

# United States Senate

WASHINGTON, DC 20510

March 4, 2020

Attorney General William Barr  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Barr,

As members of the United States Senate, we have witnessed an unprecedented rise in anonymous funding which now pervades the process for selecting federal judicial nominees, confirming them, and advancing cases and legal theories that serve special interests to the detriment of the American people. We believe this anonymous funding, likely from entities that have interests before the federal courts, is undermining the rule of law and the bedrock American principle of equal justice under law.

Investigative reporting has brought attention to Leonard Leo's leading role in these efforts, including his service with the Trump Administration advising its judicial selection and nominations process.<sup>1</sup> In March 2016, Mr. Leo, who was then Executive Vice President of the Federalist Society, met with Don McGahn and then-candidate Donald Trump to provide a list of possible Supreme Court nominees. After President Trump's election, Mr. Leo reportedly also served on his transition team, took leave from the Federalist Society to advise the Trump Administration on Supreme Court nominations, and continues to serve as an advisor on nominations to federal district and appeals courts. To date, over 85 percent of President Trump's appellate court nominees, including both of his nominees to the Supreme Court, are current or former members of the Federalist Society.

This reporting also places Mr. Leo at the center of a complex network of nonprofit groups and shell entities funded largely by anonymous donors. Between 2014 and 2017 alone, Mr. Leo's network collected more than \$250 million in donations, the sources of which remain unknown. While much of this money has been directed toward advocacy spending in support of judicial nominees through advertising and other means, it appears that Mr. Leo also has a financial interest in these anonymous donations. Although he has regularly received upwards of \$400,000 in annual compensation from the Federalist Society, Mr. Leo has declined to disclose his total compensation received through other entities in his network, including from the BH Group, which contributed \$1 million to President Trump's inaugural committee. In addition, he has recently indicated that he is forming a new venture which plans, among other things, to raise and spend millions on issue advocacy campaigns focusing on judges in the 2020 election cycle.

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<sup>1</sup> Robert O'Harrow & Shawn Boburg, *A Conservative Activist's Behind-the-Scenes Campaign to Remake the Nation's Courts*, THE WASHINGTON POST (May 21, 2019).

Mr. Leo's prominent role in the Trump Administration's judicial selection and nominations process while maintaining a financial interest in advocacy efforts related to this process has raised questions regarding his potential status as a federal employee and compliance with accompanying laws and regulations. By outward appearances, Mr. Leo may have engaged in the performance of a federal function that must be conducted by government employees authorized to act on behalf of the United States by leading the Administration's efforts to identify and select judicial nominees, and press for their confirmation.<sup>2</sup>

As a federal employee, Mr. Leo would have been responsible for complying with federal records retention and financial disclosure requirements, as well as the criminal financial conflict of interest statute, 18 U.S.C. § 208. If he was not deemed a federal employee, Mr. Leo's role in the Trump Administration may have violated legal limitations on the federal government's acceptance of voluntary services or restrictions on access to non-public records.<sup>3</sup>

Mr. Leo's personal financial interest in advocacy efforts related to the judicial selection and nominations process raises serious concerns regarding potential conflicts of interest and the independence of the federal judiciary, given his leadership role in the Trump Administration's work on this issue. As Congress conducts oversight and considers legislation related to conflicts of interest, we request that you provide the information requested in the attached Appendix. Because of the Department's role in the judicial selection or nomination process for federal judicial nominees, Mr. Leo's potential interactions with the Department as part of that process are relevant to our inquiry.

Please provide the documents specified in the attached Appendix by no later than April 3, 2020. Please also consider this letter formal notification of your obligation to identify, collect, and preserve any records that are responsive to requests in that Appendix.

Thank you for your prompt attention to this matter.

Sincerely,



Sheldon Whitehouse  
United States Senator



Richard J. Durbin  
United States Senator

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<sup>2</sup> Mr. Leo's service appears to meet the legal definition of an "inherently governmental function" that is "so intimately related to the public interest as to require performance by Federal Government employees," 31 U.S.C. § 501 note, at §5(2)(A), or that "involves, among other things, the interpretation and execution of the laws of the United States so as . . . to commission, appoint, direct, or control officers or employees of the United States," *id.* at §5(2)(B)(iv).

<sup>3</sup> 31 U.S.C. § 1342 ("An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property"); 5 U.S.C. § 552a(b)(1) (permitting disclosure of certain agency records only to "officers and employees" having a need for the record in the performance of their duties).

*Sherrod Brown*

Sherrod Brown  
United States Senator

*Richard Blumenthal*

Richard Blumenthal  
United States Senator

*Mazie Hirono*

Mazie K. Hirono  
United States Senator

## **Appendix**

From the period beginning January 20, 2017, to the present, please provide all records in the custody of the United States Department of Justice (including emails, email attachments, notes, hard copy correspondence sent through any medium including courier service, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, talking points, any handwritten or electronic notes taken during any responsive communications, and summaries of any responsive communications) related to Mr. Leo's involvement in any potential, actual, or suggested judicial selection or nomination.

For the purposes of this request, the Department may limit its search to custodians within the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Office of Legal Policy, and the Office of Legislative Affairs.