

United States Senate

WASHINGTON, DC 20510

March 4, 2020

Mr. Leonard Leo
c/o CRC Advisors
2850 Eisenhower Avenue, 1st Floor
Alexandria, VA 22314

Dear Mr. Leo,

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 your leading role in these efforts, including your service with the Trump Administration advising its judicial selection and nominations process.¹ In March 2016, you and Don McGahn met with then-candidate Donald Trump to provide a list of possible Supreme Court nominees. After President Trump's election, you also served on his transition team, took leave from the Federalist Society to advise the Trump Administration on Supreme Court nominations, and continue 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 you at the center of a complex network of nonprofit groups and shell entities funded largely by anonymous donors. Between 2014 and 2017 alone, your 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 you also have a financial interest in these anonymous donations. Although you have regularly received upwards of \$400,000 in annual compensation from the Federalist Society, you have declined to disclose your total compensation received through other entities in your network, including from the BH Group, which contributed \$1 million to President Trump's inaugural committee. In addition, you have recently indicated that you are 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.

Your 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 your potential status as a federal employee and compliance with

¹ 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).

accompanying laws and regulations. By outward appearances, you 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.²

As a federal employee, you 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 you were not deemed a federal employee, your 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.³

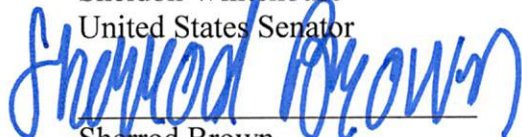
Your personal financial interest in advocacy efforts related to the judicial selection and nominations process raises serious concerns regarding potential conflicts of interest and the independence of the federal judiciary, given your leadership role in the Trump Administration's work on this issue. As Congress conducts oversight and considers legislation related to conflicts of interest, we request that you provide the information requested in the attached Appendix.

Please provide these answers and documents 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 the attached Appendix.

Thank you for your prompt attention to this matter.



Sheldon Whitehouse
United States Senator



Sherrod Brown
United States Senator

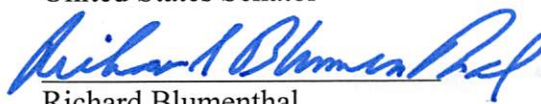


Mazie K. Hirono
United States Senator

Sincerely,



Richard J. Durbin
United States Senator



Richard Blumenthal
United States Senator

² Your 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).

³ 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).

Appendix

1. With respect to your leaves of absence from the Federalist Society and service with the Trump Administration, please provide the following information:
 - a. The dates of your leaves of absence.
 - b. The amount of compensation, if any, you received from the Federalist Society during those periods.
 - c. The legal authority under which your service with the Trump Administration was authorized.
 - d. Your title and job description during your service with the Trump Administration.
 - e. The dates your service with the Trump Administration began and, if applicable, the dates your service ended.
 - f. Any documentation memorializing your leaves of absence, including any future financial interests or employment arrangement.

2. With respect to any records created pursuant to the Federal or Presidential Records Acts, please provide the following information:
 - a. Did you use any official or non-official electronic messaging accounts during your service with the Trump Administration? If so, please list these accounts, including any email addresses or user names used.
 - b. For any federal or presidential records you created during your service with the Trump Administration, what steps have you taken to ensure these records have been properly identified and preserved in an official recordkeeping system?

3. With respect to federal ethics laws and regulations, please provide the following information:
 - a. During your service with the Trump Administration, did you complete any financial disclosure reports, including Office of Government Ethics Form 278? If so, please provide a copy of these reports. If not, please provide an accounting of any assets, income, and liabilities you would have disclosed on Office of Government Ethics Form 278, including any gifts, reimbursements, travel expenses, agreement or arrangements, positions held outside the U.S. government, and other information that should have been disclosed. If you filed confidential OGE Form 450 financial disclosure report(s), please identify the date(s) on which you filed those report(s).

