

August 15, 2018

Ms. Carrie Severino
Chief Counsel and Policy Director
The Judicial Crisis Network
722 12th St. NW
Fourth Floor
Washington, D.C. 20005

Dear Ms. Severino,

I write seeking information from the Judicial Crisis Network (“JCN”) about its campaign in support of the nomination of Brett Kavanaugh to be Associate Justice of the Supreme Court of the United States. As I seek to fully and faithfully execute my responsibility as a member of the Senate Judiciary Committee to provide advice and consent on this nomination, I believe disclosure of the major sources of funding behind this campaign, and what interests they may have in Supreme Court decisions, provide important insights into what kind of justice Judge Kavanaugh will be.

JCN’s secret money campaigns have politicized the judicial nomination process and cast a cloud over recent nominees. By a ratio of 7:1, Americans already believe the Supreme Court favors corporations over citizens.¹ A multi-million dollar advertising campaign supporting a Supreme Court nominee further exacerbates the perception that corporate special interests have captured this Supreme Court. Corporations or ultra-wealthy individuals with millions of dollars to spend in secret on a Supreme Court nomination presumably invest their money wisely and expect to see a handsome return on that investment. Here, that means a justice who will reliably vote in favor of their narrow interests, and not fairly consider the interests of all Americans.

On January 9, 2017, before President Trump had even taken office, JCN announced that it expected to spend it at least \$10 million to support the confirmation of President Trump’s yet unnamed Supreme Court nominee.² This \$10 million campaign came on the heels of JCN’s \$7 million campaign encouraging Republicans to block President Obama’s choice, Judge Merrick Garland, for the same vacancy. JCN ran advertisements thanking Republican senators for their unprecedented partisan obstruction of Judge Garland, and then ran millions of dollars of advertisements targeting Democratic Senators to support Judge Gorsuch. In fact, you threatened that Senators who opposed Judge Gorsuch would “pay a heavy price in 2018.”³ Subsequently, JCN’s tax return revealed that a single, anonymous \$17.9 million donor accounted for 96.6 percent of its annual revenue.⁴

¹ <https://www.theconstitution.org/sites/default/files/-Mellman-CACConstitution-PollSeptember2017.pdf>

² <https://judicialnetwork.com/judicial-crisis-network-launches-10-million-campaign-preserve-justice-scalias-legacy-support-president-elect-trump-nominee/>

³ <http://thehill.com/business-a-lobbying/324004-former-gop-senator-lobbying-for-gorsuchs-nomination>

⁴ <https://maplight.org/story/dark-money-group-received-massive-donation-in-fight-against-obamas-supreme-court-nominee/>

Now, with the nomination of Judge Brett Kavanaugh to replace Justice Anthony Kennedy, JCN is at it again. Since the president nominated Judge Kavanaugh, JCN has spent \$4.5 million on ad buys to support the Kavanaugh nomination. In a July appearance on CSPAN's "Newsmakers," you said that JCN was "certainly ready" to again spend \$10 million "or more" to secure Kavanaugh's confirmation.⁵

JCN is set up as a tax-exempt entity under section 501(c)(4) of the Tax Code, meaning that, unlike traditional political action committees, it does not have to disclose its donors. You acknowledged this in your recent CSPAN appearance, claiming a "duty to my donors" not to disclose their identities for fear of possible political reprisal.⁶ My duty is to the Constitution and the Rhode Islanders who elect me, and my views on secret spending to support Supreme Court nominations are more in line with late Justice Antonin Scalia's, who wrote in 2010:

Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously . . . hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.⁷

In order to bring necessary scrutiny and accountability to this confirmation process, I request JCN provide the following information and answers:

- The names of all donors in excess of \$50,000 to JCN since 2017, the amounts donated, and any instructions provided to JCN about the use of the money. To the extent these donations come from organizations that similarly mask the identity of actual donors (e.g., Donors Trust, the Wellspring Committee), please also provide key point of contact information at these organizations.
- The total number of donors to JCN since 2017.
- The total number of donations under \$100 to JCN since 2017.
- The percentage (number and amount) of donations made to JCN by corporate entities since 2017.
- Has JCN discussed the identity of its donors with Judge Kavanaugh, the Federalist Society, the Heritage Foundation or any representative of the Trump administration.
- Does JCN accept donations from foreign nationals?
- Has JCN ever failed to maintain necessary business registrations and/or licenses in jurisdictions in which it operates? If not, please explain the circumstances of the failure.
- Has JCN ever been the subject of a lawsuit or government investigation alleging its practices violate state or federal law?
- Explain the relationship between JCN and the Federalist Society and Leonard Leo, specifically as it relates the selection and nomination of Supreme Court justices.

⁵ https://archive.org/details/CSPAN_20180709_221600_Newsmakers_Carrie_Severino

⁶ *Id.*

⁷ *John Doe No. 1 v. Reed*, 561 U.S. 186, 228 (2010).

- Explain the relationship between JCN and the Heritage Foundation, specifically as it relates the selection and nomination of Supreme Court justices.
- Identify any contacts JCN has had with Judge Kavanaugh or members of the Trump Administration related to Judge Kavanaugh's nomination and the nomination of any other Supreme Court justice.

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

Sincerely,



Senator Sheldon Whitehouse