

United States Senate
WASHINGTON, DC 20510

May 5, 2021

The Honorable Kathleen McGettigan
Acting Director
United States Office of Personnel Management
1900 E St. NW
Washington, DC 20415

Dear Director McGettigan:

In recent years, we have witnessed an unprecedented rise in anonymous funding surrounding 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. Investigative reporting has brought attention to Leonard Leo's orchestrating role in these efforts, including his service with the Trump administration advising its judicial selection and nominations process.¹ Over a year ago, we wrote to the Office of Personnel Management requesting information about Mr. Leo's role, and OPM responded that it would not provide the information to us. We write now to renew that request in light of the change of Senate control, and because of its continuing importance.

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 served on his transition team, and took leave from the Federalist Society to advise the Trump administration on Supreme Court nominations. 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.

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 raised

¹ Robert O'Harrow & Shawn Boburg, *A Conservative Activist's Behind-the-Scenes Campaign to Remake the Nation's Courts*, WASH. POST (May 21, 2019).

questions regarding his potential status as a federal employee and compliance with accompanying laws and regulations. In orchestrating the administration's efforts to identify and select judicial nominees and press for their confirmation, Mr. Leo appears to have engaged in the performance of a federal function that should be executed by a federal employee.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. Even 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 his outsized role in the Trump administration's work on this issue. On March 4, 2020, we sent a letter to then-Director of the Office of Personnel Management Dale Cabaniss inquiring about Leonard Leo's role in the Trump administration and requesting the following documents and information pursuant to 5 U.S.C. 552a(b)(9):

1. Mr. Leo's Financial Disclosures (OGE Form 278 or 450).
2. Any SF-50 for Mr. Leo, and any other documents indicating his employment classification and the legal authority under which he was hired.
3. Payroll records, pay stubs, or any other documentation indicating the dates on which Mr. Leo worked, the amounts he was paid, and any other benefits he received.
4. Documents or agreements related to the administration's compliance with the Antideficiency Act, 31 U.S.C. § 1341.
5. Recusal statements, waiver, authorizations, or other documents related to Mr. Leo's compliance with the Ethics in Government Act and associated regulations.

We received a letter in response on May 8, 2020, from Andrew Moore, then-Acting Director of Congressional, Legislative, and Intergovernmental Affairs. Mr. Moore wrote that he was unable to provide the information requested because none of the Senators who signed the letter were the Chair of a Committee or Subcommittee, so the request did not fall within a Privacy Act Exception. We renew our request for the information listed above.

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).

Additionally, we have one further point of inquiry:

1. In the May 8 letter, Mr. Moore informed us that when searching the Enterprise Human Resources Integration (EHRI) system, OPM staff located an employee named Leonard Leo, but whose job series and agency did not match the information included in our letter. What was the job series and agency of the individual found in the EHRI system? Is this individual a different person than the Leonard Leo who was Executive Vice President of the Federalist Society and who advised President Trump on judicial selection?

Thank you for your prompt attention to this matter.

Sincerely,



Sheldon Whitehouse
United States Senator



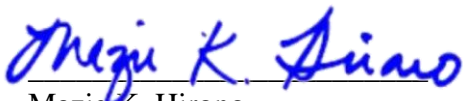
Richard J. Durbin
Chair, Senate Judiciary Committee



Sherrod Brown
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator

Enclosures (2)

CC: Dana Remus, White House Counsel, Office of White House Counsel
Helaine Greenfeld, Acting Assistant Attorney General, Department of Justice, Office of
Legislative Affairs



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Congressional
Legislative and
Intergovernmental
Affairs

MAY 08 2020

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, DC 20510

Dear Senator Whitehouse:

Thank you for your letter, dated March 4, 2020, requesting information regarding a Mr. Leonard Leo.

The U.S. Office of Personnel Management (OPM) Chief Privacy Officer has reviewed your request for information and determined that we are unable to provide information responsive to your request. Although your letter cites 5 U.S.C. § 552a(b)(9) as authority for your request, the request is not a request from the Chairman of a Committee or Subcommittee. As such, it does not fall within that Privacy Act exception; nor does any other Privacy Act exception permit us to disclose this information to you, absent the written consent of the subject.

We examined your request as we would a request under the Freedom of Information Act (FOIA). Using the information you provided, OPM is unable to locate and evaluate any responsive records under the FOIA. In considering your request, OPM staff searched the Enterprise Human Resources Integration (EHRI) system which contains information about current Federal Employees and found one person with the same name but whose job series and agency do not match the information in your letter. In addition, we inquired of the National Personnel Records Center, the entity that maintains personnel records of former federal employees, and their search revealed no records about anyone with that name and from the timeframe you describe in your letter. Accordingly, OPM has no records responsive to your request.

If you wish to appeal this response, please address your appeal to the Office of General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC, 20415-1300. In accordance with 5 CFR 294.110, please include a copy of your initial request, a copy of this letter denying the request, and a statement as to why you believe the denying official erred.

I hope this information is helpful. If you have any further questions, please feel free to contact me at (202) 606-1300.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Moore".

Andrew Moore
Acting Director
Congressional, Legislative,
and Intergovernmental Affairs

United States Senate

WASHINGTON, DC 20510

March 4, 2020

The Honorable Dale Cabaniss
Director
United States Office of Personnel Management
1900 E St. NW
Washington, DC 20415

Dear Director Cabaniss,

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 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 while simultaneously serving with the Trump Administration to advise on the same process raises serious concerns regarding potential conflicts of interest. Documents within the custody of the Office of Personnel Management (OPM) may be relevant to this inquiry. As Congress conducts oversight and considers legislation related to conflicts of interest, and pursuant to 5 U.S.C. 552a(b)(9), we request that you provide records related to the following:

1. Mr. Leo's Financial Disclosures (OGE Form 278 or 450).
2. Any SF-50 for Mr. Leo, and any other documents indicating his employment classification and the legal authority under which he was hired.
3. Payroll records, pay stubs, or any other documentation indicating the dates on which Mr. Leo worked, the amounts he was paid, and any other benefits he received.
4. Documents or agreements related to the administration's compliance with the Antideficiency Act, 31 U.S.C. § 1341.
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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).

If OPM is unable to identify documents responsive to any of these requests, we request that you describe the steps taken to find them, and indicate whether, to OPM's knowledge, responsive documents may be located elsewhere in the federal government. We request that you provide the information requested no later than April 3, 2020.

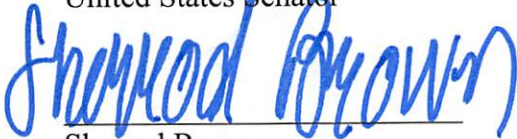
Sincerely,



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