

August 15, 2018

Ms. Kay Coles James  
President  
The Heritage Foundation  
214 Massachusetts Ave, NE  
Washington, DC 20002

Dear Ms. James,

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.” 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.

In 2016, then-candidate Trump released an initial list of 11 potential Supreme Court justices, which included five suggestions from the Heritage Foundation’s John Malcolm.<sup>1</sup> The Heritage Foundation noted that “Trump graciously credited The Heritage Foundation and the Federalist Society with providing names that informed his thinking on the matter.”<sup>2</sup> Malcolm’s recommendations also included Judge Brett Kavanaugh, and Judge Kavanaugh later appeared on President Trump’s expanded list of 25 nominees in 2017. Judge Kavanaugh received the Heritage Foundation’s “Defender of the Constitution Award” and addressed the Heritage Foundation in 2017.

Since President Trump’s election, the Heritage Foundation has maintained deep ties to the Trump administration. Seventy former Heritage employees have worked on President Trump’s transition team or in the Trump administration.<sup>3</sup> Following his first year in office, the Heritage Foundation announced that the Trump administration has embraced 64 percent of the Heritage Foundation’s policy recommendations.<sup>4</sup>

Given the extensive influence the Heritage Foundation has with Trump White House, especially as it relates to judicial selections, I request you provide the following information and answers:

- The names of all donors in excess of \$50,000 to the Heritage Foundation since 2016, the amounts donated, and any instructions provided to the Heritage Foundation about the use

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<sup>1</sup> <https://www.heritage.org/crime-and-justice/impact/heritage-expert-helps-shape-supreme-court-nominee-list>

<sup>2</sup> <https://www.heritage.org/courts/commentary/how-trump-changed-the-courts-2017>

<sup>3</sup> <https://www.heritage.org/impact/trump-administration-embraces-heritage-foundation-policy-recommendations>

<sup>4</sup> *Id.*

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 Heritage Foundation's policy for accepting donations from foreign nationals?
- What role has the Heritage Foundation 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 Heritage Foundation have the authority to add or remove individuals?
- Which Heritage Foundation 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 Heritage Foundation and the Judicial Crisis Network, specifically as it relates the selection and nomination of Supreme Court justices.
- Explain the relationship between the Heritage Foundation and the Federalist Society and Leonard Leo, specifically as it relates the selection and nomination of Supreme Court justices.
- Identify any contacts the Heritage Foundation has had with members of the Trump administration, specifically as it relates the selection and nomination of Supreme Court justices.
- Has anyone at the Heritage Foundation 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 Heritage Foundation 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