simply because any organization or anyone disagrees with the way a Justice thinks, writes, or votes.

For several months now, left wing “watchdog” groups have been attacking Justice Thomas for alleged ethical violations largely stemming from his relationships with personal friends who happen to be wealthy. Democratic members of Congress have even requested that Attorney General Merrick Garland open an investigation into Justice Thomas for what they describe as

“willful” violations of federal law. This is calumny. Willful violations require intentional disregard or indifference. The attacks on Justice Thomas are nothing less than ridiculous and dangerous, and they set a terrible precedent for political blood sport through federal ethics filings.

Justice Thomas’s amended report answers — and utterly refutes— the charges trumped up in this partisan feeding frenzy. We continue to work with Supreme Court and Judicial Conference officials for guidance on whether he should further amend his reports from any prior years and have invited them to raise any additional questions.

This is the way the process is supposed to work. These matters are best handled by the entities that oversee them. For the judiciary, relevant law provides that oversight lies with the Judicial Conference, not the DOJ and not the Congress. It is incumbent on the Judicial Conference, then, to provide clear guidance for the judiciary moving forward. And I truly believe that Justice Thomas’s critics know this, which only raises disturbing questions about their true motives in concocting and inflaming this “controversy.”

No Justice, Justice Thomas included, should be subjected to such political blood sport. It is painfully obvious that these attacks are motivated by hatred for his judicial philosophy, not by any real belief in any ethical lapses. Several other Justices have been accused of ethics infractions of late as well, and while I do not represent them, I have seen no evidence to suggest their conduct was anything other than consistent with the rules in effect at the time the reports were filed, or due to inadvertent mistakes – as is the case with Justice Thomas.

While public figures may be the targets of weaponized ethics allegations, all Americans are its victims. Trust in our national institutions is eroding fast enough — with poisonous consequences for our country — without partisans, sworn to uphold the Constitution, abusing it and their own privilege to score cheap political points for a few slow news cycles. And yes of course, our public officials are not above the law, but they are also entitled to rely on the rules put in place to govern their conduct. So, the ethics wars need to stop: They are not only unfair to our government officials, but also undermine public confidence in our republic.

Executive Summary

Today, the Judicial Conference released Justice Thomas’s Financial Disclosure Report for Calendar Year 2022. Because the March 14, 2023, judicial guidance for the first time specifically made clear that “transportation that substitutes for commercial transportation” will

no longer be considered exempt from reporting under that provision, Justice Thomas has included all reportable private travel on his Calendar Year 2022 Report, as advised by Supreme Court officers, including legal counsel with the Administrative Office of the Courts.

The financial disclosure rules have nothing to do with permitting travel or gifts. They establish reporting requirements. Prior to the March 14, 2023 guidance, Justice Thomas adhered to the then-existing judicial guidance as his colleagues had done (notably including the former chairman of the Judicial Codes of Conduct Committee, Judge Raymond Randolph), both in practice and in consultation with the Judicial Conference, that exempted the disclosure of “transportation that substitutes for commercial transportation” as related to the personal hospitality reporting provision. The guidance in effect until March of this year did not call for the reporting of such travel, as shown in contemporaneous notes Judge Randolph took on May 8, 2006, stating “[p]ersonal hospitality – don’t have to report...private plane/lodge,” upon seeking advice with judicial ethics staff about a trip he took to Alaska. Consequently, Justice Thomas, like his colleagues, was consistently advised over the years by court officers and legal counsel that transportation and lodging under the personal hospitality provision did not need to be disclosed on his Financial Disclosure Reports.

It is also worth noting that in 2011, twenty members of Congress filed a complaint regarding Justice Thomas’ travel, which he had appropriately not disclosed based on the personal hospitality provision. The complaint claimed Justice Thomas was not in compliance with the requirement to disclose such trips. The Judicial Conference issued a letter confirming that Justice Thomas had not improperly failed to disclose information concerning his travel.

Justice Thomas’s critics allege that he failed to report gifts from wealthy friends. Untrue. He has never accepted a gift from anyone with business before the Court. For anyone who knows him at all, it is clear that no one influences Justice Clarence Thomas’s jurisprudence. But friends are dear, close, and separate. He has included all other reportable gifts on his disclosure forms. Much of the noise to the contrary is based on malicious and sloppy reporting and attacks from partisans who disagree with his jurisprudence and want to drive him and others off the Court.

The report released today also includes the disclosure of personal bank accounts and life insurance held by Justice Thomas’s wife, the inadvertent misnaming of his spouse’s family real estate holding, as well as information regarding a real estate transaction in 2014 that resulted in a capital loss, which were inadvertently omitted from prior reports. During the preparation and filing of this report, filer sought and received guidance from the Supreme Court’s Legal Office,

the Counselor to the Chief Justice, the staff of the Judicial Conference Financial Disclosure Committee (“Committee”), and personal counsel.

Because of the personal and familial nature of the issue, Justice Thomas included the supplemental information about the 2014 real estate transaction in the Savannah, Georgia area in the interest of completeness and transparency. Justice Thomas inherited a 1/3 interest in three properties with his mother and brother in 1984 (and later his brother’s family after his tragic passing in 2000): his mother’s residence, located at 542 East 32nd Street, and two additional houses, located at 546 & 548 East 32nd Street. His mother’s home was never rented or held for investment, so it was never included on his Financial Disclosure Report. The other properties were included on prior Financial Disclosure Reports because they were rented and generated income, albeit at a very nominal amount. For example, in 2009, the last year they were included on his reports, the properties generated \$1,200 in gross rents, which amounted to \$400 for Justice Thomas. Given that neither property generated any income after 2009, the Justice recalls being advised by Supreme Court officers and the Financial Disclosure Committee staff to remove these properties from future disclosure reports because they no longer qualified as rental property. In fact, the homes became dilapidated, were riddled with squatters, and were ultimately torn down by the city. By no means did Justice Thomas consider either property to be an “asset” or a property held for “investment.”

In 2014, Harlan Crow, a longtime friend of Justice and Mrs. Thomas, visited Savannah with Justice Thomas. Mr. Crow witnessed firsthand how the neighborhood was blighted and dangerous with derelicts, drug users, and junkies, notably in the house next to the Justice’s mother and in the other houses on her street. Mr. Crow asked Justice Thomas what he intended to do with the home after his mother (who was in her 80s at the time) passed away, and the Justice replied that he intended to have the property bulldozed. Mr. Crow indicated he wanted to preserve the home for a possible museum and asked his team to review the idea of doing so. When he first raised the idea of purchasing this home to preserve it, Mr. Crow did not know that Justice Thomas had a 1/3 interest in the property.

Mr. Crow’s interest in preserving this home is consistent with his previous efforts to preserve important landmarks in Justice Thomas’ life, and other historical preservation projects. In 2001, Mr. Crow provided significant funding to help restore the dilapidated Carnegie Library, which was, during segregation, the all-black library where a young Clarence Thomas began his love of reading. In 2008, Mr. Crow also purchased the run down and no longer used oyster and crab factory where Justice Thomas’ mother and other family members had worked, and which was yards from where he had been born in Pin Point, Georgia. Mr. Crow financed the construction of

a museum in these restored buildings to celebrate the Gullah Geechee culture. Because he wanted to preserve this history, Mr. Crow provided a life estate provision for the current owners of the Pin Point property, the Varns, so they could continue to live there rent free for the rest of their lives. Finally, around the same time, Mr. Crow also financially contributed to Savannah College of Art & Design (SCAD)'s efforts to restore a building it owned that had once been the convent of the Catholic nuns who taught Justice Thomas at St. Benedict the Moor. It is important to note that none of these projects provide any financial benefit to Justice Thomas; Mr. Crow supported these projects to honor the Justice's life, the nuns who taught him, and the community in which he grew up.

With respect to the 2014 Savannah transaction, Mr. Crow bought the three parcels in which Justice Thomas had a one-third ownership interest for \$133,000, along with the remaining houses/lots with numbers 540 to 550 on the same street. Mr. Crow bought these other homes because he believed it would be beneficial to develop these properties to make this neighborhood more appealing – a mini urban renewal project. Mr. Crow believed that if he built a seed home with a good tenant it would improve the neighborhood. Accordingly, he built a house next to Justice Thomas' mother's house, which Mr. Crow now owns, and then sold the other two properties to a developer with the understanding that decent housing would be built. As part of the overall agreement and consistent with his past practice, Mr. Crow provided a life estate to Mrs. Williams, Justice Thomas's mother, to live in this home for the rest of her life without rent. This was not a gift but part of the overall transaction, just as he did with respect to the owners of the Pin Point property. Without it, Mrs. Williams would likely not have sold the home at that time if she had to move. This would have defeated Mr. Crow's intent to purchase the home in order to preserve it.

All the purchases on 32nd Street in Savannah made by Mr. Crow were arms-length transactions at fair market value. Justice and Mrs. Thomas had put between \$50,000 to \$75,000 into his mother's home in capital improvements over the years. The total proceeds from the sale to Justice Thomas were \$44,000, and, therefore, the transaction amounted to a capital loss. The properties, as improved, are currently valued on Zillow at approximately \$1.3 million with his mother's former residence nearly doubling the value of the purchase price of all three properties. There was no profit or net income for Justice Thomas on the transaction—indeed, he lost money on the ultimate sale of the property—but the purchasers and subsequent owners/investors appear to have done very well financially.

Because his interest in the Savannah properties had not generated even nominal income since 2009, and thus had been removed from the annual reports (as suggested by Committee staff) as

“assets,” Justice Thomas inadvertently failed to realize that the “sales transaction” for the property triggered a new reportable transaction in 2014, even though this sale resulted in a capital loss. He has now reported that transaction in Part VIII of his 2022 report.