

## United States Senate

WASHINGTON, DC 20510-3905

August 15, 2018

Mr. Eugene B. Meyer  
President  
The Federalist Society  
1776 I Street, NW  
Washington, DC 20006

Dear Mr. Meyer,

At the announcement of his nomination to replace Justice Anthony Kennedy as an Associate Justice on the Supreme Court, Judge Brett Kavanaugh stated, “No president has ever consulted more widely, or talked with more people from more backgrounds, to seek input about a Supreme Court nomination.”<sup>1</sup> While the validity such a strange claim by a nominee is difficult, if not impossible to assess, as a member of the Senate Judiciary Committee I believe a full understanding of the groups involved in the selection process and what interests they may have in Supreme Court decisions provides important insights into what kind of justice Judge Kavanaugh will be.

The need for transparency is more important when that process is outsourced to unaccountable private individuals and organizations. In a 2016 interview, then-candidate Donald Trump stated: “We’re going to have great judges, conservative, all picked by the Federalist Society.”<sup>2</sup> In early 2016, then-candidate Trump released a list of eleven potential Supreme Court nominees, culled with the help the Federalist Society’s Executive Vice President Leonard Leo.<sup>3</sup> He released another list of 21 judges in September 2016, and then a list of 25 judges in November 2017 when he was President.

Despite his prominent position on the District of Columbia Circuit Court of Appeals and deep ties to the Federalist Society, Judge Kavanaugh appeared only on the third list. Indeed, according to his Judiciary Committee questionnaire, Judge Kavanaugh has been a member of the Federalist Society since 1998 and has spoken at Federalist Society events over 50 times. This suggests some circumstance changed over the past year to warrant Judge Kavanaugh’s inclusion and ultimate selection by the President.

During that period, the Federalist Society continued to play an integral role in the selection of judicial nominees under the Trump administration, and Mr. Leo appears to be playing as significant a role as anyone in that process. As he did for the nomination of Justice Gorsuch, Mr.

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<sup>1</sup> [https://www.washingtonpost.com/news/the-fix/wp/2018/07/10/brett-kavanaughs-first-claim-as-a-supreme-court-nominee-was-bizarre/?utm\\_term=.94c3a7383ad2](https://www.washingtonpost.com/news/the-fix/wp/2018/07/10/brett-kavanaughs-first-claim-as-a-supreme-court-nominee-was-bizarre/?utm_term=.94c3a7383ad2)

<sup>2</sup> <https://www.motherjones.com/politics/2017/11/how-donald-trump-is-remaking-the-federal-courts-in-his-own-image/>

<sup>3</sup> [https://www.washingtonpost.com/politics/how-trump-narrowed-the-field-for-his-supreme-court-pick/2018/07/08/b9d3b16a-808c-11e8-b660-4d0f9f0351f1\\_story.html?utm\\_term=.b699fdd432d6](https://www.washingtonpost.com/politics/how-trump-narrowed-the-field-for-his-supreme-court-pick/2018/07/08/b9d3b16a-808c-11e8-b660-4d0f9f0351f1_story.html?utm_term=.b699fdd432d6)

Leo is currently on leave from the Federalist Society to assist the White House with Judge Kavanaugh's nomination.<sup>4</sup>

Mr. Leo's role in this process is of particular interest given reporting about his financial ties to the Trump administration. Mr. Leo serves as the attorney for the BH Group LLC and as president of the BH Fund. The BH Group donated \$1 million to President Trump's inaugural committee.<sup>5</sup> The Federalist Society also received a \$750,000 payment from the Wellspring Committee, a secretive political nonprofit which provided a nearly \$24 million donation to the right-wing Judicial Crisis Network.<sup>6</sup> This web of secret donations and disguised relationships, with Mr. Leo at its center, casts a troubling shadow over the entire selection process.

Americans should understand how and why a person is selected to fill a life-tenured seat on our nation's highest court. The Senate's Judiciary Committee has but one opportunity to ascertain these facts. In light of President Trump's statements about the Federalist Society and public reporting about its role, I request you provide answers to the following:

- The names of all donors in excess of \$50,000 to the Federalist Society since 2016, the amounts donated, and any instructions provided to the Federalist Society about the use of the money. To the extent these donations come from organizations that similarly mask the identity of actual donors (e.g., DonorsTrust, the Wellspring Committee), please also provide key point of contact information at these organizations.
- What is the Federalist Society's policy for accepting donations from foreign nationals?
- What role has the Federalist Society played in the development of President Trump's three lists of potential Supreme Court nominees? Were any specific criteria used? On what basis were potential nominees added to the second and third iterations of the list? Did any person at the Federalist Society have the authority to add or remove individuals?
- Which Federalist Society donors have provided input on the three lists of judges issued by President Trump, or on Judge Kavanaugh's nomination specifically?
- Explain the relationship between the Federalist Society and the BH Group and or BH Fund.
- How was the Federalist Society involved with the \$1 million donation from the BH Group to President Trump's inaugural committee?
- Explain the relationship between the Federalist Society and Leonard Leo and the Judicial Crisis Network, specifically as it relates the selection and nomination of Supreme Court justices.

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<sup>4</sup> <https://fedsoc.org/staff/leonard-leo>

<sup>5</sup> <https://www.fastcompany.com/40572666/revealed-mystery-1m-inaugural-donation-linked-to-trump-judicial-adviser>

<sup>6</sup> <https://www.opensecrets.org/news/2018/05/mystery-gift-to-trump-inauguration-from-conservative-activists/>

- Explain the relationship between the Federalist Society and Leonard Leo and the Heritage Foundation, specifically as it relates the selection and nomination of Supreme Court justices.
- Identify any contacts the Federalist Society has had with members of the Trump administration, specifically as it relates the selection and nomination of Supreme Court justices
- Has anyone at the Federalist Society spoken with Judge Kavanaugh since his nomination to the Supreme Court?
- Has any member of the various Trump nominee lists been asked or offered his or her opinion to the Federalist Society on whether a particular case should be overruled? If so, which candidate and which opinions?

With confirmation hearings imminent, I request the courtesy of a response by August 24, 2018.

Sincerely,



Senator Sheldon Whitehouse