

United States Senate
WASHINGTON, DC 20510

September 10, 2020

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

Dear Mr. Cipollone,

We write to request information on the process President Trump used to develop a list of potential nominees to the United States Supreme Court. Recent reporting indicated that a “large team of extraordinarily talented lawyers”¹ worked on a “big vetting project” to recommend to him a list of possible nominees.² President Trump announced his list on September 9, 2020.

We have previously raised concerns about whether those who have advised the President on his selection of judicial nominees have complied with applicable records retention, financial disclosure, and conflict-of-interest requirements.³ It is well documented that Leonard Leo took two leaves of absence from his position at the Federalist Society to advise the Trump administration on judicial nominees.⁴ The *Washington Post* reported last year that Mr. Leo was also at the center of a \$250 million dark money operation designed to influence the federal judiciary.⁵ We still do not know whether Mr. Leo complied with financial disclosure requirements intended to identify conflicts of interest by government advisors and other transparency laws.

Reporting indicates that Mr. Leo has moved on to different endeavors that include channeling millions of dollars into efforts to make it harder for Americans to vote during an unprecedented public health crisis.⁶ Now his protégé, Carrie Severino, president of the Judicial Crisis Network (JCN), is reported to have been “involved in the ... list process.”⁷ JCN and Ms. Severino bring their own potential conflicts of interest to this role. JCN has spent millions of

¹ Tyler Olson, *An inside look at how Trump's Supreme Court list is made: 'A tremendous investment of time'*, FOX NEWS (June 10, 2020), available at <https://www.foxnews.com/politics/behind-the-scenes-of-how-trumps-supreme-court-list-is-made>.

² *Id.*

³ Letter from Senator Sheldon Whitehouse et al. to White House Counsel Cipollone, dated March 4, 2020, available at <https://www.whitehouse.senate.gov/imo/media/doc/Cipollone%20Letter.pdf>.

⁴ Over 86% of President Trump's nominees to the circuit courts of appeal and both his Supreme Court nominees have been members of the Federalist Society.

⁵ Robert O'Harrow Jr. & Shawn Boburg, *A Conservative Activist's Behind-the-Scenes Campaign to Remake the Nation's Courts*, WASH. POST (May 21, 2019).

⁶ Brian Slodysko and Thomas Beaumont, *Wealthy donors pour millions into fight over mail-in voting*, ASSOCIATED PRESS, July 27, 2020 available at <https://apnews.com/88aac5da244eb615df36ae868db3a6a0>.

⁷ Olson, *supra* note 1.

dollars on campaigns to support the confirmations of Justices Neil Gorsuch and Brett Kavanaugh, supported by multi-million dollar contributions from anonymous sources.

- One anonymous donor gave JCN \$17.9 million in fiscal year 2016 for political campaigns against Merrick Garland and in favor of Neil Gorsuch;⁸
- In fiscal year 2017, a \$17.1 million donation came in from an anonymous donor—perhaps the same one—for the political campaign to prop up Brett Kavanaugh;⁹
- And in fiscal year 2018, which also covered the period of the Kavanaugh confirmation, JCN received a \$15.9 million donation from a single donor, and five other donations from anonymous sources over a million dollars each.¹⁰

Because JCN is incorporated as a 501(c)(4) organization, it is not required to disclose its donors, which heightens the risk of conflicts of interest. JCN is, however, required to disclose grants it makes to outside groups, and a review of these disclosures shows JCN has contributed millions of dollars over the last decade to groups that are actively in politics and with business before the courts. For example, JCN has given:

- At least \$9.9 million to the Republican Attorneys General Association.¹¹
- At least \$4.7 million to the Tea Party Patriots.¹²
- At least \$2.2 million to the National Rifle Association.¹³
- At least \$1.9 million to the Rule of Law Defense Fund.¹⁴

Severino is also president of the Judicial Education Project (JEP), from which she receives compensation of at least \$170,000 a year from sources that are not disclosed.¹⁵ JEP has participated as an *amicus curiae* or as counsel for an *amicus curiae* in at least 14 cases before the Supreme Court on issues ranging from abortion to the Affordable Care Act to affirmative action.

It is a reasonable assumption that any person selected by Ms. Severino and her team as a potential nominee to the Supreme Court would be acceptable to those who donate millions of dollars to her work with JCN and JEP. Ms. Severino surely knows who these people are and what they want. The American people should know, too.

⁸ Margaret Sessa-Hawkins and Andrew Perez, *Dark Money Group Received Massive Donation In Fight Against Obama's Supreme Court Nominee*, MAPLIGHT (Oct. 24, 2017) available at <https://maplight.org/story/dark-money-group-received-massive-donation-in-fight-against-obamas-supreme-court-nominee/>.

⁹ Anna Massoglia and Andrew Perez, *Secretive conservative legal group funded by \$17 million mystery donor before Kavanaugh fight*, OPEN SECRETS NEWS (May 17, 2019) available at <https://www.opensecrets.org/news/2019/05/dark-money-group-funded-by-17million-mystery-donor-before-kavanaugh/>.

¹⁰ <https://www.scribd.com/document/469403824/Judicial-Crisis-Network-990-2018-2019>.

¹¹ Judicial Crisis Network IRS Form 990 (2013, 2014, 2015, 2016, 2017, 2018).

¹² *Id.* (2016, 2017, 2018).

¹³ *Id.* (2016, 2017, 2018).

¹⁴ *Id.* (2014, 2017, 2018).

¹⁵ Judicial Education Project IRS Form 990 (2018).

Federal law requires those who serve in the Administration or who formally advise the President to disclose their financial interests so that conflicts of interest may be addressed. It also limits the use of voluntary services, requires federal records to be properly maintained, and restricts access to certain records by members of the public. While the President is entitled to receive advice from members of the public, these laws provide for basic transparency and accountability in government decision-making, principles that are of utmost importance when a life-tenured seat on the nation's highest court is at stake.

So we may have a better understanding of what interests are influencing the President's selection of potential Supreme Court nominees, we request you answer the questions in the attached Appendix not later than September 24, 2020.

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

Appendix

1. Did a “large team of extraordinarily talented lawyers” advise President Trump on a list of potential nominees to the Supreme Court? If so, please identify the names of those people serving on this team and their professional affiliations (if not federal employees, then their employing organizations).
2. Was this “large team of extraordinarily talented lawyers” a Federal Advisory Committee? If not, please explain why not.
3. With respect to any person serving on this team, please specify:
 - a. The date their services with the Trump Administration began and, if applicable, the date their services ended.
 - b. The legal authority under which their services were authorized.
 - c. Their titles and job descriptions.
4. With respect to any records created by the team vetting potential Supreme Court nominees pursuant to the Federal or Presidential Records Acts, please provide the following information:
 - a. Have members of this team used any official or non-official electronic messaging accounts during their 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 this team created during their service for the Trump Administration, what steps have you taken to ensure these records have been properly identified and preserved in an official recordkeeping system?
5. With respect to federal ethics laws and regulations, please provide the following information:
 - a. Have all members of this team completed 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 members of this team filed confidential OGE Form 450 financial disclosure report(s), please identify the date(s) on which they filed those report(s).
 - b. Have members of this vetting team signed any ethics agreements or sought guidance about ethics laws or regulations that apply to them, including any potential financial conflicts of interest? If so, please provide a copy of any agreement or guidance provided. If not, please explain why not, and provide any supporting legal opinions or analyses.
 - c. Have any members of this vetting team sought a waiver of any ethics law or regulation? If so, please provide a copy of any waiver they received or documentation of the reason(s) why the waiver was not issued.

- d. Have members of this vetting team made any commitments pursuant to Executive Order 13770, also known as the Trump Ethics Pledge? Please provide copies of the signed pledge. If any member of this team sought a waiver of any these commitments, please provide a copy of any waiver received or documentation of the reason(s) why the waiver was not issued.
6. With respect to federal appropriations law, please provide the following information:
 - a. While members of this nominee vetting team are advising President Trump, are any receiving compensation from any entities, including the federal government? If so, please detail this compensation.
 - b. Has any member of this vetting team executed any agreement waiving future pay claims against the government? If so, please provide a copy of this agreement.
 7. With respect to federal privacy law, please provide the following information:
 - a. Do members of this vetting team have access to any non-public information, the disclosure of which was legally prohibited outside of the federal government?