

United States Senate

WASHINGTON, DC 20510

March 4, 2020

Pat A. Cipollone
White House Counsel
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Cipollone,

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.¹ 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.

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).

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.²

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.³

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 Mr. Leo's 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.

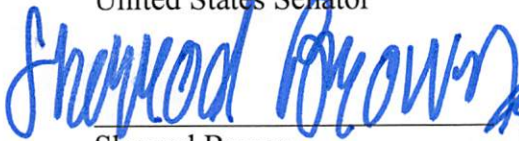
Sincerely,



Sheldon Whitehouse
United States Senator



Richard J. Durbin
United States Senator



Sherrod Brown
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator

² 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).

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 Mr. Leo's leaves of absence from the Federalist Society and service with the Trump Administration, please provide the following information:
 - a. The date his service with the Trump Administration began and, if applicable, the date his service ended.
 - b. The legal authority under which his service was authorized.
 - c. His title and job description.

2. With respect to any records created pursuant to the Federal or Presidential Records Acts, please provide the following information:
 - a. Did Mr. Leo use any official or non-official electronic messaging accounts during his 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 Mr. Leo created during his 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 his service with the Trump Administration, did Mr. Leo complete any financial disclosure reports, including Office of Government Ethics (OGE) Form 278? If so, please provide a copy of these reports. If not, please explain why not, and provide any supporting legal opinions or analyses. If Mr. Leo filed confidential OGE Form 450 financial disclosure report(s), please identify the date(s) on which he filed those report(s).
 - b. During his service with the Trump Administration, did Mr. Leo sign any ethics agreements or seek guidance about ethics laws or regulations that applied to him, including any potential financial conflicts of interest? If so, please provide a copy of any agreement or guidance provided to Mr. Leo. If not, please explain why not, and provide any supporting legal opinions or analyses.
 - c. During his service with the Trump Administration, did Mr. Leo seek a waiver of any ethics law or regulation? If so, please provide a copy of any waiver he received or documentation of the reason(s) why the waiver was not issued.
 - d. Did Mr. Leo make any commitments pursuant to Executive Order 13770, also known as the Trump Ethics Pledge? Please provide a copy of the signed pledge. If he sought a waiver of any these commitments, please provide a copy of any waiver he received or documentation of the reason(s) why the waiver was not issued.

4. With respect to federal appropriations law, please provide the following information:
 - a. During his service with the Trump Administration, did Mr. Leo receive any compensation from any entities, including the federal government? If so, please detail this compensation.
 - b. Did Mr. Leo execute any agreement waiving future pay claims against the government? If so, please provide a copy of this agreement.
5. With respect to federal privacy law, please provide the following information:
 - a. During his service with the Trump Administration, did Mr. Leo access any non-public information that by law the disclosure of which outside of the federal government was prohibited?
6. For the duration of his service with the Trump Administration, please provide any federal or presidential records in the custody of the White House (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.