

Supreme Court Justice Thomas' Gift Controversy Sparks Senate Power Battle



In a move reminiscent of allies of former President Donald Trump, who refused to provide information to the House panel investigating the January 6 attack on the US Capitol, Crow is now following suit. The refusal to comply with subpoenas led to numerous court battles, which were eventually withdrawn. Crow, a Texas commercial real estate magnate, is similarly stonewalling. He has consistently denied requests from Democratic chairmen of two Senate committees seeking detailed information about gifts and transactions benefiting Justice Thomas, claiming it is not Congress' business. Democratic Senator Sheldon Whitehouse of Rhode Island, a senior member of both committees, stated that a subpoena is highly likely in both cases.

Crow's legal team has thus far responded to the committees with a dismissive attitude, effectively refusing to cooperate. Rob Kelner, a partner at Covington and Burling in Washington, remarked that Crow's responses amount to a message of "go pound sand." Despite meeting with one of the two committees, Crow's spokesperson declined to comment.

The Senate's authority to compel public testimony and the production of documents has been pivotal in historic moments, including investigations into organized crime, auto safety, and financial crises. Congress holds significant power to issue subpoenas as long as the inquiries pertain to matters within its jurisdiction.

Recent cases involving public testimony from CEOs of prominent corporations, such as Starbucks, Norfolk Southern, and Silicon Valley Bank, have also raised the possibility of subpoenas. However, the increasingly polarized Senate and the frequent use of filibusters to block action may be emboldening Crow and his advisors. If Crow refuses to comply with a committee subpoena, the Senate would need to vote to take him to court, an unprecedented move that has never been filibustered before.

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Kelner, who regularly represents clients in congressional investigations but is not involved in Crow's case, suggested that Crow's team likely calculated that there wouldn't be enough votes to overcome a filibuster and enforce a subpoena. This tactic risks undermining Senate committees' ability to uncover abuses in the private sector and hold unwilling business executives accountable before the public.

While committees can still leverage the chairman's power to request the Justice Department's prosecution of individuals who ignore subpoenas, this approach is less expedient and often met with declination by the department.

Chairmen of the committees investigating Crow's gifts, Senator Dick Durbin of the Judiciary Committee and Senator Ron Wyden of the Finance Committee, are weighing their options. Durbin stated that committee Democrats would likely unite behind a vote to issue a subpoena but emphasized the importance of proceeding thoughtfully and orderly. Wyden mentioned ongoing productive discussions with fellow Democrats on the committee regarding next steps, including the possibility of issuing a subpoena.

The scrutiny surrounding Crow's ties to Justice Thomas intensified after ProPublica published articles detailing luxury trips and a real estate transaction between the two. The sale of Georgia properties owned by the Thomas family to Crow, as well as the majority of the hospitality received by Thomas, were not disclosed on his annual financial reports.

The push for subpoenas follows recent correspondence from Crow's attorney to both committees. Wyden requested that Crow's legal team provide documents to the committee by June 2, rejecting arguments that the panel lacks jurisdiction to acquire personal tax information and travel records. In response, Crow's lead attorney, Michael D. Bopp, maintained that the committee lacks a legitimate legislative need for the requested information.

The Senate has not resorted to court enforcement of a subpoena since 2016, when it held Carl Ferrer, CEO of Backpage.com, in contempt for refusing to provide documents and appear as a witness during a Senate inquiry into human trafficking. Eventually, the Senate prevailed in court.

As the potential battle between Crow and the Senate unfolds, it will serve as a critical test of the Senate's power to compel cooperation and gather essential information, shedding light on the boundaries and effectiveness of Congress' oversight capabilities.

