

Senate Committee on the Judiciary
Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights
“What’s Wrong with the Supreme Court: The Big-Money Assault on Our
Judiciary”

Senator Whitehouse’s Questions for Lisa Graves

1. You said in response to a question from Senator Lee that CMD had not received “dark money” from the Open Society Institute and others. Can you please explain?

The term “dark money” is used in a variety of ways in popular discourse, and CMD uses the phrase in its journalism to describe the funding sources for significant expenditures made to influence elections, judicial nominations, ballot measures, and legislation when the sources of those funds are kept secret from the public. “Dark money” does not include all undisclosed funding for nonprofits, regardless of their activities. For example, the Red Cross is nonprofit, and it is not a dark money organization.

As CMD does not engage in those activities, aside from occasionally taking a position on measures aimed at improving transparency, voting rights, government ethics, and campaign finance regulations, the funding we receive is not “dark money” in any meaningful sense. Furthermore, CMD voluntarily discloses its major funders on its PRWatch.org website.

For decades donations to electoral candidates, political campaigns, and political parties have been required to be disclosed under federal law and in most states, including for judicial candidates running for office or in retention elections. However, since the adoption fifty years ago of the Federal Election Campaign Act (FECA), which replaced the Corrupt Practices Act, individuals and organizations have been attempting to invalidate or get around FECA’s disclosure rules and limits.

Indeed, as I documented last year, Charles Koch’s funding subsidized the Libertarian Party’s Supreme Court challenge to the FECA in the *Buckley v. Valeo* litigation.¹ The Libertarian Party also sought a ruling by the Federal Election Commission to allow him to give more to the Party than permitted by statute, a permission that was granted after the *Buckley* decision was issued. He then bundled funds from two of his brothers and his mother to become the then-largest donor to the Libertarian Party, and he helped underwrite other attacks it made on clean election rules under the FECA. So, his attacks on federal anti-corruption laws began more than 40 years ago.

¹ Lisa Graves, “Love the Billionaire Bucks Flooding the 2020 Elections? Thank Charles Koch,” *The Guardian*, February 7, 2020, <https://www.theguardian.com/commentisfree/2020/feb/07/charles-koch-elections-billions-money-cash/>.

His brother, David, used an exception to the FECA created by *Buckley* to self-finance most of the Libertarian Party's 1980 presidential campaign, but after his family failed to win the White House, Charles Koch switched his focus to influencing the Republican Party both through donations to candidates and through an array of groups he created or has funded over the years.

In addition to underwriting much of the term limit efforts in the early 1990s, Koch family money funded a major new dark money push, dubbed Triad, to influence the outcome of a number of U.S. House races in Kansas in 1996. "The episode was a major event in modern political financing, marking the return of massive anonymous contributions to American politics after a 20-year hiatus," according to a *Wall Street Journal* reporter.²

That spending by secretive groups was investigated by the U.S. Senate, although then-Senator Fred Thompson reportedly refused to allow subpoenas to be issued to uncover the true identity of the funders during that investigation. The Senate report discussed suspicions that the money was tied to Charles Koch, ties that were documented a year later by a whistleblower who shared key materials with the press.³

That episode and other examples of dark money that was deployed to help specific candidates without giving directly to the candidate became a target of the Bipartisan Campaign Reform Act (BCRA), known as McCain-Feingold. Koch-funded groups opposed that legislation and also supported legal challenges to its provisions.

After George W. Bush's two appointments to the Supreme Court and a challenge to the law in the midst of the 2008 presidential election, the Court struck down key provisions of BCRA regulating that "outside" spending in the 5-4 *Citizens United* decision in 2010. Koch-funded groups then dramatically expanded their spending to influence election results, while keeping the public in the dark. That spending now often exceeds the spending by the candidates themselves, which is subject to limits and disclosure.

That is what is traditionally considered to be "dark money." Contrary to Senator Lee's assertion, dark money is not all money given to any non-profit group in the country. It is money that is being secretly spent around elections, often in attack ads on TV or online, that do not expressly say to vote for or against a candidate. And, more broadly, it includes money spent to influence judicial appointments and, sometimes, amicus briefs. To date, spending on ads about federal court confirmations has not been regulated like campaign spending and thus is not even subject to minimal disclosure requirements. In our view, it should be if it meets the threshold in the DISCLOSE Act and H.R. 1/S. 1 — regardless of whether the group doing the spending is "conservative" or "progressive."

² Glenn R. Simpson, "New Data Shows That Koch Firm Funded GOP TV Ads in '96 Races," *Wall Street Journal*, June 1, 1998, <https://www.wsj.com/articles/SB896659331532085500/>.

³ Bill Moyers, "Washington's Other Scandal," *Frontline*, October 6, 1998, <https://billmoyers.com/content/washingtons-scandal-campaign-finance/>.

2. Senator Lee inquired about the identity of the donor of an anonymous gift your organization received from Schwab several years ago. If that donation is different from “dark money,” as you define that term, please explain. Please also explain how you define that term.

As explained above, we do not consider money donated to CMD to be dark money, as CMD does not engage in electoral, judicial nominations, or lobbying campaigns.

In any event, Senator Lee is referring to two gifts CMD received from an account with Charles Schwab charitable investment funds several years ago. The identity of the account holder—man, woman, or child, whether living or as part of a bequest—was not known to me then or to this day. Had I known the name of that generous benefactor, I would have disclosed it on CMD’s website as I had CMD’s other major donors.

This stands in stark contrast to situations where the leader of an organization knows the identity of a donor underwriting ads to influence the outcome of an election but the public is kept in the dark.

For example, an investigation by *The Guardian* revealed that, in 2011-2012, then-Wisconsin Governor Scott Walker secretly raised millions of dollars—in the form of million-dollar checks and other substantial sums—for a group called Wisconsin Club for Growth (WCFG), even though he could not legally solicit or receive such funds for his own candidate or committee accounts when he was facing a recall election.⁴

Walker sought millions in funding to help him and other Wisconsin Republicans survive petitions to recall them from office after they pushed through dramatic limits on the power of workers to bargain collectively via what was known as Act 2 in 2011. Walker and his top political advisors knew exactly who was writing checks to WCFG in response to his specific requests for millions to help him win that election (and some of those checks notated that they were for “Walker’s (c)(4)” or for Walker), but the public was kept in the dark about the source of the donations that were spent to underwrite ad campaigns specifically to influence the outcome of those recall elections.

A bipartisan group of county District Attorneys launched an investigation into illegal coordination among the groups Walker secretly raised money for, at least one of which was directed by one of his long-time political advisors. Ultimately, the Wisconsin Supreme Court rejected that criminal investigation and overruled long-standing Wisconsin law regarding illegal campaign coordination—even though at least two of the judges in the majority in that ruling had benefited themselves from the spending around their elections by some of the groups under criminal investigation. (The justices refused to recuse themselves from the case, and CMD filed an amicus brief with the U.S. Supreme Court, urging it to grant certiorari in a due process appeal by the state prosecutors, which was based on the legal precedent about similarly inappropriate influence on the West Virginia Supreme Court in *Caperton v. A.T. Massey Coal Co.*)

⁴ Ed Pilkington and *The Guardian* US Interactive Team, “Because Scott Walker Asked,” *The Guardian*, September 14, 2016, <https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-ca-sh-american-politics>

3. Please detail what is known about the history of Leonard Leo and the Federalist Society working on judicial nominations with Brett Kavanaugh when Kavanaugh worked in George W. Bush White House Counsel's Office?

Documents provided to the Senate Judiciary Committee reveal that Brett Kavanaugh received memoranda about judicial nominations that had been stolen from the files of several staffers of U.S. Senators. Those files were taken without the permission of the authors at the behest of Manuel Miranda, a Republican staffer who was the senior advisor on nominations to Majority Leader Bill Frist. The theft, which took place from late 2001 until mid-November 2003, is the reason the Senate Judiciary Committee has a divided file server to this day, with Democratic staffers having "-dem" and Republican staffers having "-rep" as part of their email addresses for their work on the Committee.

The U.S. Sergeant-at-Arms investigated the theft of those files and referred the case to the U.S. Attorney's Office to investigate potential federal crimes, despite Miranda's denial of any wrongdoing. The George W. Bush administration declined to prosecute the GOP staffer who had aided in its efforts to get Bush judicial nominees confirmed.

One of the facts unknown to the Sergeant-at-Arms and his investigative team, which had access only to the Senate Judiciary Committee's server after the Capitol Police seized it after being alerted by Senator Ted Kennedy's Chief Counsel Jim Flug, was who Miranda was working with on nominations at the White House. That is because Miranda's communications with the White House Counsel's office occurred primarily in 2003 when he was no longer on the Committee because he had become Senator Frist's chief counsel on nominations.

In that new role, Miranda was the primary Senate staffer communicating with the White House and special interest groups on judicial nominations. Miranda was elevated to that position over other more senior Judiciary Committee staffers after a short period on the Committee. As the independent investigators discovered, he had shared some of those memos with other GOP Senate staffers. Ultimately, then-Chairman Hatch apologized that his former staffer had stolen Committee files, and Hatch's other staffers who had received some of those stolen files or were aware of their theft also apologized.

However, Miranda—who resigned in disgrace after the discovery of the thefts—refused to cooperate with the Sergeant-at-Arms investigation. And he specifically refused to tell the investigators who his main contact was in the White House Counsel's office.⁵

However, in 2018, the public learned that Miranda's main contact in the White House Counsel's Office on the strategies and tactics to get Bush's nominees confirmed was Brett Kavanaugh, according to documents from then that were given to the Committee.

Those documents show that my confidential analysis of crucial nomination issues that the White House Counsel's Office was intensely focused on countering, regarding the filibuster of Bush judicial nominees, was provided by Miranda to Kavanaugh.

⁵ U.S. Senate, *Report on the Investigation into Improper Access to the Senate Judiciary Committee's Computer System*, Senate Sergeant of Arms, March 4, 2004, <https://cryptome.org/judiciary-sys.htm>.

As the Chief Counsel for Nominations for the Senate Judiciary Committee, for the Ranking Member and former Chairman, I spearheaded the research on the history of the filibuster and the strong precedents for Senate access to Executive Branch materials written by nominees to high office. I also had all of the main memos about concerns regarding the potential unfairness of Bush judicial nominees (written by me or reviewed by me as part of managing the team working on the nominations process) in my government files that were taken without my permission at Miranda's direction. Other staffers' files were taken as well, including those of my clerk, Rachel Arfa.

Those materials provided valuable insights into our strategy and substantive arguments as the White House battled the Senate Democrats who were voting against invoking cloture to end the debate on a handful of the most controversial Bush nominees.

Miranda was the lead GOP staffer in that battle for the Senate Republicans, and he was in regular contact with Kavanaugh about tactics to try to break those filibusters.

Very few other staffers at the White House were included in emails from Miranda, other than Kavanaugh—except when large meetings were planned.

However, the documents show that a non-government official was on several emails of those emails about nominations and strategy. That person was Leonard Leo, who was a top leader of the Federalist Society and its leader on judicial appointments.

That is, Miranda was leading the Senate part of the effort to break the filibuster of Miguel Estrada and other Bush nominees. Kavanaugh was leading the White House part of the effort to try to break those filibusters. And, Leo was leading the outside group strategy to support their efforts. They were like a triumvirate on the confirmation effort.

We knew that the Federalist Society was involved in the nominations process after Bush had removed the American Bar Association from the pre-nomination evaluation of the qualifications of nominees. We also knew that a high proportion of Bush's circuit court nominees were Federalist Society members.

But until the documents were shared as part of Kavanaugh's nomination to the U.S. Supreme Court, we did not know details about how much of an insider Leo was with the Bush White House on nominations—a role that pre-dates the more recent and more public role he played in choosing the slate of judicial candidates for the Supreme Court and lower courts that Trump chose from for these lifetime appointments to the bench.

The documents show that Leo was working closely with Kavanaugh and with Miranda; that Leo even accompanied a major Republican donor to the White House to meet with Kavanaugh; that Leo had other staff at the Federalist Society working with him on coordinating the umbrella of special interest groups pressuring the Senate to approve Bush's judicial nominees; and more.

We also did not know, until those documents were provided, that Kavanaugh had in fact received material stolen from the files of the staff of the Senate Judiciary Committee.

The documents provided, however, were largely incomplete. The person designated by the Bush administration to determine whether to share them with the Committee and the public was a friend of Kavanaugh, whom Kavanaugh helped get a job in the White

House. Although the GOP likes to tout that thousands of pages of files were provided, that claim obscures the reality that many more thousands of pages of files were held back and were not properly provided to the Committee, in my view.

Within those files that were withheld in Kavanaugh's rushed nomination process may very well be other files that shed more light on how many more stolen files Kavanaugh received and whether others in those nomination fights also received those stolen files.

There is no evidence in the partial files provided that Leo received stolen files, but we know for certain that Miranda did share those files with other GOP staffers and also with at least two rightwing groups that were subordinate to Leo's leadership of the umbrella group: C. Boyden Gray's Committee for Justice and Concerned Women for America. The latter are known because, when a selection of the files that Miranda had stolen were provided to the *Wall Street Journal* editorial page and press, that small sample included markings showing they had passed through the hands of those groups. It is certainly possible that Miranda shared the files only with other groups and not the leader of the coalition on judicial nominations, and it is also possible that is not the case.

This extraordinary violation of the U.S. Senate by a Senate staffer calls into question the integrity of a justice of the U.S. Supreme Court, and the Senate has a right to access the correspondence to and from Kavanaugh that was improperly denied to it. I believe the Senate should renew its requests for those withheld materials, which the former GOP Chairman of the Committee refused to insist on. The public has a right to know the full truth about this matter.

4. From early 2002 through late 2003, when you worked on then-Chairman Leahy's Judiciary Committee staff, you were a victim of an ongoing series of document thefts by a Republican staff counterpart on the committee. An investigation by the (Republican) Senate Sergeant at Arms concluded in 2004 with a referral of the perpetrator to the U.S. Attorney's Office. The documents stolen from you, some of which related to Democratic strategy on judicial nominations, ended up in the possession of Brett Kavanaugh in the Bush White House Counsel's Office. In sworn testimony under oath at two confirmation hearings, Kavanaugh has denied knowledge that the documents in his possession were the product of theft. What is your response to Kavanaugh's testimony? Do you believe it was truthful? Why or why not?

As I wrote in *Slate* in September 2018, when I watched Kavanaugh's initial testimony before the Senate Judiciary Committee, I was shocked to learn that there was documentary evidence that Kavanaugh had received material stolen from the Senate Judiciary Committee.⁶

⁶ Lisa Graves, "I Wrote Some of the Stolen Memos that Brett Kavanaugh Lied to the Senate About," *Slate*, September 7, 2018, <https://slate.com/news-and-politics/2018/09/judge-brett-kavanaugh-should-be-impeached-for-lying-during-his-confirmation-hearings.html>; And Jeremy Stahl, "The Evidence Is Clear: Brett Kavanaugh Lied to the

I knew Kavanaugh had played a significant role in nominations in George W. Bush's first term (as Associate White House Counsel), and we suspected that he and others in the thick of that battle knew about the stolen files. That is because the Sergeant-at-Arms investigation made clear that Miranda had not kept them to himself.

Accordingly, when Kavanaugh appeared before the Committee in connection with his nomination to the U.S. Court of Appeals for the D.C. Circuit, Democratic staffers prepared several questions asking him whether he had ever received any of the stolen memos, and he denied it—under oath. The Senate's investigation into the theft had begun in November 2003 and concluded in the spring of 2004 with the criminal referral. Kavanaugh's hearing was the summer of 2004, and so the issue was very fresh on Members' and staffers' minds.

Kavanaugh was not confirmed before the presidential election. When his nomination was considered by the Senate Judiciary Committee a second time in 2006, he was asked again whether he had received any of the files Miranda had stolen, and again he denied it—under oath.

During those two nominations, the Committee did not have any access to the kind of correspondence it obtained in connection with the elevation of Kavanaugh to the highest court in the country.

I was astonished during the hearing on Kavanaugh's Supreme Court nomination, not only by the evidence that he had certainly received the stolen material but also by his new claims about those files. When asked in 2018, for what was then the third time about the stolen files, he stated—under oath—that it was common to get such materials from Senate Democrats about their strategies and tactics, and he asserted that staffers often shared such materials across the aisle. That was a jaw-dropping and false claim.⁷

I can attest from personal experience that it was certainly not the case on the Senate Judiciary Committee for Democratic or Republican staffers to share their strategy memos on nominations with each other. In 2019, several staffers joined together in writing an op-ed denouncing Kavanaugh's testimony. The Judiciary Committee was the most contentious and bitterly contested one during that period, and the White House was centrally involved in attacking Democratic Senators. Republican Senators and the

Senate Judiciary Committee," *Slate*, September 12, 2018, <https://slate.com/news-and-politics/2018/09/brett-kavanaugh-lies-senate-testimony-supreme-court.html>.

⁷ See Jeremy Stahl, "The Evidence Is Clear: Brett Kavanaugh Lied to the Senate Judiciary Committee," *Slate* September 12, 2018, <https://slate.com/news-and-politics/2018/09/brett-kavanaugh-lies-senate-testimony-supreme-court.html>.

White House were furious that Democrats were blocking some of the most prized GOP nominees, people who were being groomed to be potential Supreme Court nominees.⁸

I also considered the possibility his statements were a potential confession that there was evidence in emails that Kavanaugh had seen more of the files stolen by Miranda and was trying to pre-emptively normalize that, should such evidence someday surface.

It is my firm belief that Kavanaugh perjured himself in his earlier confirmation hearings when he stated that he had not received any such files, because documentary evidence refutes that testimony, and also in his subsequent testimony when he claimed that receiving memos written by Democrats about controversial matters was normal. When Kavanaugh was pressed to reconcile his testimony in Questions for the Record, he refused to provide any additional answers. Salvador Rizzo, the *Washington Post's* fact checker, examined these issues in detail and found Kavanaugh's claims about the stolen memos to be not credible.⁹ My former boss, Senator Patrick Leahy, agreed, as did several other senators, including the current chairman of the Committee.¹⁰

As I wrote in 2018 and continue to believe, Kavanaugh should be impeached.

5. Do you have any additional concerns about secretly funded amicus briefs you would like to share with the Subcommittee?

As I detailed in my written testimony, CMD is troubled by the surge in coordinated amicus briefs being filed with the Supreme Court in cases of great importance to wealthy corporate interests and right-wing ideologues, who often share common funders. The identities of most of the actual donors bankrolling these efforts are kept from the public view, leaving the American people in the dark as to their financial or personal interests in the outcome of the litigation. (See my written testimony, pages 17-23.)

Since the Subcommittee's hearing on March 10, CMD has published an investigation into the shared funders behind several amicus groups filing briefs in the *Cedar Point Nursery v. Hassid* case, which argue that a California law allowing union organizers

⁸ Bob Schiff, Kristine Lucius, Jeff Berman, and Lisa Graves, "Brett Kavanaugh Can't Be Trusted. We Know Because We Worked as Counsel to Senators When he Was in the Bush White House," *Time*, September 17, 2018, <https://time.com/5398191/brett-kavanaugh-supreme-court-senators/>.

⁹ Salvador Rizzo, "Brett Kavanaugh's Unlikely Story about Democrats' Stolen Documents," *The Washington Post*, September 20, 2018, <https://www.washingtonpost.com/politics/2018/09/20/brett-kavanaughs-unlikely-story-about-democrats-stolen-documents>.

¹⁰ Patrick Leahy, "Brett Kavanaugh Mised the Senate Under Oath. I Cannot Support his Nomination," *The Washington Post*, September 13, 2018, https://www.washingtonpost.com/opinions/brett-kavanaugh-mised-the-senate-under-oath-i-cannot-support-his-nomination/2018/09/13/ea75c740-b77d-11e8-b79f-f6e31e555258_story.html.

onto growers' property amounts to an unconstitutional regulatory taking under the Fifth Amendment. The case could also have sweeping implications for the government's ability to inspect property for health and safety violations under a variety of laws.¹¹

I would also like to bring to the Committee's attention two related issues regarding amicus briefs. The first is the troubling way in which the Republican Attorneys General Association coordinates amicus briefs on behalf of sovereign states while simultaneously selling access to Attorneys General and their staff to its private sector funders—whose donations are then spent to bolster their reelection campaigns. This practice creates the strong appearance, if not the reality, that many of those briefs are advancing the private interests of the RAGA donors that help them win the powerful public offices they hold. There are numerous examples of this sort of alignment, and perhaps the most significant one is how RAGA Attorneys General attacked the Obama Administration's Clean Power Plan in accordance with the policy agenda of the RAGA's fossil fuel donors.¹²

A second area worth further examination is the role of American Legislative Exchange Council (ALEC) in amicus briefs. As CMD has documented extensively since I launched ALECexposed.org in 2011, ALEC is a pay-to-play group where state legislators vote as equals on "model" bills with corporate lobbyists and special interest groups, without the press or public present. Koch Industries has been a major funder of ALEC for nearly 30 years and sits on its corporate board, along with Big Tobacco and other corporations.

Koch Industries and other Koch-created and -funded groups like Charles Koch's Americans for Prosperity are on ALEC Task Forces, where private sector members get an equal vote on legislation that advance their special interests. ALEC has also featured the controversial Cleeta Mitchell at its meetings, along with Hans von Spakovsky and others who have been peddling voter fraud claims that have been widely discredited.

But, what has received less public attention is the role that the corporate-funded ALEC is playing in the flotillas of amicus briefs. The late Bob Sloan did pioneering work documenting ALEC's role in filing amicus briefs and other ALEC activities.¹³

¹¹ Alex Kotch, "Right-Wing Groups Rally Around Anti-Union Case Argued in Supreme Court Today," *Center for Media and Democracy* March 22, 2021, <https://www.exposedbycmd.org/2021/03/22/right-wing-groups-rally-around-anti-union-case-argued-in-supreme-court-today/>.

¹² See, e.g., Alex Kotch, "As GOP State Attorneys General Fight Environmental Regulations, Fossil Fuel Companies Bankroll Their Campaigns," *Center for Media and Democracy*, December 16, 2019, <https://www.exposedbycmd.org/2019/12/12/gop-state-attorneys-general-fight-environmental-regulations-fossil-fuel-companies-bankroll-campaigns/>; Andrew Perez and Lee Fang, "GOP Law Enforcement Chiefs Invited Donors to Help Set Policy Via Secret Bulletin Board," *The Intercept*, February 12, 2018, <https://theintercept.com/2018/02/12/gop-law-enforcement-chiefs-invited-donors-to-help-set-policy-via-secret-bulletin-board/>.

¹³ Bob Sloan, "ALEC, the Koch Led CABAL and 'The Amicus Project'-Fed Court Interference," *Daily KOS*, July 24, 2012,

In more recent years, the corporate-funded ALEC has weighed in with the Supreme Court in several prominent cases as the self-described largest voluntary association of state legislators in the country.¹⁴ However, dues from those legislators account for less than 2% of ALEC's revenues annually. The remaining 98% comes from corporations like Koch Industries and family foundations like Koch's and those of the Amway fortune controlled by the DeVos family. I think it is worth examining more closely the extent to which ALEC's amicus agenda reflects the financial interests and objectives of its corporate and CEO benefactors.

The Independent Women's Forum has also expanded its amicus work in recent years. While the Independent Women's Forum/Voice received substantial funding from the Leo-tied Judicial Crisis Network after Justice Scalia died, more recent filings show an increase in DonorsTrust funding. The Independent Women's Forum is a pay-to-play group that has received funding from corporations while advancing their policy agenda. For example, IWF has received funding from Juul while writing articles that minimized concerns about health risks from vaping, without disclosing to the public that it was funded by the biggest vaping company in the country. It is not clear in the amicus briefs IWF has submitted whose interests or what funder agenda it may be advancing, if any.

These are just a few of the examples of special interest groups with major funding from corporations or CEOs joining in the flotilla of amicus briefs Senator Whitehouse has described. Another is the Competitive Enterprise Institute. There are many others.

6. Can you please provide additional details about the issues surrounding judicial junkets and the history of that practice?

Yes. For many years, the expert on judicial junkets was Doug Kendall, who spearheaded deep research into the judicial education industry when he led the Community Rights Counsel. His research and the work of his colleague Jason Rylander and others led to two major 20/20 investigations on judicial junkets,¹⁵ along with numerous other news stories about the problem of corporate-funded judicial education and calls on Congress to ban this practice.¹⁶

<https://www.dailykos.com/stories/2012/7/24/1103641/-ALEC-the-Koch-Led-CABAL-The-Amicus-Project-Fed-Court-Interference>.

¹⁴ See, for example, "Archive: Amicus Briefs," [alec.org](https://www.alec.org/periodical/amicus-briefs/), American Legislative Exchange Council,, <https://www.alec.org/periodical/amicus-briefs/>.

¹⁵ ABC News, "20/20 Investigates Judicial Junkets," YouTube video, 6:40, https://www.youtube.com/watch?v=N7Aw_FXhRqk <https://www.youtube.com/watch?v=6io8w9vofAM>.

¹⁶ For example, see letter from Jim Ward, William Samuel, et al. to Senator Reid and Senator McConnell, March 6, 2008, <http://www.communityrights.org/JunketsLetter.pdf>.

Their examination of the ways in which corporations were using “judicial education” to try to sway the rulings of judges was conducted before Charles Koch and his extreme agenda were made infamous by Jane Mayer’s blockbuster reporting in 2010 in the *New Yorker* and in her book *Dark Money*.¹⁷ However, those investigations describe the early programs in the 1990s and early 2000s — some of which were later tied to funding of groups and programs by the Koch family fortune — to train judges how to think about legal and economic issues in litigation brought before them as judicial officers.¹⁸

One of the main providers of judicial training in Koch-style economic-legal analysis is right outside Washington, DC. Research shows that Charles Koch began funding George Mason University nearly 40 years ago, although any amount of funding from the privately held Koch Industries or individual trust accounts is not publicly disclosed. Only the amounts spent through the Koch family foundations can be traced. Koch’s agenda was embraced by several professors at GMU, including Henry Manne, a Koch ally who began training federal judges in the 1970s, and expanded that program when he joined George Mason’s faculty in the 1990s and became the dean of GMU’s law school.¹⁹

Meanwhile, at Kansas University in the 1990s, another law professor tied to the Koch family fortune received Koch funding to focus on training state judges. That program began with more than \$1 million in seed money from the Koch foundations, according to my research. In one four-year period in the late 1990s, as Koch Industries faced major federal and state lawsuits and regulatory actions over its pollution, the Koch foundations spent nearly 10% of their grants funding judicial education for federal and state judges.

Since then, the amount of cash Koch has invested in universities in general and George Mason University, and its law school in particular, has grown exponentially. That includes a recent \$10 million grant after Antonin Scalia died and the law school was renamed for him. The cumulative amount spent through the Koch fortune on judicial education since the first couple million dollars in the late 1990s has never been tallied.

The judicial education programs funded by Koch’s fortune have also been supported by other corporate funders, often passed through a university foundation so they are not easily visible to the public, a practice Koch’s advisors touted decades ago. Meanwhile numerous corporate lawyers — and often Federalist Society members — have acted as teachers to these federal and state judges on a range of issues including methods that limit the application of environmental laws that protect the public interest in clean air,

¹⁷ Jane Mayer, “Covert Operations: The Billionaire Brothers who are Waging a War against Obama,” *The New Yorker*, August 23, 2010, <https://www.newyorker.com/magazine/2010/08/30/covert-operations>.

¹⁸ See the attached appendix “Report on Koch Foundations’ Funding of Judicial Education,” an internal report provided to me.

¹⁹ See Henry N. Butler, “The Manne Programs in Economics for Federal Judges,” *Case Western Reserve Law Review* 50, no.2 (1999), <https://core.ac.uk/download/pdf/214082437.pdf>. The author, Henry Butler, was then the Fred and Mary Koch Distinguished Professor of Law and Economics and Director of the Law and Organizational Economics Center at the University of Kansas.

water, and our climate.²⁰ Over the past 25 years, thousands of judges have participated in programs funded by the Koch fortune as well as by Charles Koch's allies.

As Mr. Kendall and Mr. Rylander documented, other corporate-funded groups have also launched judicial education programs, which were sometimes held at very posh resorts. These are detailed in the Internet Archive of communityrights.org. Other corporations besides petro-chemical corporations and their corporate defense lawyers have also targeted judicial education, including the tobacco industry.²¹ There are more illuminating examples in the archive of Mr. Kendall's reports, including "Nothing for Free: How Private Judicial Seminars Are Undermining Environmental Protections and Breaking the Public Trust." I would urge the Committee to examine these reports and explore more.

There is no uniform reporting of these efforts to indoctrinate judges at the state level, and the federal disclosure process is wholly inadequate. Despite having a system for "Reports of Privately Funded Seminars" administered by the Administrative Office for the U.S. Courts (the "AO"), the process the AO has created is deeply flawed. The forms filed by providers are not readily accessible to the public for all the periods in which a judge may have attended one of these events (just the most recent). Additionally, the true funders of the programs are not often revealed, just the sponsoring group. The AO also does not require disclosure in the reports filed by the organizers of these events, like George Mason University, to list the names of the federal judges who attended the trainings so that reporters, litigants, and the public can see who is being trained in what.

Only limited information is provided annually by individual judges who travel to attend such seminars, when they are required to disclose such travel reimbursements; and many do not have to travel far to attend them. What little information is disclosed in these separate annual financial disclosure reports is not accessible online, and the AO requires requesters to identify each specific judge's financial disclosure form requested. I previously served as the Deputy Chief of the Article III Judges Division of the AO, and it pains me to see such an inadequate commitment to transparency by the third branch of government on such important matters that affect the integrity of our judicial system.

The AO's system also suffers from the purposeful cloaking of donors through pass-throughs like George Mason University's foundation, which UnKoch My Campus has helped document and expose (and for which I serve as an informal advisor). Stating that a particular seminar was sponsored by George Mason University or its law school hides the identities of the true donors underwriting its operations in this area, which we know through other sources to have included substantial funding from the Koch fortune.

²⁰ Eric Schaeffer, "Junketing Judges: A Case of Bad Science," *The Washington Post*, June 4, 2006, <https://www.washingtonpost.com/archive/opinions/2006/06/04/junketing-judges-a-case-of-bad-science/68943158-de8a-46eb-8f42-3faf39a795c1/>; Brian Ross, "Supreme Ethics Problem?" ABC News video transcript, January 23, 2006, <https://abcnews.go.com/Nightline/story?id=1541642>.

²¹ L.C. Friedman, "Tobacco Industry Use of Judicial Seminars to Influence Rulings in Products Liability Litigation," *Tobacco Control* (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563562/>.

The public has a right to know when federal or state judges are being trained on how to interpret the law at seminars underwritten by corporations, trade groups, or CEO-led foundations and also when independent judges are trained by corporate lawyers whose firms are the business of litigation. I also think people have a right to know how Charles Koch has used his wealth to advance his corporate and personal agenda by helping to remake the law by getting judges trained to approach issues in ways he prefers. He is one of the richest men on the planet, whose petro-chemical empire was documented in Chris Leonard's book *Kochland* and whose agenda to limit democracy was detailed in Nancy MacLean's book *Democracy in Chains*, as well as in Jane Mayer's *Dark Money*.

This should not be a partisan issue, however. Any reformed mandatory disclosure would treat those who seek to train judges, whether aligned with the right or the left, equally.

7. Are there any other concerns you have about judicial travel or related matters, such as gifts from friends, you would like to describe for the Subcommittee?

I am very concerned about the lack of compliance with, and enforcement of, the family income and gift reporting requirements of the Ethics in Government Act as it applies to Supreme Court justices. I also think the gift exceptions need substantial reform. For example, as Common Cause exposed in 2011, Justice Thomas failed to report his wife's income and a variety of lavish gifts from a wealthy Texas real estate magnate.²²

It is unclear if Justice Thomas, or other justices, have fully complied with Ethics Act disclosure requirements since then, and Congress should examine this important question. This is a matter that I think warrants a more complete investigation.

As you know, the Supreme Court does not have a binding code of conduct, and we agree with you that such a code is necessary. It should require the highest standards for our highest court.

8. What is your view of the issues at stake in the *Americans for Prosperity Foundation v. Becerra* case?

My views are strongly in accord with the brief filed, *sub nom.* Rodriguez, with the U.S. Supreme Court by Senators Whitehouse, Leahy, Wyden, Durbin, Klobuchar, Merkeley, Coons, Blumenthal, Baldwin, Hirono, Warren, Markey, Booker, and Van Hollen. That

²² Kim Geiger, "Clarence Thomas Failed to Report Wife's Income, Watchdog Days," *Los Angeles Times*, January 22, 2011, <https://www.latimes.com/politics/la-xpm-2011-jan-22-la-na-thomas-disclosure-20110122-story.html>; Mike McIntire, "Friendship of Justice and Magnate Puts Focus on Ethics," *New York Times*, June 18, 2011, <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>.

brief accurately and compellingly describes what is at stake in the case pending before the Court and the long-standing precedents and regulations at issue.²³

I also think the briefs by Public Citizen and the Campaign Legal Center provide excellent analyses of these issues, which include and transcend the particular California state regulation being challenged by Charles Koch's primary political arm, Americans for Prosperity Foundation.²⁴

I am worried that the new majority on the Supreme Court, which has been packed with controversial judges hand-picked by Leonard Leo for Trump's slate, will use this case to undermine the constitutionality of the disclosure rules that a previous Court majority recognized help advance important public interests.

Even though on the surface this case is about the confidential disclosure to a regulatory agency of the major donors to a tax-exempt organization, I am concerned some of the justices on the Supreme Court will use this case to take aim preemptively at the constitutionality of H.R. 1 and S. 1, comprehensive election reform legislation that is opposed by Charles Koch's political operation, which is a party in this litigation.

I believe that Koch and his operatives have been playing a long game when it comes to rewriting our Constitution to suit his tastes. He has long been an opponent of disclosure rules and campaign donation limits, dating back to his funding for the Libertarian Party when his fortune was used in part to underwrite the Party's attacks on the Federal Election Campaign Act. His groups have attacked subsequent reforms. Koch has also been a major funder of the Federalist Society and has told his fellow billionaires that his groups were working closely with the Federalist Society on his "under the dome" efforts to get the kind of judges he wants confirmed to the Supreme Court and lower courts. We also know his groups spent untold millions backing controversial Trump nominees.

We also know that Koch and his allies have waged a multi-year attack on disclosure and transparency measures. As shown by the trial testimony of a parade of Koch operatives and Koch-funded groups in this case, the Koch team has been using this

²³ See Brief of U.S. Senators as Amici Curiae in Support of Respondent, *Americans for Prosperity Foundation v. Matthew Rodriguez*, No 19-251, March 31, 2021, http://www.supremecourt.gov/DocketPDF/19/19-251/173478/20210331123251215_19-251%20Brief%20f%20Amici%20Curiae.pdf.

²⁴ See Brief of Campaign Legal Center, Citizens for Responsibility and Ethics in Washington, Common Cause, and League of Women Voters of California as Amici Curiae in Support of Respondent, *Americans for Prosperity Foundation v. Matthew Rodriguez*, no. 19-251 and 19-255, March 31, 2021, http://www.supremecourt.gov/DocketPDF/19/19-251/173489/20210331125611703_Amicus%20Brief%20Final.pdf; Brief of Amici Curiae Public Citizen and Public Citizen Foundation in Support of Respondent, *Americans for Prosperity Foundation v. Matthew Rodriguez*, no. 19-251 and 19-255, March 2021, http://www.supremecourt.gov/DocketPDF/19/19-251/173539/20210331145344824_19-251%20bsac%20Public%20Citizen.pdf.

case (and the unintended technical flaws in California's tax-exempt electronic filing system) as a weapon to try to destroy the constitutionality of disclosure laws.

Given public outrage at the outsized role Charles Koch has been playing in American elections, Koch's operatives and allies are trying to make sure the public never learns the true extent of who is really funding the groups that are spending hundreds of millions of dollars to influence elections.

Indeed, Koch's operatives know that H.R. 1 and S. 1 are very popular, as Jane Mayer revealed in her most recent reporting.²⁵ They know they cannot persuade the public to side with billionaires in their desire to dominate U.S. elections and keep the public in the dark. So, they are counting on their political allies to stop that legislation. At the same time, they are also urging the Supreme Court to effectively preempt that legislation through a broad ruling that strikes down disclosure rules that have been on the books for decades.

Lastly, I would like to add that we believe the underlying regulation, which requires providing a copy of nonprofits' IRS Form 990 Schedule B to the IRS and to state regulatory agencies, gives oversight agencies important data needed to enforce state laws governing tax-exempt groups.

There are numerous examples of how such data can be helpful to regulators committed to rooting out corruption, which were highlighted by Chairman Whitehouse and other Senators in their complaint to the IRS in response to the Trump administration's actions to eliminate the Schedule B requirement.²⁶

9. Can you please provide additional details about the current and recent attacks on voting rights by some of the groups and people trying to capture the federal courts? Do you see a connection between them?

One group with connections to the Leonard Leo dark money network that has been very active in what many consider to be voter suppression activities is the Honest Elections Project.²⁷ A fictitious name of the 85 Fund (along with Judicial Education Project), the

²⁵ Jane Mayer, "Inside the Koch-Backed Effort to Block the Largest Election-Reform Bill in Half a Century," *New Yorker*, March 29, 2021, <https://www.newyorker.com/news/news-desk/inside-the-koch-backed-effort-to-block-the-largest-election-reform-bill-in-half-a-century>.

²⁶ See Senators Whitehouse, Udall, Blumenthal, and Warren to Secretary Mnuchin and Commissioner Rettig, "Re" Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations," December 9, 2019, <https://www.whitehouse.senate.gov/download/irs-complaint>.

²⁷ Sam Levine and Anna Massoglia, "Revealed: Conservative Group Fighting to Restrict Voting Tied to Powerful Dark Money Network," *The Guardian*, May 27, 2020, <https://www.theguardian.com/us-news/2020/may/27/honest-elections-project-conservative-voting-restrictions>.

Honest Elections Project was heavily involved in pushing restrictive voting laws in 2020, and that has continued into 2021.²⁸ This year, it released a report containing restrictive voting regulations for states to adopt.²⁹ Honest Elections Project's leader Jason Snead also regularly provides comment to the media regarding election related issues.³⁰

Groups within Leonard Leo's dark money network have given money to rightwing groups that have become involved in rewriting the rules for our voting system this year, as Trump continues to make debunked claims of voter fraud and GOP legislators use those falsehoods as a predicate for rolling back voting rights. The Republican State Leadership Committee, the anti-choice Susan B. Anthony's List, and Tea Party Patriots all received money from the Judicial Crisis Network between 2018-2019, and have announced initiatives to support restrictive voter laws.³¹ Susan B. Anthony's List also received money from America Engaged in 2018.³² Additionally, "People United for Privacy," which was revealed to have been a part of a conference call convened by the State Policy Network regarding HR 1, received money from Rule of Law Trust, according to the group's 2019 Form 990.³³

²⁸ Nicholas Riccardi, "Conservative Group Pushes Proposals to Tighten Voting Laws," *ABC News*, March 2, 2021, <https://abcnews.go.com/Politics/wireStory/conservative-group-pushes-proposals-tighten-voting-laws-76210706>.

²⁹ See "Honest Elections Project Releases its 'Safeguarding Future Elections' Report," Honest Elections Project, March 3, 2021, <https://www.honestelections.org/news/honest-elections-project-releases-its-safeguarding-future-elections-report/>.

³⁰ Jeremy W. Peters, "In Restricting Early Voting, the Right Sees a New 'Center of Gravity'" *New York Times*, March 19, 2021, <https://www.nytimes.com/2021/03/19/us/politics/republicans-trump-voting-rights.html>; Mike McIntire, "Friendship of Justice and Magnate Puts Focus on Ethics," *New York Times*, June 18, 2011, <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>; Olivia Rubin and Lucien Bruggeman, "'A Great Clash': Mail-in Voting Emerges as Main Target in Renewed Voting-Rights Battle," *ABC News*, March 5, 2021, <https://abcnews.go.com/US/great-clash-mail-voting-emerges-main-target-renewed/story?id=76260022>.

³¹ See Internal Revenue Service, Form 990: Return of Organization Exempt from Income Tax: Judicial Crisis Network, 2018, <https://www.documentcloud.org/documents/20407649-judicial-crisis-network-2018-990>.

³² See Internal Revenue Service, Form 990: Return of Organization Exempt from Income Tax: America Engaged, 2018, <https://www.documentcloud.org/documents/6587306-America-Engaged-2018-990.html#document/p17/a540935>.

³³ Jane Mayer, "Inside the Koch-Backed Effort to Block the Largest Election-Reform Bill in Half a Century," *New Yorker*, March 29, 2021, <https://www.newyorker.com/news/news-desk/inside-the-koch-backed-effort-to-block-the-largest-election-reform-bill-in-half-a-century>; Robert Maguire, Twitter post, December 21, 2020, 1:45 p.m., https://twitter.com/RobertMaguire_/status/1341092487704829953.

Leo and some of the leading people trying to restrict voting share a connection to the law firm Holtzman Vogel Josefiak Torchinsky, PLLC. The firm is linked to several Leo affiliated entities including: BH Fund, Rule of Law Trust, America Engaged, and the now defunct JCN PAC. The firm has also been connected to the Honest Elections Project, the National Republican Senatorial Committee (which recently announced an ad buy opposing HR 1), the Republican National Committee, and Project Veritas.³⁴

Notably, that firm was paid over \$650,000 by the Pennsylvania Senate Republican Caucus to try to limit the ability of people to cast votes during the extraordinary public health crisis caused by the deadly Covid-19 pandemic.³⁵ It also bears mentioning that Alex Vogel and Jason Torchinsky, both partners at the firm, were involved with the American Center for Voting Rights, a Bush era voter suppression organization that promoted theories about voter fraud and that, according to law professor Richard Hasen, “has infected even the Supreme Court’s thinking about voter-ID laws.”³⁶

10. Please share with the Subcommittee if there are any parallels in state court capture with some of the groups and people trying to capture the federal courts.

Leo’s court-packing network has played an active role in judicial selection for both federal and state courts. One of the main vehicles for that effort in the states is the Republican State Leadership Committee (RSLC), which has spent millions on state Supreme Court elections via its Judicial Fairness Initiative (JFI). RSLC/JFI has been the

³⁴ See Brief of the Honest Election Project as Amicus Curiae in Support of Defendants, *Democratic National Committee and Democratic Party of Wisconsin v. Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, JR. and Mark L. Thomsen*, no 3:20-cv-00249, March 30, 2021, https://www.honestelections.org/wp-content/uploads/2020/03/HEP-Amicus-Brief-2020-03-30-17_55_45.pdf; Federal Election Commission, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00027466&recipient_name=Vogel&two_year_transaction_period=2022; Alayna Treene, “Exclusive: NRSC Ddrops \$1M Aad Buy Targeting Democrats’ Voting Rights Bill,” *Axios*, (March. 25, 2021), <https://www.axios.com/nrsc-senate-republicans-ads-voting-elections-hr1-sb1-a95aa7c2-b0e0-460b-bc52-83c92cbdf61c.html>; Federal Election Commission, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00003418&recipient_name=Vogel&two_year_transaction_period=2020; Internal Revenue Service, *Form 990: Return of Organization Exempt from Income Tax: Project Veritas*, 2018, <https://projects.propublica.org/nonprofits/organizations/272894856/201921849349300017/IRS990>.

³⁵ Charles Davis, “Pennsylvania Republicans Spent \$1 Million in Tax Dollars on 2020 Election Lawsuits to Suppress Voters,” *Business Insider*, January 21, 2021, <https://www.businessinsider.com/pennsylvania-gop-spent-million-in-tax-dollars-on-election-lawsuits-2021-1>.

³⁶ See “Honest Elections Project Exposed,” FairFight.com, Fair Fight, <https://fairfight.com/honest-elections-project-exposed/>; Richard Hasen, “The Fraudulent Fraud Squad,” *Slate*, May 18, 2007, <https://slate.com/news-and-politics/2007/05/the-incredible-disappearing-american-center-for-voting-rights.html>.

subject of numerous claims that it has misled voters in state judicial elections or retention elections, which it denies.

Over the past three years alone, the Judicial Crisis Network/JCN (which is now called the Concord Fund) has given more than \$4.5M to RSLC.

Where we describe activities below that are disclosed under the IRS regulations governing “527” organizations, the spending is disclosed and the donor is disclosed, but in the case of JCN’s gifts to RLSC, the identity of the original donor is hidden by such pass-through groups. We consider that to be a form of dark money because — although JCN is technically the donor to the election campaigns around candidates seeking seats on state supreme Courts — the original donor is cloaked by JCN. Where JCN has been funded by transfers from the Wellspring Committee, for example, the original donor is cloaked twice. This allows RSLC, which is required to disclose its donors as a 527, to hide who is really underwriting its electoral activities. This is multi-level dark money.

Here are four examples of the role of JCN or RSLC, or both, in state court elections.

1) Wisconsin

The Leo-tied JCN has been active in Wisconsin over the past decade. In 2011, Leonard Leo himself was specifically tapped to raise a six-figure sum to help GOP operatives focused on retaining a controversial judge, Bill Prosser, on the Wisconsin Supreme Court, as detailed by investigative reporter Ed Pilkington in *The Guardian*.³⁷ Wisconsin Club for Growth also received \$400,000 from the Wellspring Committee in 2011.

Notably, on election night, when it looked like Prosser was going to lose, a team of political operatives working with Walker’s closest advisors considered a proposal eerily reminiscent of the tactics in the 2020 election, with one writing: “Do we need to start messaging ‘widespread reports of election fraud’ so we are positively set up for the recount regardless of the final number?” Prosser was ultimately declared the winner.

Interestingly, Prosser was later touted as a key player in the Federalist Society’s State Courts Project, which was helmed by Leo and his colleague Sarah Field.³⁸

JCN also gave \$500,000 to Wisconsin Club for Growth in 2013, which turned around and spent \$400,000 backing Pat Roggensack on the Supreme Court. The very next year, JCN gave \$825,000 to Wisconsin Manufacturers & Commerce (WMC), which has

³⁷ Ed Pilkington, “Leaked Court Documents From ‘John Doe Investigation’ in Wisconsin Lay Bare pervasive Influence of Corporate Cash on Modern US Elections,” *The Guardian*, September 14, 2021, <https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-ca-sh-american-politics>.

³⁸ See <https://www.documentcloud.org/documents/4615111-Brett-M-Kavanaugh-12-D-Attachments-Part2>. (In early 2018, Field left the Federalist Society to become the leader of Koch’s Americans for Prosperity’s judicial project, which was anticipating a vacancy on the Supreme Court the year Justice Kennedy announced he was stepping down. I detailed Field’s earlier ties to Koch in my written testimony.)

been one of the most active special interests in Wisconsin court races. Two years later, JCN gave \$1.4 million to Wisconsin Alliance for Reform (WAR), which spent \$2.6 million on ads to help elect then-Governor Walker's preferred candidate, Rebecca Bradley.

RSLC also spent big in 2019, with a last-minute \$1.3 million ad blitz during the final week of the state's Supreme Court election, which RSLC/JFI boasted moved its judicial candidate from nearly ten points behind in the polls to narrowly winning.³⁹

In last year's state Supreme Court race, both RSLC and WMC spent nearly \$1 million each, but their preferred state Supreme Court candidate lost his bid for retention.⁴⁰

2) Arkansas

In Arkansas' 2018 Supreme Court race, JCN and RSLC/JFI cut very similar ads attacking Justice Courtney Goodson, which were rated false and misleading by the Arkansas Judicial Campaign Conduct and Education Committee.⁴¹

In that race, RSLC/JFI ended up spending over \$2.6 million and JCN reportedly spent over \$1.2M.⁴² RSLC was also active in Arkansas last year, with \$225,000 in ad buys. Their money flowed in earlier races too. JCN and RSLC spent \$600,000 and \$250,000 respectively in the state in 2016, and two years earlier JCN was involved in the state primary for Attorney General, which is another trend described more fully below.⁴³

3) Michigan

Michigan is another example of JCN's close coordination with state actors and here is a small snapshot of that activity. In 2012, JCN spent \$1 million during Michigan's Supreme

³⁹ See David James, "Republican State Leadership Committee: Judge Brian Hagedorn Wins Election to Wisconsin Supreme Court," Wisconsin Politics, April 10, 2019, <https://www.wispolitics.com/2019/republican-state-leadership-committee-judge-brian-hagedorn-wins-election-to-wisconsin-supreme-court/>.

⁴⁰ Lisa Graves and Evan Vorpahl, "ACS on Dark Money: Who Is Capturing Our Courts (Wisconsin Edition)?" *American Constitution Society*, November 6, 2019), <https://www.acslaw.org/expertforum/acs-on-dark-money-who-is-capturing-our-courts-wisconsin-edition/>.

⁴¹ Max Brantley, "Judicial Election Watchdog Blasts Ads Targeting Justice Courtney Goodson," *Arkansas Times*, October 20, 2018, <https://arktimes.com/arkansas-blog/2018/10/20/judicial-election-watchdog-blasts-ads-targeting-justice-courtney-goodson>.

⁴² Billy Corriher, "Secret-Money Courts Group Accused of Libel in Arkansas," *Facing South*, May 18, 2018, <https://www.facingsouth.org/2018/05/secret-money-courts-group-accused-libel-arkansas>; and <https://financial-disclosures.sos.arkansas.gov/#/exploreCommitteeDetail/265797/null/0/0/null>.

⁴³ Roby Brock, "Leslie Rutledge Defeats David Sterling For Republican AG Nomination," *NPR*, June 10, 2014, <https://www.ualpublicradio.org/post/leslie-rutledge-defeats-david-sterling-republican-ag-nomination>.

Court contests.⁴⁴ And JCN spent another \$1 million that year to beat Circuit Court judge Phyllis McMillen. That was matched with \$1 million in spending by a group named Americans for Job Security (AJS), another group with ties to Koch's political network and which was later fined by the FEC for hiding the sources of its political ads in the 2016 election. (AJS had also previously received nearly \$350,000 from the Wellspring Committee in connection with another judicial race). According to IRS Form 990s, in 2012-13, JCN gave the "MI State Republican Party," which JCN described as a "501(c)(4)" organization, \$500,000. In 2014-15, JCN gave \$700,000 to the "Michigan State Republican Party," which it described as a "527." In that cycle, the Michigan state GOP spent more than \$3 million on three supreme court races.⁴⁵

4) West Virginia

RSLC has also spent massive amounts of money to elect corporate-friendly judges, in states like in West Virginia, where the RSLC spent \$1.7 million in 2020, \$1.9 million in 2018, and over \$2.6 million in 2016. JCN provided funding to RSLC in those years.

Additionally, we would be remiss if we did not mention that the Leo network has played an active role in state Attorney General races. JCN has become a major donor to the Republican Attorneys General Association (RAGA), contributing \$3 million last year, and \$1 million the year before. RAGA Attorneys General have been very active in amicus filings, and RAGA has promoted Trump's nominees for the Supreme Court from the slate handpicked by Leo. It has also signaled it may oppose Biden's judicial nominees.

RAGA spun off from RSLC in 2014 and began spending millions raised from corporate givers in exchange for access to elect right-wing attorneys general. (RAGA got its start within RSLC nearly two decades ago.) Since 2014, JCN (now known as Concord) has become by far RAGA's largest single contributor at about \$13 million.⁴⁶ However, as noted above, that allows the true donors underwriting those millions to be kept hidden.

RAGA's 501(c)(4) arm, the Rule of Law Defense Fund (RLDF), has also received funding from JCN. Most recently, RLDF has been embroiled in controversy over its role in promoting Trump's events on January 6, which resulted in the insurrection incited by Trump. Notably, RAGA and individual Republican AGs played significant roles in trying to overturn the results of the 2020 election and amplifying Trump's voter fraud claims.

⁴⁴ See "Descending Into Dark Money: A Citizen's Guide to Michigan Campaign Finance 2012 (Michigan Campaign Finance Network, 2012), https://mcfn.org/pdfs/reports/MCFN_2012_Cit_Guide_final_rev..pdf.

⁴⁵ *Buying Time 2014: Michigan* (Brennan Center for Justice, 2014), <https://www.brennancenter.org/our-work/research-reports/buying-time-2014-michigan-0>.

⁴⁶ Nick Surgey, "New Filing Shows Massive Dark Money Support from Judicial Crisis Network to Republican Attorneys General Association," *Documented*, October 16, 2020, <https://documented.net/2020/10/new-filing-shows-massive-dark-money-support-from-judicial-crisis-network-to-republican-attorneys-general-association/>.

These are just a few of the ways in which Leonard Leos's network is shaping both federal and state courts, as well as the top law enforcement officers in the states.

11. In your exchange with Senator Kennedy, you described how the crime of bribery is not the only way in which the judicial process can be corrupted. Please elaborate.

The Supreme Court has long recognized that money can be used in many ways other than actual bribery to exercise undue influence over politicians and create the appearance of corruption. In *Caperton v. A. T. Massey Coal Co.*, the Court held that judges are not immune to those threats. Legal experts have also long recognized that dark money spending poses a threat to judicial independence in the context of popularly elected judges.⁴⁷

In the federal courts, the dynamic is more complex. The greatest threat in recent years has been the intentional bypassing of traditional norms for selecting qualified and principled jurists and the outsourcing of that process to actors bankrolled by dark money interests intent on packing the federal judiciary with judges who fit a pro-corporate and rightwing ideological mold, with a focus on nominees who are being counted on to reverse major legal precedents of the 20th century. While that form of influence is more indirect, it is equally dangerous to the integrity of the U.S. judicial system and the people's confidence in the fairness of the courts.

12. At the hearing, some claimed the *Washington Post* had not covered funding of "left" or progressive groups equally. What is your view of that claim?

Despite the assertions that the *Washington Post* has not covered dark money on the left the paper has in fact reported on dark money spending on both the left and right numerous times.⁴⁸

⁴⁷ Alicia Bannon, "The Rise of Dark Money is a Threat to Judicial Independence," *ABA Journal*, July 5, 2018, https://www.abajournal.com/news/article/the_rise_of_dark_money_is_a_threat_to_judicial_independence; Arn Pearson, "Conquering the Courts," *Center for Media and Democracy*, May 2018, https://www.exposedbycmd.org/wp-content/uploads/2018/05/Conquering_the_courts_report-FINAL-WEB-05-10-18.pdf; Lisa Graves and Evan Vorpahl, "Who is Capturing Our Courts (Wisconsin Edition)?" *Center for Media and Democracy*, November 7, 2019, <https://www.exposedbycmd.org/2019/11/07/who-is-capturing-our-courts-wisconsin-edition/>.

⁴⁸ On left-wing dark money, see Michelle Ye Hee Lee, "Liberal Activists Embrace 'Dark Money' in Supreme Court Fight," *The Washington Post*, July 27, 2018, https://www.washingtonpost.com/politics/liberal-activists-embrace-dark-money-in-supreme-court-fight/2018/07/27/0b21582c-902a-11e8-bcd5-9d911c784c38_story.html; Michelle Ye Hee Lee and Ana Narayanswamy, "Wealthy Longtime Democratic Donors Boosted Biden with Big Checks in the Second Quarter," *The Washington Post*, July 16, 2020, <https://www.washingtonpost.com/politics/2020/7/16/wealthy-longtime-democratic-donors-boosted-biden-with-big-checks-second-quarter/>; Michelle Ye Hee Lee, "For Democratic Presidential Hopeful Steve Bullock, It's All About the 'Dark Money,'" *The Washington Post*, July 14, 2019,

On a related note, I would like to add that I support the restoration of the Fairness Act, which required holders of broadcast licenses to cover issues of public importance and to do so in a manner that was honest, equitable, and balanced. Koch groups and the GOP helped destroy that requirement, which had served the nation’s public interest well for nearly 40 years. In the wake of its destruction, America has witnessed the rise of outlets like FOX, which uses the phrase “fair and balanced” in its marketing but often is neither—as exemplified by its hyping of claims of voter fraud in the 2020 presidential election actions that are now the subject of a defamation lawsuit by Dominion Voting Systems.⁴⁹

Newspapers were not subject to the requirements of the Fairness Doctrine, but many have remained devoted to the principles of honest, equitable, and balanced journalism—including in their provision of opinion on their editorial pages—with notable exceptions, like the editorial page of the *Wall Street Journal*.

CMD’s expertise is not in performing numerical analyses of general media coverage, but its researchers do study the substantive content of investigations published by other media outlets. CMD also investigates them from time to time, as with its examination of “Video News Releases,” where corporate-produced videos were passed off as news, and the investigation of Tucker Carlson’s Daily Caller media operations and concerns about how the nonprofit he co-founded was subsidizing his for-profit company.⁵⁰

https://www.washingtonpost.com/politics/for-democratic-presidential-hopeful-steve-bullock-its-all-about-the-dark-money/2019/07/13/a8e6362c-9da8-11e9-b27f-ed2942f73d70_story.html. On right-wing dark money, see *supra*

<https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/>; Michelle Ye Hee Lee, “Unnamed Donors Gave Large Sums to Conservative Nonprofit that Funded Trump Allies,” *The Washington Post*, November 27, 2019,

https://www.washingtonpost.com/politics/secret-donors-gave-large-sums-to-conservative-nonprofit-that-funded-pro-trump-allies/2018/11/27/07667840-f266-11e8-80d0-f7e1948d55f4_story.html; Catherine Ho, “Conservative Group to Launch \$2 Million Ad Campaign to Block Supreme Court Nomination,” *The Washington Post*, March 18, 2016,

<https://www.washingtonpost.com/news/powerpost/wp/2016/03/18/conservative-group-to-launch-2-million-ad-campaign-to-block-supreme-court-nomination/>. The paper has also addressed both sides in Brian Slodsysko and Thomas Beaumont, “Wealthy Donors Pour Millions into Fight Over Mail-In Voting,” *The Washington Post*, (July 27, 2020),

https://www.washingtonpost.com/politics/wealthy-donors-pour-millions-into-fight-over-mail-in-voting/2020/07/27/cb375206-cfc5-11ea-826b-cc394d824e35_story.html.

⁴⁹ Michael Grynbaum, “Fox News Faces Second Defamation Suit Over Election Coverage,” *New York Times*, March 26, 2021, <https://www.nytimes.com/2021/03/26/business/media/fox-news-defamation-suit-dominion.html>.

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