

**Testimony of Lisa Graves
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**Before the United States 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”

March 10, 2021

Mr. Chairman Whitehouse, Ranking Member Kennedy, and Members of the Subcommittee:

Thank you for inviting me to testify today about what's wrong with the U.S. Supreme Court and the big-money assault on our judiciary.

Over the past decade, special interests have pumped hundreds of millions of dollars into sophisticated campaigns to influence judicial nominations, judicial decisions, and judges themselves through a dizzying network of dark money nonprofits and limited liability companies.

This is not a positive sign of civic engagement; it is an exercise in raw power, and a dramatic reminder that the choice of who interprets the U.S. Constitution and the laws of our land is every bit as important as electing those who make the laws in the first place.

With federal courts interpreting everything from personal and civil rights and freedoms to the ability of government to regulate massive corporations to protect our environment, health, safety, privacy, and financial security, to the very ground rules of American democracy itself, the stakes could not be higher.

That's why I am appearing before you today to say that the process of choosing our judges, influencing their rulings, and currying their favor needs the same level of transparency as do elections, lobbying, and gifts to government officials.

America needs some real sunshine to protect its ailing democracy, and we need it now. The people have a right to know who is trying to influence our courts and why.

In recent years, the country has faced a growing dark-money assault on our judiciary by powerful interests that want to roll back the core legal precedents of the 20th century that have made our rights real and not just empty promises, reined in some of the worst abuses of corporate power, and enabled the country to make slow progress toward environmental, social, and economic justice for all.

Without reform, the names, goals, and financial interests of the major bankrollers of those efforts to capture our courts will remain hidden from the American people.

We need stronger disclosure laws now to help ensure we have independent courts staffed with fair-minded judges devoted to following legal precedents and free from special interest influence.

That's why CMD supports reforms like those contained in the For the People Act, the newly reintroduced DISCLOSE Act, the AMICUS Act, and the Judicial Travel Accountability Act. Those

bills would go far to shine a light on the major sources of the dark money distorting our democracy, and we urge you to support their passage.

I am the President of the Board of the Center for Media and Democracy (CMD), a nationally recognized watchdog group that has been researching and exposing the undue influence of powerful special interests distorting public opinion and our democracy since its founding in 1993. Since I first joined the Center in 2009, it has expanded its expertise in tracing dark money spending that exploded after the Supreme Court’s controversial decision in the *Citizens United* case.

I have worked as a senior advisor in all three branches of government—serving as the Chief Counsel for Nominations on the Senate Judiciary Committee for Senator Patrick Leahy, as the Deputy Chief of the Article III Judges Division of the Administrative Office of the U.S. Courts (with oversight of the Financial Disclosure Office of the judiciary and other matters); and as a Deputy Assistant Attorney General in the Office of Legal Policy/Policy Development at the U.S. Department of Justice under both Attorneys General Janet Reno and John Ashcroft (and where I was the staff leader of the DOJ Working Group on Judicial Nominations, among other duties) —and in other posts, including as an adjunct professor at George Washington University.

CMD’s current Executive Director, Arn Pearson, has more than 25 years of experience with campaign finance and government ethics issues, and previously served as the Vice President for Policy and Litigation at Common Cause. My testimony today reflects decades of expertise on democracy reform, dark money, and judicial ethics at CMD, and draws on the work of Mr. Pearson, David Armiak, Alex Kotch, Evan Vorpahl, Caroline Jones, and other colleagues.¹

I. The Anonymous Influence of Huge Donors and Operatives on the Selection and Confirmation of Justices

Recent media stories estimate that dark money spending to influence the confirmation of Justice Amy Coney Barrett reached at least \$40 million. Comparable amounts were likely spent on advertising and lobbying campaigns to block Judge Merrick Garland’s nomination, and to battle over the nominations of Justices Neil Gorsuch and Brett Kavanaugh.^{2 3 4 5}

¹ CMD’s research on dark money issues is available at [Exposed by CMD](#), PR Watch, [Source Watch](#), and [ALEC Exposed](#), a website I launched at CMD in 2011 about the American Legislative Exchange Council. I have also co-founded several online research projects, including Atrazine Exposed, Outsourcing America Exposed, NFIB Exposed, Pete Peterson Exposed, SPN Exposed, Stink Tanks, Documented Investigations, [True North Research](#), [IWF Exposed](#), [Koch Docs](#), and the [BOLD ReThink](#).

² Jordan Fabian, “Trump-Allied Groups Pour \$30 Million Into Barrett Confirmation,” *Bloomberg*, (October 22, 2020), <https://www.bloombergquint.com/politics/trump-allied-groups-pour-30-million-into-barrett-confirmation>

³ See <https://demandjustice.org/demand-justice-statement-on-ruth-bader-ginsburgs-death/>

⁴ Laila Robbins, “Conservative Group Behind Kavanaugh Confirmation Has Spent Years Reshaping State and Federal Benches,” *Brennan Center for Justice*, (September 12, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/conservative-group-behind-kavanaugh-confirmation-has-spent-years>

⁵ See <https://www.feinstein.senate.gov/public/index.cfm/2020/7/feinstein-whitehouse-introduce-bill-to-combat-dark-money-in-judicial-nominations>

As I will set forth below, those numbers—as high as they may seem—are just the tip of the iceberg.⁶

While we believe that much of that dark money spending has flowed from right-wing corporate magnates through a maze of front groups coordinated by the Federalist Society's co-chair, Leonard Leo,⁷ the disclosure reforms we urge you to consider would apply equally to all groups deploying dark money spending on TV and social media ads about judicial appointments without regard to ideology or viewpoint.

I understand that at this hearing at least one of the witnesses will argue there are “far larger empires of ‘dark money’ on the left.” While we disagree with that assessment and a variety of other statements that have been made by the Capital Research Center on this issue and many others, that disagreement has little bearing on the merits of the reforms that will come before this subcommittee. That is because the proposed legislation would apply regardless of point of view, interests, or claimed objectives of those seeking to influence judicial nominations.

Nevertheless, there is no evidence of anyone on the “left” playing the kind of role Leonard Leo has played in the selection of Supreme Court and lower court judges and the marshalling of resources and groups to secure their confirmation. His role has been singular and closely tied to some of the richest people on the planet, including Charles Koch.

Just seven months ago, billionaire Koch's political arm, Americans for Prosperity (AFP), launched a “full-scale” campaign to get Amy Coney Barrett confirmed to a lifetime seat on the Supreme Court on the eve of the presidential election.⁸ Koch was not alone in this, but the length and depth and intensity of his focus on remaking America's laws to suit his image is unmatched.

AFP is only one part of the influence machine Koch Industries' CEO has built up to capture the Supreme Court—and, with it, the meaning of our Constitution. The network he funds includes the Federalist Society. Koch has sought to keep the press from reporting on the names of the other billionaires and millionaires that fund his agenda, but leaks have revealed that it has included many extremely wealthy fossil fuel industry executives and heirs of corporate fortunes.

AFP deployed deceptive rhetoric designed to assure Americans that Barrett would be a judge who “puts the Constitution first, interprets the law as written, and protects our freedoms.” They also claimed she will “uphold the rule of law” and “not legislate from the bench.”⁹

⁶ Anna Massoglia and Kaitlin Washburn, “Only a fraction of ‘dark money’ spending on Kavanaugh disclosed,” *Center for Responsive Politics*, (October 24, 2018), <https://www.opensecrets.org/news/2018/10/only-a-fraction-of-dark-money-spending-on-kavanaugh-disclosed/>

⁷ See https://www.sourcewatch.org/index.php?title=Leonard_Leo.

⁸ Americans for Prosperity, “AFP Mounts Full Scale Campaign to Confirm Judge Amy Coney Barrett,” Americans for Prosperity, (September 26, 2020), <https://americansforprosperity.org/afp-mounts-full-scale-campaign-to-confirm-judge-amy-coney-barrett/>

⁹ Americans for Prosperity, “Tell Senators: Confirm President Trump's Nominee!,” Americans for Prosperity, (archived on September 30, 2020), <https://web.archive.org/web/20200930202613/https://americansforprosperity.ivolunteers.com/ContactOfficials/SCOTUS-2020/>

But the real reason the Koch machine and its close allies were “all in”¹⁰ for Barrett was because of their belief that she would be a sure vote for their radical pro-corporate, anti-regulatory agenda. They believe she will help usher in a legal revolution that will reverse a century of post-New Deal precedents they dislike.¹¹

Here’s how Leo described this revolution to funders behind closed doors at a meeting of the Council on National Policy:¹²

We stand at the threshold of an exciting moment in our republic: the revival of our structural Constitution by the U.S. Supreme Court, a revival in those very important principles of limited constitutional government—separation of powers, federalism, enumerated powers, limits on judicial power, sovereignty—and this is really I think, in recent memory, a newfound embrace of limited constitutional government in our country. *I don’t think this has really happened since probably before the New Deal, which means no one in this room has probably experienced the kind of transformation that I think we are beginning to see.*
(Emphasis added)

No one has played a bigger role in orchestrating this revolution than Leo.

Ginni Thomas—the wife of Supreme Court Justice Clarence Thomas and a far-right partisan who urged on the January 6 rally that turned into a violent insurrection—gave Leo a special award she created for her closest right-wing allies in 2017.¹³

She bragged to the crowd of donors at that “United in Purpose” event at the Trump hotel in Washington, D.C., that Leo “has single-handedly changed the face of the judiciary under the *auspices*” of the Federalist Society.¹⁴ She added: “He has many hats. That isn’t even all he does. He doesn’t really tell all that he does, but I know enough to know he’s a force of nature. He’s a disciplined strategist ... and a hero to me.”

To ensure that Leo’s singular role is preserved in the public record, we offer the following documentation of the origins and impacts of the array of dark money operations he has orchestrated while serving as a leader of the Federalist Society.

¹⁰ Nancy Cook and Gabby Orr, “Trump taps Barrett, launching brawl over Supreme Court’s future,” *Politico*, (September 26, 2020), <https://www.politico.com/news/2020/09/26/trump-scotus-coney-barrett-easy-choice-422019>

¹¹ Robert O’Harrow and Shawn Boberg, “A conservative activist’s behind-the-scenes campaign to remake the nation’s courts,” *Washington Post*, (May 21, 2019), <https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/>

¹² Robert O’Harrow, “Videos show closed-door sessions of leading conservative activists: ‘Be not afraid of the accusations that you’re a voter suppressor,’” *Washington Post*, (October 12, 2020), https://www.washingtonpost.com/investigations/council-national-policy-video/2020/10/14/367f24c2-f793-11ea-a510-f57d8ce76e11_story.html

¹³ Elura Nanos, “Ginni Thomas Just Apologized to Clarence Thomas’s Court Clerks. The Internet Was Not Pleased.” *Law & Crime*, (February 2, 2021), <https://lawandcrime.com/supreme-court/ginni-thomas-just-apologized-to-clarence-thomass-court-clerks-the-internet-was-not-pleased/>

¹⁴ See “Impact Awards Preview,” (December 7, 2017), <https://www.youtube.com/watch?v=EtZY2jEMhlw&t=3918s>

A. President Trump tapped Leo, a leader of the Federalist Society, to create the list of judges he picked from, but Leo's finances are not public.

Leo was Trump's "judge whisperer." In 2016, Trump asked Leo to create a list of potential Supreme Court nominees, and Leo did. He also aided Trump with pre-vetting his 231 lower court picks. (Leo's central role in judicial nominations dates back nearly two decades. CMD asks the Subcommittee to allow it to supplement the record with analysis of his role in 2003-2005 based on the documents disclosed during the Kavanaugh nomination to the Supreme Court.)

In at least 14 separate instances, Trump credited Leo's Federalist Society publicly, making comments like telling Pat Robertson on October 24, 2016, "The Federalist Society vetted very carefully great scholars, pro-life, very, very fine people ... We have a list of twenty judges and all been vetted (sic) by Federalist Society."

After Trump became president, Leo worked with White House Counsel Don McGahn¹⁵ on the nomination of Neil Gorsuch to fill the vacancy created by Justice Antonin Scalia's death. GOP senators held that vacancy open for more than 400 days, blocking a hearing on President Obama's nomination of the uncontroversial Judge Merrick Garland, who is now President Joe Biden's nominee to become attorney general.

Despite his central insider role in selecting Trump's judicial nominees, Leo was a "volunteer" and therefore not required to file any financial disclosures of his sources of income or his investments. Despite taking a partial leave from the Federalist Society and a 25% pay cut,¹⁶ Leo appeared to increase his wealth significantly during his tenure as Trump's judicial selector-in-chief, including the purchase of a \$3.3 million mansion in Maine.¹⁷

In 2018, the year Trump nominated Kavanaugh to the Supreme Court, Leo paid off a 30-year mortgage he took out on his home in 2010, 22 years ahead of schedule.¹⁸ On the eve of Kavanaugh's confirmation vote, in October 2018, Leo closed on a luxurious 12-bedroom Maine estate, valued at more than \$4 million, which he purchased for \$3.3 million.

In 2019, Leo hosted a fundraiser at that very mansion for Sen. Susan Collins, who cast a key vote for Kavanaugh's confirmation.¹⁹ According to FEC filings, donors to Collins at that protested event included C. Boyden Gray (the former White House Counsel, who previously

¹⁵ Arn Pearson, "Don McGahn, Trump White House Counsel, Has Long Courtted Controversy," *prwatch.org*, (November 22, 2016), <https://www.prwatch.org/news/2016/11/13176/don-mcghahn-trump-transition-lawyer-has-long-courtted-controversy>

¹⁶ The Federalist Society's tax filing for 2018, when Leo was its Executive Vice President, shows he took a more than \$40,000 cut that year on top of a nearly \$80,000 cut the year before in his total compensation, while he was partly "on leave." (His total compensation as reported by the Federalist Society was \$488,870 in 2016. 410,030 in 2017; and \$367,365 in 2018. The 2019 filing is not yet available.)

¹⁷ Colin Woodard, "Why did Trump's 'judge whisperer' buy a house on the Maine coast?" *Portland Press Herald*, (August 18, 2019), <https://www.centralmaine.com/2019/08/18/why-did-trumps-judge-whisperer-buy-a-house-on-the-maine-coast/#>

¹⁸ Robert O'Harrow and Shawn Boberg, "A conservative activist's behind-the-scenes campaign to remake the nation's courts," *Washington Post*, (May 21, 2019),

<https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/>

¹⁹ Mike Tipping, "Collins attends fundraiser at \$4m mansion of nation's top anti-choice judicial activist," *Maine Beacon*, (August 8, 2019), <https://mainebeacon.com/collins-attends-fundraiser-at-4m-mansion-of-nations-leading-anti-choice-judicial-activist/>

launched and nurtured dark money groups around judicial nominations, like the Committee for Justice) and Neil and Ann Corkery, anti-choice/anti-gay activists at the center of Leo's dark money network.^{20 21}

Public disclosures for executive branch officials are designed to root out conflicts of interest. That a person could play such an important role without filing any financial information underscores how severely unregulated this arena is and why reform is vital to help protect the integrity of our highest Court, the federal judiciary, and the judicial selection process.

B. Leo's dark money ring is growing.

In 2019, the *Washington Post* documented how Leo sits at the hub of a secretive scheme to capture the courts and remake our laws, with a cadre of his confidantes and groups.²² The *Post* tallied that dark money network's combined income between 2014 and 2017 at \$250 million, before the big fight around Justice Kavanaugh's confirmation.

When 2018 tax records are added, along with new groups that popped up in Leo's network, that total reaches more than \$400 million, based on True North Research's calculations updating that figure. That does not include any spending on the confirmation of Justice Amy Coney Barrett, or any spending by Koch's Americans for Prosperity.

Leo's judicial nominations influence network includes²³ the following dark money nonprofits and limited liability companies:

- **CRC Advisors.**²⁴ In 2020, Leo announced he was moving from executive vice president to co-chair of the Federalist Society to lead a for-profit company called CRC Advisors. It advises wealthy donors on judicial appointments, state officials, and policies. Its CEO is Leo's friend Greg Mueller, who led Creative Response Concepts (CRC), a public relations firm that Koch groups have hired. CRC has been a major contractor of the Federalist Society since at least 2007 and has been paid by numerous Leo organizations in recent years.²⁵ Jonathan Bunch serves as its executive director and is a former Federalist Society staffer, according to a CRC press release.
- **Judicial Crisis Network/Concord Fund.** After the 2004 election, the Judicial Crisis Network (JCN) was conceived at a small dinner party Leo attended with Neil Corkery and others. Justice Antonin Scalia was a guest. Launched as the Judicial Confirmation

²⁰ Maine Public, "Protesters met Susan Collins outside a fundraiser hosted by Trump's 'judge whisperer,'" *Bangor Daily News*, (August 11, 2019), <https://bangordailynews.com/2019/08/09/news/protesters-met-susan-collins-outside-a-fundraiser-hosted-by-trumps-judge-whisperer/>

²¹ Federal Election Commission, "Collins for Senator," campaign finance filing (August 15, 2019), https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00314575&committee_id=C00705780&contributor_name=corkery&two_year_transaction_period=2020&two_year_transaction_period=2018&two_year_transaction_period=2016&line_number=F3-11A1

²² Robert O'Harrow and Shawn Boberg, "A conservative activist's behind-the-scenes campaign to remake the nation's courts," *Washington Post*, (May 21, 2019), <https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/>

²³ Backgrounder, <https://truenorthresearch.org/2020/10/backgrounder-on-the-supreme-court-judge-amy-barrett-trump-advisor-leonard-leo-and-billionaire-charles-koch/>

²⁴ See https://www.sourcewatch.org/index.php/Creative_Response_Concepts

²⁵ CRC Public Relations, "Clients," CRC Public Relations, (archived January 30, 2007), <https://web.archive.org/web/20070130062137/http://www.crcpublicrelations.com/clients.aspx>

Network, it was created in anticipation of the Supreme Court vacancies that George W. Bush ultimately filled with Justices John Roberts and Samuel Alito. Corkery was one of three original board members, with Gary Marx (a Ralph Reed operative) and James Hirszen (an advisor to Mel Gibson's splinter Traditionalist sect). Corkery has acted as a treasurer of several Leo-linked groups, in addition to helping to lead the anti-gay National Organization for Marriage.

JCN is led by Carrie Severino, a protégé of Leo's who used to clerk for Justice Thomas, out of the Federalist Society office. But, according to a former media relations director for Leo, "The JCN is Leonard Leo's PR organization—nothing more and nothing less."²⁶ The group serves as a major conduit of money to the Republican Attorneys General Association, its sister group the Rule of Law Defense Fund, and the Republican State Leadership Committee (which has spent millions to try to capture state Supreme Courts, including on hundreds of thousands of ads in 2020).^{27 28}

During the Trump administration, JCN received massive infusions of cash from one donor, whose identity was not made public. Subsequently filings by a group called the Wellspring Committee, discussed below, showed it provided similarly large grants to JCN, and Wellspring in turn received most of its funding from a single secret source. For example, in 2018, Wellspring made a \$17.1M anonymous donation to Judicial Crisis Network (78% of total revenue of \$22M in dark money that year).²⁹ The year before that, it made a \$21.5M anonymous donation to JCN (84% of revenue of \$25.6M in dark money that year).³⁰

- **Wellspring Committee.** The group was created and run by Ann and Neil Corkery. Its origins are in the Koch donor network.³¹ Then, after Justice Scalia died, it got more than \$28 million from one donor. In 2016-17, it gave JCN \$38 million, as JCN blocked Garland and backed Gorsuch. After much scrutiny and Kavanaugh was confirmed, it closed its doors. In all, it gave JCN more than \$58 million.

²⁶ Jay Michaelson, "The Secrets of Leonard Leo, the Man Behind Trump's Supreme Court Pick," *Daily Beast*, (July 24, 2018), <https://www.thedailybeast.com/the-secrets-of-leonard-leo-the-man-behind-trumps-supreme-court-pick?ref=scroll>

²⁷ 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/>

²⁸ 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/>

²⁹ Anna Massoglia and Andrew Perez, "Secretive conservative legal group funded by \$17 million mystery donor before Kavanaugh fight," *Center for Responsive Politics*, (May 17, 2019), <https://www.opensecrets.org/news/2019/05/dark-money-group-funded-by-17million-mystery-donor-before-kavanaugh/>

³⁰ Judicial Crisis Network, "Judicial Crisis Network 2016 form 990," IRS, (May 15, 2016), <https://www.documentcloud.org/documents/4463990-Judicial-Crisis-Network-990-2016-2017.html>

³¹ Viveca Novak and Peter Stone, "The JCN Story: Building a Secretive GOP Judicial Machine," *Center for Responsive Politics*, (March 23, 2015), <https://www.opensecrets.org/news/2015/03/the-jcn-story-building-a-secretive-gop-judicial-machine/>

- **Rule of Law Trust.** As Wellspring was being closed down, Neil Corkery created this group in 2018.³² Leo is listed as its only trustee, and almost all its known expenses are related to BH Group reimbursements, another Leo group. Rule of Law Trust brought in three contributions (possibly from one, two, or three individuals) totaling \$80 million in 2018. It distributed two grants in 2019: \$500,000 to People United for Privacy and \$895,000 to America Engaged.
- **America Engaged.** Leo is this group's president, and Bunch is a director. Other board members are C. Boyden Gray and Todd Graves, a former state attorney general. It has given nearly \$4 million to Charles Koch's Freedom Partners. In 2017, it gave nearly \$1 million to the NRA as it backed Gorsuch.³³
- **Judicial Education Project/85 Fund.** This is a Neil Corkery entity tied to Leo. JEP's other fictitious names are the "Law and Policy Forum" and the "Honest Elections Project" (HEP), which has been criticized for peddling voter fraud claims. JEP has filed amicus briefs in Severino's name siding with Trump on emoluments, and in cases on abortion, the Affordable Care Act, Deferred Action for Parents of Dreamers, the Voting Rights Act, and attacks on workers.^{34 35}
- **BH Group, LLC.** This was created by Corkery after Scalia died. As of the last known publicly filing, Leo controls 35% of it, and he has been listed as an employee.^{36 37} Since 2016, it received \$2.37 million from JCN and \$2 million from JEP. It also contributed \$1 million to Trump's inauguration. Wellspring gave it over \$1.5 million for PR, yet it does not have a website.³⁸

³² Robert Maguire, "\$80 million dark money group tied to Trump Supreme Court advisor, Leonard Leo," *Citizens for Responsibility and Ethics in Washington*, (October 23, 2020), <https://www.citizensforethics.org/reports-investigations/crew-investigations/80-million-dark-money-group-tied-to-trump-supreme-court-advisor-leonard-leo/>

³³ See Issue One's [report](#) for detailed funding information, <https://www.issueone.org/dark-money-groups-us-chamber-of-commerce/>.

³⁴ The "[Honest Elections Project](#)" has also run ads opposing mail-in balloting, encouraged the purging of voter rolls, and filed briefs in support of what voting rights advocates have called voter suppression. Its executive director Jason Snead is a former senior policy analyst for the Heritage Foundation, where he was tasked with developing the Heritage Election Fraud Database that the Brennan Center has strongly critiqued. HEP is [actively trying to rollback voting rights in the states](#).

³⁵ Nicholas Riccardi, "Conservative group pushes proposals to tighten voting laws," *Associated Press*, (March 2, 2021), <https://www.startribune.com/conservative-group-pushes-proposals-to-tighten-voting-laws/600029431/>

³⁶ Robert Maguire, "\$80 million dark money group tied to Trump Supreme Court advisor, Leonard Leo," *Citizens for Responsibility and Ethics in Washington*, (October 23, 2020), <https://www.citizensforethics.org/reports-investigations/crew-investigations/80-million-dark-money-group-tied-to-trump-supreme-court-advisor-leonard-leo/>

³⁷ Federal Elections Commission, "Weber for Congress: itemized receipts," campaign finance filing, (2018), <https://docquery.fec.gov/cgi-bin/forms/C00669069/1222738/sa/11A1>

³⁸ Robert Maguire, "\$1 million mystery gift to Trump inauguration traced to conservative legal activists," *Center for Responsive Politics*, (May 14, 2018), <https://www.opensecrets.org/news/2018/05/mystery-gift-to-trump-inauguration-from-conservative-activists/>

- **BH Fund.** Leo is the president; Bunch is a director. It was launched with a secret \$24 million donor and gave \$20 million to George Mason University's law school, securing Scalia's name and Leo's special influence.^{39 40}
- **Freedom and Opportunity Fund.** Leo is president, with Graves and Bunch on the board. It gave \$4 million to the Independent Women's Voice⁴¹ as it sought to keep Scalia's vacancy open and supported the Gorsuch nomination. It received \$400,000 from BH Group in 2017.

Other groups in Leo's judicial influence network include Catholic Voices, the Catholic Association, and the Catholic Association Foundation.

C. Leo's Federalist Society wields exceptional influence in the federal courts.

The Federalist Society was created in 1981 as a debating society to push a "conservative" and "libertarian" agenda in law schools. Antonin Scalia was one of its first advisors, before President Reagan made him a judge. It backed him for the Supreme Court.⁴² Becoming a Federalist Society law school advisor appears to have helped provide a fast track to a nomination for a federal judgeship, as Scalia, Robert Bork, and Frank Easterbrook all followed that path.

According to the *New York Times*, by 1986, "more than half the 153 Reagan-appointed Justice Department employees and all 12 assistant attorneys general [were] members or ha[d] spoken at Federalist Society events."

One leader predicted to the *New York Times*: "Twenty years from now we will see our Cabinet secretaries and Federal Justices coming from the Federalist Society."

Almost 40 years later, five of the current justices on the Supreme Court are either former Federalist Society members of or have been frequent speakers at its events. Most of Trump's circuit court nominees have deep ties to the group.

For example, 5th Circuit Judge Edith Jones credited the Federalist Society, Leonard Leo, and its director, Eugene Meyer, with putting five new Trump judges on that court in less than a year. (That tally is now six out of 17.)⁴³ At that event in Texas with Judge Jones, on the eve of the Senate Judiciary Committee's hearings on Kavanaugh's nomination to the Supreme Court, Justice Thomas joked that Leo was "the third most powerful man in the world."⁴⁴

³⁹ Jay Michaelson, "The Secrets of Leonard Leo, the Man Behind Trump's Supreme Court Pick," *Daily Beast*, (July 24, 2018), <https://www.thedailybeast.com/the-secrets-of-leonard-leo-the-man-behind-trumps-supreme-court-pick?ref=scroll>

⁴⁰ Mark Joseph Stern, "What the Koch Brothers' Money Buys," *Slate*, (May 2, 2018), <https://slate.com/news-and-politics/2018/05/we-now-know-how-the-koch-brothers-and-leonard-leo-buy-special-favors.html>

⁴¹ See <http://iwfexposed.org/>

⁴² "THE FEDERALIST SOCIETY: The cover of a pamphlet published by the Federalist Society; Judge Scalia's Cheerleaders," *New York Times*, (July 23, 1986), <https://www.nytimes.com/1986/07/23/us/federalist-society-cover-pamphlet-published-federalist-society-judge-scalia-s.html>

⁴³ See <https://fedsoc.org/conferences/2018-texas-chapters-conference#agenda-item-gregory-s-coleman-memorial-lecture-justice-clarence-thomas>

⁴⁴ See <https://fedsoc.org/conferences/2018-texas-chapters-conference#agenda-item-gregory-s-coleman-memorial-lecture-justice-clarence-thomas>

The Federalist Society Gala in 2019 featured Sen. McConnell bragging about capturing the Court and how “we have flipped the 2nd Circuit, the 3rd Circuit, and we will flip the 11th Circuit.”⁴⁵ He proclaimed that blocking Garland’s confirmation in 2016 was the most important decision of his life. And, in a foreshadowing of his efforts to push Barrett onto the Court despite the impending election, he told the Federalist Society crowd that his new motto was: “leave no vacancy behind.”⁴⁶

Despite all this, the Federalist Society has repeatedly claimed it has no policy agenda and is not involved in judicial selection. It has also stressed that Leo was on leave, despite Trump’s statements to the contrary. The facts speak for themselves and so do the results. Fully 86% of the federal judges appointed by Trump were members of the Federalist Society, including those for the nation’s highest court.

D. The Federalist Society is funded by big secret donors and huge corporations, and advances major corporate agendas.

The Federalist Society’s two largest known funders are two donor advised funds (DAFs), DonorsTrust and Donors Capital Fund, which were created specifically to hide the identity of the real donors who fund right-wing groups. These DAFs’ secret donors have given the Federalist Society a combined total of over \$28 million between 2015 and 2019, according to a CMD analysis of IRS filings.

The Federalist Society’s biggest non-DAF donor is the Lynde and Harry Bradley Foundation. The \$930 million fund from the inherited wealth of anti-labor industrialists gave the Federalist Society \$2.6 million between 2015 and 2019. Its board is chaired by Koch ally and billionaire Art Pope. Bradley has also secretly funded JEP’s amicus briefs to the Court, as True North Research and the Center for Media and Democracy have documented.⁴⁷

Other donors that have given it seven-figure sums between 2015 and 2019 include the Charles Koch Foundation (\$2.1 million), Robert Mercer’s foundation (\$2.8 million), and the Searle Freedom Trust (\$2 million). Both Koch and Searle also fund amici. It is also noteworthy that Leo has served with billionaire Rebekah Mercer on the board of one of her pet projects, Reclaim New York, alongside Steve Bannon. Mercer has given at least \$6 million to the Federalist Society.

The Federalist Society is also stacked with corporate attorneys whose day jobs are to defend some of the biggest corporations in the world. Through its publications and events, the Federalist Society advances a pro-corporate agenda to limit the ability of Congress and federal agencies to regulate corporations and to thwart the mitigation of climate change under the guise of a merely neutral philosophy.⁴⁸ Other members are GOP election lawyers who work to limit

⁴⁵ Mark Joseph Stern, “The Federalist Society Just Proved It’s All In for Trump,” *Slate*, (November 18, 2019), <https://slate.com/news-and-politics/2019/11/federalist-society-barr-mcconnell-trump.html>

⁴⁶ <https://twitter.com/JoshMBlackman/status/1195146526890299392?s=20>

⁴⁷ Lisa Graves, “Snapshot of Secret Funding of Amicus Briefs Tied to Leonard Leo–Federalist Society Leader, Promoter of Amy Barrett,” *ExposedbyCMD*, (October 10, 2020), <https://www.exposedbycmd.org/2020/10/10/snapshot-secret-funding-amicus-briefs-tied-leonard-leo-federalist-society-leader-promoter-amy-barrett/>

⁴⁸ Desmog, “Federalist Society for Law and Public Policy Studies,” *Desmog Blog*, <https://www.desmogblog.com/federalist-society-law-and-public-policy-studies>

Congress' power to pass laws like *McCain-Feingold* to limit or even disclose the dark money distorting our elections.

E. The Barrett nomination provides a snapshot of how Leo has shaped the U.S. Supreme Court.

Leo Effectively Pre-Nominated Barrett. According to a new book co-authored by Severino—who worked closely with Leo on the pressure campaigns to block Garland and install Gorsuch—Leo met with then-White House Counsel Don McGahn in April 2017 about expanding Trump's Supreme Court list to include Barrett.⁴⁹⁵⁰

At that time, Barrett had been a law professor for 15 years and had no judicial experience, but Leo and the White House Counsel's Office were going to remedy that by getting her some time sitting on a federal circuit court.

In May of that year, Trump nominated Barrett to a vacancy on the Seventh Circuit created by McConnell's refusal to allow President Obama's nominee, Myra S. Powell (the first black woman appointed to the Indiana Supreme Court), a hearing for nearly a year.

Leo Lobbied Trump to Add Barrett. According to Severino, Leo met for dinner twice, in June and September 2017, with Trump to discuss nominations including Barrett a candidate on Trump's list for the next vacancy on the Supreme Court, which was expected to be Ruth Bader Ginsburg. Barrett was confirmed to the Seventh Circuit on Halloween of 2017.

On November 17, McGahn announced that Trump had added Barrett to his short list. That announcement came during the Federalist Society's National Convention, where Barrett spoke about Scalia for whom she had clerked.

Barrett has been a frequent flier for Federalist Society events. After becoming a federal judge, Barrett suddenly appeared to have a lot more time to speak at Federalist Society events than when she was teaching a few classes a semester as a law professor. In her nearly three years paid to be a federal judge, she addressed Federalist Society meetings almost two dozen times. It is the group to whom she has spoken most frequently.

Barrett also has close ties to Alliance Defending Freedom, an anti-LGBTQ group whose claims have been published by the Federalist Society.

Leo's Agenda for "Constitutionalist" Barrett Is Far-Reaching. Barrett and the other Trump appointees represent far more than the anti-choice and anti-Affordable Care Act agenda of Leo and his funders. Leo bragged in 2019 about how America is about to witness "the revival of our structural Constitution by the U.S. Supreme Court... a newfound embrace of limited constitutional government in our country. I don't think this has really happened since probably

⁴⁹ Mollie Hemingway and Carrie Severino, "Justice on Trial: The Kavanaugh Confirmation and the Future of the Supreme Court," *Regnery Publishing*, (October 2020)

⁵⁰ Arn Pearson, "Don McGahn, Trump White House Counsel, Has Long Courted Controversy," *ExposedbyCMD*, (November 17, 2016), <https://www.exposedbycmd.org/2016/11/22/controversial-figure-trump-transition-legal-counsel/>

before the New Deal, which means no one in this room has probably experienced the kind of transformation that I think we are beginning to see.”

The decades before the New Deal, known as the “*Lochner* Era,” were marked by extreme judicial activism where courts struck down protections people clamored for to regulate the business activities of industrialists whose wealth and agenda had dominated U.S. law, destroyed the economy, and impoverished millions.

The echo of that laissez-faire activism can be heard in the remarks of then-Federalist Society advisor Antonin Scalia at its first national meeting: “The free market has the ability to order things in the most efficient manner, and generally should be allowed to operate free of government intervention.”

“Limited constitutional government” is a variation on the “limited government” mantra used by major Koch-funded groups like Americans for Prosperity, the Cato Institute, and the American Legislative Exchange Council, all of which strongly backed Barrett’s confirmation.

F. Charles Koch and his political network of billionaire donors have been major players in capturing the courts.

“We’re literally creating a generational change in the direction of the courts,” Sen. Thom Tillis (R-NC) announced to wide applause at Charles Koch’s semi-annual gathering of billionaires in 2018.⁵¹ That was after Gorsuch was confirmed to the Supreme Court seat Sen. McConnell blocked Obama from filling and well before the Senate had confirmed more than 200 federal judges, backed by Koch groups, to lifetime seats.

Although Charles Koch has sought to distance himself from Trump the man, his network has been very successful in using Trump the administration to accomplish “once-in-a-generation” tax cuts, roll back regulations protecting our environment, and capture the courts.⁵² The Koch network spent heavily in 2016 to try to retain Republican control of the Senate, and that spending buoyed Trump in swing states, a playbook it tried to run again in 2018.⁵³⁵⁴ His political arm, Americans for Prosperity (AFP), bragged that 2020 would be its biggest year ever.⁵⁵

Koch Has Invested in Court Capture. With her election-eve appointment on the line, Koch’s AFP said it was “all in” for Barrett.⁵⁶

⁵¹ Rebecca Berg, “Koch brothers network spending more to save the GOP in the midterms than ever before,” *CNN*, (January 29, 2018), http://lite.cnn.com/en/article/h_8b89209aa9d68c5c98b05aba31f099dd

⁵² Lee Fang and Nick Surgey, “Koch Document Reveals Laundry List of Policy Victories Extracted from the Trump Administration,” *The Intercept*, (February 25, 2018), <https://theintercept.com/2018/02/25/koch-brothers-trump-administration/>

⁵³ The Seminar Network, “Advancing Comprehensive Tax Reform,” *KochDocs*, (2017), <http://kochdocs.org/2019/06/07/koch-seminar-network-advancing-comprehensive-tax-reform/>

⁵⁴ David Armiak, “Koch Cash Instrumental in Key Senate Races and May Have Buoyed Trump,” *ExposedbyCMD*, (November 28, 2016), <https://www.exposedbycmd.org/2016/11/28/koch-cash-instrumental-senate-races-buoyed-trump/>

⁵⁵ Fredreka Schouten, “Koch network plans its biggest election-year effort in 2020,” *CNN*, (January 16, 2020), <https://www.cnn.com/2020/01/16/politics/charles-koch-network-2020-elections/index.html>

⁵⁶ Nancy Cook and Gabby Orr, “Trump taps Barrett, launching brawl over Supreme Court’s future,” *Politico*, (September 26, 2020), <https://www.politico.com/news/2020/09/26/trump-scotus-coney-barrett-easy-choice-422019>

In a memo obtained by Documented and The Intercept, Koch's Seminar Network (which is now called "Stand Together" and was previously called "Freedom Partners Chamber of Commerce") detailed how it gets the judges it wants confirmed.^{57 58}

In that memo to uber-rich donors, the Seminar Network noted how the groups Koch's donor collective funds mobilize activists in order to support Trump's judicial nominees.⁵⁹ It described how they used paid and earned media and had spent millions on waves of "direct mail, television and digital advertising [targeting Senators], and phone-banking and door-knocking." It also stated that Koch's Freedom Partners, Concerned Veterans for America, and AFP "have also been engaging in direct, under-the-dome tactics, working with allies like the Federalist Society."

Koch's network also took credit for pressuring three Democrats it targeted (Senators Manchin, Heitkamp, and Donnelly) to vote for Gorsuch. It said it "contacted nearly 400,000" people. In a letter to AFP Donor Activists obtained by CMD, David Koch wrote, "Thanks to our activists, starting with our unique grassroots efforts on behalf of Justice Gorsuch that won praise from the White House, we are continuing our unique grassroots efforts to support the confirmation of federal judges who will respect the Constitution and restore freedoms."⁶⁰

For Kavanaugh, the Koch network spent big to push his confirmation even before hearings began and erupted in controversy over evidence he had lied under oath and had attempted to sexually assault a fellow teen, Christine Blasey Ford—which he denied.^{61 62 63} Before September 2018, it had already contacted more than 1.2 million people, and its video ads reached millions of viewers. AFP also sent mailers targeting Sen. Heitkamp and others.⁶⁴ The total spent was not disclosed.

The *Washington Post* documented: as Leo--speaking as a leader of the Federalist Society--told donors at the Council on National Policy: "We're going to have to understand that judicial confirmations these days are more like political campaigns." That is exactly what the Koch and

⁵⁷ Lee Fang and Nick Surgey, "Koch Document Reveals Laundry List of Policy Victories Extracted from the Trump Administration," *The Intercept*, (February 25, 2018), <https://theintercept.com/2018/02/25/koch-brothers-trump-administration/>

⁵⁸ KochDocs, "Charles Koch's Nonprofits – 2019 IRS 990 Tax Filings," *KochDocs*, (2021), <https://kochdocs.org/2020/12/11/charles-kochs-nonprofits-2019-irs-990-tax-filings/>

⁵⁹ Seminar Network, "Efforts in Government: Advancing Principled Public Policy," *Seminar Network*, <https://www.documentcloud.org/documents/4364737-Koch-Seminar-Network.html>

⁶⁰ David Koch, "Letter to Potential Americans for Prosperity Donor Activists," *Americans for Prosperity*, <https://beta.documentcloud.org/documents/20508480-david-koch-letter-to-potential-americans-for-prosperity-donor-activists>

⁶¹ 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>

⁶² Americans for Prosperity, "By the Numbers: AFP's grassroots action since Judge Kavanaugh's Supreme Court nomination," *Americans for Prosperity*, (August 2018), https://mk0xituxemaauaaa56cm7.kinstacdn.com/wp-content/uploads/2018/08/AFP_SCOTUS_ByTheNumbers_8.30.pdf

⁶³ CNN, "Watch Christine Blasey Ford's opening statement," *CNN*, (September 27, 2018), <https://www.cnn.com/videos/politics/2018/09/27/christine-blasey-ford-full-testimony-senate-hearing-vpx.cnn>

⁶⁴ Americans for Prosperity, "Supreme Court Nominee Judge Brett Kavanaugh-A Proven Supporter and Defender of the U.S. Constitution," (August 2018), https://mk0xituxemaauaaa56cm7.kinstacdn.com/wp-content/uploads/2018/08/AFP-PRNT-SCOTUS_HEITKAMP_v1.pdf

Leo dark money network groups, like JCN, do. The amount they spent to back Barrett is unknown, and the edges of it will only be discernable in nonprofit IRS filings come November 2021, a year after the confirmation.

Koch is not the only wealthy interest focused on capturing the courts, but he does represent perhaps the most enduring and devoted of those investing in changing the rules through changing who interprets them. As detailed in “Captured Courts” by the Democratic Policy and Communications Committee, the judges confirmed under the Leo and Koch networks concerted campaign to remake the federal judiciary are already “rolling back the clock on civil rights, consumer protections, and the rights of ordinary Americans, reliably putting a thumb on the scale in favor of corporate and Republican political interests.”⁶⁵

Koch’s Effort Is Deeply Tied to Leo. As the Koch network’s memo noted, it has heavily funded Leo’s Federalist Society. The group has received nearly \$8 million or more from the Koch fortune over the past two decades, and Koch Industries has been regularly listed for years on its annual report as giving at least \$100,000 a year.⁶⁶ The amount Koch has given personally, if any, is not known, nor is the actual amount given by his corporation, Koch Industries.

Additionally, in 2018, the Koch network hired Leo’s key Federalist Society staffer on state courts, Sarah Field, to be AFP’s Vice President of Judicial Strategy. Field actually worked for Koch groups long before then. She had also helmed “Liberty Central,” the controversial political operation of Ginni Thomas, after Ginni left it for the entity “Liberty Consulting.” Leo was a member of Liberty Central’s board in 2010 when Ginni Thomas was president and she paid more than \$120,000. Ginni Thomas’ clients and pay since she created the consulting firm are secret and are not publicly disclosed in the annual financial reports filed by Justice Thomas with the Administrative Office of the U.S. Courts.

Koch’s Efforts Date to the 1970s. Although Koch’s investment in efforts to capture our courts has increased in recent years, his interest in influencing our courts dates back decades.

As Jane Mayer detailed in *Dark Money*, Koch has worked since the 1970s to operationalize “the Powell Memo.”^{67,68} According to Mayer, that memo, written for the Chamber of Commerce by then-tobacco lawyer, and future Justice, Lewis Powell, was:

a brilliant battle plan detailing how conservative business interests could reclaim American politics. In the spirit of Hannibal, it called for a devastating surprise attack on the...establishment, which regarded itself as nonpartisan but which the conservatives regarded as liberal. Carrying out this attack would be an alternative opinion elite that would look like the existing one, except that it would be privately funded by avowedly partisan donors intent on implementing a pro-business—and, critics would say, self-serving—political agenda.

⁶⁵ Senator Debbie Stabenow, Senator Chuck Schumer, Senator Sheldon Whitehouse, “Captured Courts,” *Democratic Policy & Communications Committee*, (May 2020),

<https://www.democrats.senate.gov/imo/media/doc/Courts%20Report%20-%20FINAL.pdf>

⁶⁶ KochDocs, “Federalist Society Annual Reports,” *KochDocs*, (October 23, 2020),

<https://kochdocs.org/2020/10/23/federalist-society-annual-reports/>

⁶⁷ Jane Mayer, “Dark Money,” *Penguin Random House*, (January 24, 2017)

⁶⁸ Lewis F. Powell, Jr., “Powell Memo,” *Greenpeace* (1971),

<https://www.greenpeace.org/usa/democracy/the-lewis-powell-memo-a-corporate-blueprint-to-dominate-democracy/>

As Charlie Cray of Greenpeace has noted, the Powell Memo urged CEOs to invest in universities and think tanks, and in efforts to “exploit[]” the judicial system and to fund litigators and amicus briefs to advance a pro-business agenda.⁶⁹

[Koch thought the Powell Memo did not go far enough.](#)⁷⁰ In a cornerstone speech on “[Anti-Capitalism and Business](#)” at his Institute for Humane Studies (IHS) in 1974, he attacked taxes as theft, the minimum wage, “so-called equal opportunity requirements, safety and health regulations, land use controls [and] licensing.”⁷¹ He also urged businesses to invest only in public institutions that “contribute in some way to our individual companies or to the general welfare of our free enterprise system.”

Through his Cato Institute and as the biggest funder of the Libertarian Party, Koch also attacked Social Security, protecting endangered species, the idea of a Department of Energy,⁷² and more.

He also used IHS to partner with the Liberty Fund to host gatherings of lawyers to advance his libertarian theories, in a precursor to the Federalist Society. One of the first successes of that effort was advancing a new legal theory that the Constitution’s Fifth Amendment requires just compensation not only for the taking of land but for the impact of regulations—by inventing the doctrine of “regulatory takings.” Through these and similar programs, Koch’s operations cultivated lawyers and professors like Henry G. Manne (later the Dean of GMU’s law school) and Richard Epstein to advance novel revisions of the law.

Since the 1960s, Koch has also sought to promote the writings of Ludwig von Mises, a free market fundamentalist who attacked New Deal reforms like Social Security. Efforts by Koch and others to promote this once-obscure Austrian economist almost led to the Federalist Society naming itself the Ludwig von Mises Society. At its launch in 1982, the Federalist Society was expressly described as both conservative and libertarian, despite the failure of the Libertarian Party at the polls in 1980, with David Koch running for vice president.⁷³ Charles Koch is not listed as a founding funder of what was then a student group, but he has made up for that with millions since.

⁶⁹ Charlie Cray, “Greenpeace Analyzes the Lewis Powell Memo: Corporate Blueprint to Dominate Democracy,” *Greenpeace*, (September 21, 2011), <https://www.greenpeace.org/usa/greenpeace-analyzes-the-lewis-powell-memo-corporate-blueprint-to-dominate-democracy/>

⁷⁰ Connor Gibson, “To Charles Koch, Universities Are Propaganda Machines,” *Huffington Post*, (January 27, 2016), https://www.huffpost.com/entry/to-charles-koch-universit_b_9090404

⁷¹ KochDocs, “1974 Charles Koch Speech: “Anti-Capitalism and Big Business” and How the Powell Memo Did Not Go Far Enough,” *KochDocs*, (1974), <https://kochdocs.org/2019/06/07/charles-koch-anti-capitalism-big-business/>

⁷² Sharon Kelly, “Documents Shine New Light on Koch Brothers’ Early Efforts to Abolish the Department of Energy,” *Desmog Blog*, (August 7, 2019), <https://www.desmogblog.com/2019/08/07/documents-shine-new-light-koch-brothers-early-efforts-abolish-department-energy>

⁷³ Nicholas Confessore, “Quixotic ’80 Campaign Gave Birth to Kochs’ Powerful Network”, *The New York Times*, (May 17, 2014), <https://www.nytimes.com/2014/05/18/us/politics/quixotic-80-campaign-gave-birth-to-kochs-powerful-network.html>

Koch Stealthily Funds Efforts to Repeal Rules and Limit Rights, Including Voting. Sen. Whitehouse observed that: “Decades ago, big corporations and right-wing ideologues figured out that judges with life tenure can carry out their unpopular agenda and cement those political victories for decades.”

That is one of the reasons why the GOP has chosen to nominate such young ideologues to the Supreme Court. In his autobiography [Square Peg](#), Sen. Orrin Hatch takes credit for blunting the impact of President Clinton’s nominees, Ruth Bader Ginsburg and Stephen Breyer, by getting the GOP caucus to allow them quick votes, because they would not serve as long as younger and more hardline judicial picks of the GOP, like Clarence Thomas. In good health, Barrett could issue rulings from the Supreme Court beyond the year 2060.

Koch’s groups variously deploy all levers to accomplish Koch’s agenda: lobbying against bills and rules, getting rules repealed when they have a Koch-friendly administration, litigating regulations, and packing the courts with judges hostile to regulation and agencies.

In its memo to donors, the Koch network also touted its success at getting the Trump administration to repeal or curtail rules, such as those regarding the [Clean Power Plan](#), the Consumer Financial Protection Board, the Keystone XL Pipeline, bars of fracking on public lands, estate tax rules, independent contractor standards, labor rights, and, of course, key ACA regulations. David Koch wrote, “Our efforts have been aligned with the Trump administration’s efforts to use Executive Orders to direct agencies and departments to dismantle regulatory overreach.” Koch would not have to spend so much on lobbying, however, if he could get justices to clear the field and bar Congress or agencies from having power, under new interpretations of the Constitution, to make such rules in the first place.

That is what the “structural Constitution” theory Leo and the Federalist Society have trumpeted is really all about. Some of the litigation to advance that agenda through judicial rulings is already underway. For example, as Chris Leonard [described](#) in the *New York Times*, part of this agenda is an attack on “Chevron” deference. That long-standing legal precedent has helped insulate agency expertise from second-guessing by courts, so long as Congress has not preempted its interpretation and the agency is not unreasonable. (Chris Leonard is the author of [Kochland](#), which details how protecting carbon from regulation is the top priority of Koch Industries and core Koch groups.)

Another variation on this theme comes in the form of the “unitary executive” theory which, among other things, contends that Congress cannot create “independent” agencies and that any executive branch employee can be dismissed by the President. Litigation or amicus briefs along these lines has been pursued by Koch-funded groups like Cato and the Heritage Foundation, as the DSCC noted.

However, some of these structural attacks are already well underway, as noted above with regard to voting rights. It would be a mistake to believe that Koch-subsidized litigation focuses only on challenging business regulations it dislikes. The reality is that its proponents have aggressively pursued an assault on democratic principles as well. Koch-funded groups have been part of “flotilla of amici,” as Sen. Whitehouse coined the term, not just on the ACA but in attacks on the very structure of our democracy, such as by gutting the Voting Rights Act and Congress’ power to limit dark money.

Notably, Sen. McConnell has praised the Koch network for supporting the *Citizens United* decision, which unleashed a tsunami of dark money, and for their help in elections, saying: “And

I want to start by thanking you, Charles and David, for the important work you're doing. I don't know where we'd be without you, and I want to thank you all for rallying to the cause."⁷⁴

II. Anonymous Influence of Huge Donors and Operatives Using a “Flotilla of Amici” Briefs to Reverse Major Precedents

Koch-funded groups have been part of a “flotilla of amici,” the phrase Chairman Whitehouse coined, not only on the Affordable Care Act (which the Koch political network has spent millions trying to block and repeal over the past decade) but in attacks on the very structure of our democracy.

This includes efforts to roll back key protections in the landmark Voting Rights Act and to reinterpret the First Amendment to limit Congress' power to regulate dark money. Right now, as we meet, another flotilla is speeding toward the Supreme Court to try to bar state regulators from having access to the schedule of major donors that nonprofits provide to the IRS.

Increasingly, we are seeing a surge in amicus briefs being filed with the Supreme Court in cases of great importance to the fundraising of the Republican Party and its policy goals. The groups represented in those briefs often share common funders, to the extent that researchers can identify them through foundation or donor advised fund tax filings. 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.

Just this past week, a news story in the *Wall Street Journal* by Jess Bravin reported that:⁷⁵

The volume of amicus briefs today is breaking records. The court's last full term, 2019-20, saw 911 amicus briefs filed, for an average of 16 per case, according to a study published in the *National Law Journal* last November. That is up from 715, or an average of nine a case, in 2010-11. The longer-term growth is even greater: Such briefs were filed in 96% of cases argued before the Supreme Court over the past decade but in just 23% of cases in the decade ended in 1955.

Supreme Court rules do not require the disclosure of the major funders of the groups filing such briefs unless the funder specifically designated funding for that particular brief. As the *Journal* reported, that's a huge loophole. “Wealthy individuals and corporations can donate money to an interest group, it puts that money in a general fund, and then uses the general fund to file an amicus brief,” Professor Paul Collins said. “And that donation doesn't fall under the Supreme Court's current disclosure rules.”

A *National Law Journal* study from November 2020 found that:

The 2019-20 term had more than 900 amicus briefs filed in argued cases, the highest average number of amicus briefs per case ever. The justices cited briefs in 65 percent of cases—another record—relying on friends of the court for

⁷⁴ Brad DeLong, “Mitch McConnell at the Koch Brothers Donor Summit: Live from La Farine CCCXIX: August 29, 2014” (transcript) <https://www.bradford-delong.com/2014/08/mitch-mcconnell-at-the-koch-brothers-donor-summit-live-from-la-farine-cccix-august-29-2014.html>

⁷⁵ Jess Bravin, “Amicus Briefs Inundate Supreme Court,” *Wall Street Journal*, (March 6, 2021), <https://www.wsj.com/articles/amicus-briefs-inundate-supreme-court-11615039201>

perspectives on government policies, history, religion, medicine, psychology, and even the financial implications of the [C]ourt's decisions.⁷⁶

In October 2020, a new review of grant documents by True North Research and the Center for Media and Democracy provided a snapshot of how groups tied to Leonard Leo have been secretly funded to file briefs with the Supreme Court to overturn U.S. laws. The documents show how grant-makers at the Bradley Foundation were working closely with Leo at the Federalist Society on how the foundation could fund “two Supreme Court amicus projects” in 2014 while avoiding funneling the money through DonorsTrust. According to the grant summary from the Bradley Foundation, Leo’s Judicial Education Project (JEP) sought \$200,000 to help subsidize the cost of two amicus briefs. Bradley’s grant officer recommended that its board approve \$150,000 to help underwrite the costs of those briefs to the Supreme Court, making their intention clear with the statement that:

At this highest of legal levels, it is often very important to orchestrate high-caliber amicus efforts that showcase respected high-profile parties who are represented by the very best lawyers with strong ties to the Court. Such is the case here, with *King* and *Friedrichs*, even given Bradley’s previous philanthropic investments in the actual, underlying legal actions.

In essence, the Bradley Foundation wanted to subsidize an amicus brief to the U.S. Supreme Court prepared by a for-profit law firm for GOP Members of Congress by funding a non-profit group working with that firm. These documents, among many others, show how Leo has played a central role, not only in getting judges appointed, but also in getting legal arguments before the courts to try to rollback legal precedents and statutes that he or his funders dislike.

To illustrate how the flotilla of amici operate, researchers at the Center for Media and Democracy examined a five cases: two completed cases, *Janus v. Association of Federal, State, County, and Municipal Employees* and *Seila Law v. Consumer Financial Protection Bureau*; two cases currently pending for argument or decision by the Supreme Court this term, *Americans for Prosperity Foundation v. Becerra* (previously versus Harris) and *Cedar Point Nursery v. Hassid*; and one seeking Supreme Court review: *Thompson v. Marietta Education Association*.

- ***Janus v. AFSCME***.⁷⁷ In its June 2018 *Janus* decision, the U.S. Supreme Court overturned four decades of precedent that permitted public employee unions to collect agency fees from unit members as compensation for bargaining and representational services. The prior precedent under *Abood* did not force non-members to subsidize speech or pay dues, but rather held that unions could be compensated for services provided to non-members.

The case called *Friedrichs v. California Teachers Association* preceded *Janus*, but ended with a tie following the death of Justice Antonin Scalia in February 2016. Many of the groups that filed amicus briefs in *Friedrichs* also did so in *Janus*. As the Center for

⁷⁶ Anthony J. Franze and R. Reeves Anderson, “Amicus Curiae at the Supreme Court: Last Term and the Decade in Review,” *The National Law Journal*, (November 18, 2020), <https://www.arnoldporter.com/-/media/files/perspectives/publications/2020/11/amicuscuriae-at-the-supreme-court.pdf>

⁷⁷ <https://www.scotusblog.com/case-files/cases/janus-v-american-federation-state-county-municipal-employees-council-31/>

Media and Democracy has shown, the State Policy Network orchestrated a massive PR campaign around that litigation.⁷⁸

Friedrich's successor case, *Janus*, was just one in a wave of 5-4 rulings reversing legal precedents where a majority of Justices appointed by the same party issued rulings aligned with the party that appointed them. With the *Janus* decision, the 5-4 Court reversed more than 40 years of settled law, and repeatedly cited *Citizens United* as a precedent for how to overrule more precedents to come. It also signaled its disdain for the negotiated contracts for American workers' retirement, and it suggested that corporate "speech" should be given even greater protection. It signaled a wave of activism--and amicus briefs--to come.

- ***Seila Law v. CFPB***.⁷⁹ This case involved a challenge to the constitutionality of a statute limiting the power of the President to remove the head of the Consumer Financial Protection Bureau without cause.⁸⁰ The Court minimized a precedent that stood for 85 years protecting the Federal Trade Commission chair from removal without cause and asserted that the structure of the Constitution forbids Congress from limiting the power of a president to fire the CFPB's leader.
- ***AFPP v. Becerra***.⁸¹ This case is currently pending and is a challenge to California's donor transparency requirements.⁸² Under California law, charitable nonprofits that solicit donations in the state are required to confidentially submit to regulators their Internal Revenue Service (IRS) Schedule B forms identifying donors who gave \$5,000 or more in a given tax year. This requirement, which is identical to what the IRS also mandates, provides information the state can use when investigating fraud. For years, AFP has refused to provide that form to the state.
- ***Cedar Point Nursery v. Hassid***.⁸³ In this case, a corporation is claiming that long-standing state regulations that allow union representatives to give notice and access farm workers at the worksite constitute a taking without compensation in violation of the Fifth Amendment.
- ***Thompson v. Marietta Education Association***.⁸⁴ This case involves a claim that designating a labor union to represent and speak for public-sector workers violates the First Amendment if an employee objects to its advocacy on behalf of workers.

The Center for Media and Democracy analyzed all of the amicus briefs filed in these cases and found 19 organizations that filed and/or signed onto at least three. The 19 include Charles Koch's Americans for Prosperity Foundation, a plaintiff in one of the cases, the Chamber of Commerce, the Republican Attorneys General Association, and members of the State Policy

⁷⁸ Mary Bottari, "Behind *Janus*: Documents Reveal Decade-Long Plot to Kill Public-Sector Unions," *In These Times*, (March

2016), https://inthesetimes.com/features/janus_supreme_court_unions_investigation.html

⁷⁹ <https://www.scotusblog.com/case-files/cases/seila-law-llc-v-consumer-financial-protection-bureau/>

⁸⁰ Alex Kotch, "Conservative Foundations Finance Push to Kill the CFPB," *ExposedbyCMD*, (February 13, 2020), <https://www.exposedbycmd.org/2020/02/13/conservative-foundations-finance-push-kill-cfpb>

⁸¹ <https://www.scotusblog.com/case-files/cases/americans-for-prosperity-foundation-v-becerra/>

⁸² Alex Kotch, "Koch Funds Groups Supporting Lawsuit Against Donor Transparency," *ExposedbyCMD*, (January 10, 2020), <https://www.exposedbycmd.org/2020/01/10/koch-funds-groups-supporting-lawsuit-against-donor-transparency/>

⁸³ <https://www.scotusblog.com/case-files/cases/cedar-point-nursery-v-hassid/>

⁸⁴ <https://www.scotusblog.com/case-files/cases/thompson-v-marietta-education-association/>

Network, a web of state-based right-wing “think tanks” created to localize the national agenda of the American Legislative Exchange Council, a group where corporate lobbyists vote as equals with state legislators behind closed doors on “model” bills to limit the rights of ordinary people.⁸⁵

Organizations That Filed At Least Three Amicus Briefs In These Five Cases

| Organization | Janus v. AFSCME | Seila Law v. CFPB | AFPP v. Becerra | Cedar Point Nursery v. Hassid | Thompson v. Marietta |
|---|-----------------|-------------------|-----------------|-------------------------------|----------------------|
| Americans for Prosperity Foundation | | Filed | Filed | Filed | Filed |
| Buckeye Institute | Filed | Filed | Filed | Filed | Lawyers in case |
| Cato Institute | Filed | Filed | Filed | Filed | Filed |
| Center for Constitutional Jurisprudence (Claremont Institute) | Filed | Filed | Filed | Filed | |
| Chamber of Commerce | | Filed | Filed | Filed | |
| Competitive Enterprise Institute | Filed | Filed | | | Filed |
| Empire Center | Filed | | Filed | | Filed |
| Freedom Foundation | Filed | | Filed | | Filed |
| Goldwater Institute | Filed | | Filed | | Filed |
| James Madison Institute | Filed | | Filed | | Filed |
| Landmark Legal Foundation | Filed | Filed | Filed | | Filed |
| Liberty Justice Center | Filed | | Filed | Filed | Filed |
| Mackinac Center | Filed | | Filed | | Filed |
| National Right to Work Legal Defense Foundation | Filed | | Filed | | Filed |
| NFIB Small Business Legal Center/NFIB | Filed | Filed | Filed | Filed | |
| Pacific Legal Foundation | Filed | Filed | Filed | Filed | Filed |
| Pelican Institute for Public Policy | | | Filed | Filed | Filed |
| Republican Attorneys General Association | Filed | Filed | Filed | Filed | |
| Southeastern Legal Foundation | Filed | Filed | Filed | | Filed |

After an exhaustive search of IRS filings for the common foundation funders of the 19 groups, CMD researchers found that a total of \$116 million was donated by 12 funding vehicles to 18 of these organizations between 2015 and 2019 (See Appendix, Figures 1-6). This does *not* include the signatories of subgroups, as with the 100-plus groups that signed on to the Nonprofit Alliance Foundation in support of the case filed by one of the groups co-founded by Charles Koch: AFPP.

Just under \$40 million of this was contributed by three Donor Advised Funds: DonorsTrust, Donors Capital Fund, and the Bradley Impact Fund. These three donor conduits allow court influencers to avoid identification, as the contributions documented in IRS filings show them as originating from the funds, not the donors themselves.⁸⁶

Additionally, funding vehicles of the Koch family fortune—including the Charles Koch Foundation, Charles Koch Institute, Capital Leaders, Stand Together Trust, and Koch companies—have given a total of \$46.7 million to 13 of the 18 organizations over the same period.⁸⁷

⁸⁵ See https://www.sourcewatch.org/index.php?title=Americans_for_Prosperty_Foundation; https://www.sourcewatch.org/index.php?title=Republican_Attorneys_General_Association; https://www.sourcewatch.org/index.php?title=State_Policy_Network; https://www.alecexposed.org/wiki/ALEC_Exposed.

⁸⁶ See <https://www.sourcewatch.org/index.php?title=DonorsTrust>; https://www.sourcewatch.org/index.php?title=Donors_Capital_Fund; https://www.sourcewatch.org/index.php?title=Bradley_Impact_Fund.

⁸⁷ See https://www.sourcewatch.org/index.php?title=Koch_Family_Foundations; https://www.sourcewatch.org/index.php?title=Charles_Koch_Institute; https://www.sourcewatch.org/index.php?title=Capital_Leaders; https://www.sourcewatch.org/index.php?title=Stand_Together_Trust.

That is only the amount that is publicly available as a result of IRS requirements that grantees be disclosed. Any money provided to a nonprofit by a privately held corporation, like Koch Industries, or drawn on a personal checking account, such as the trust accounts David Koch sometimes used to fund groups before he died in 2019, is not included in those figures.

Other common major financial backers of the amici groups include right-wing foundations, such as the Searle Freedom Trust (\$11.8 million), the Bradley Foundation (\$9.8 million), Sarah Scaife Foundation (\$6.5 million), and the Adolph Coors Foundation (\$1.6 million).

Some of these foundations are led or controlled by CEOs or heirs of major corporations, such as Art Pope, the billionaire discount store executive who now helms the nearly \$1 billion chest of assets accumulated by the Bradley brothers from their industrial operations. Pope is a long-time funder, ally, and board member of Koch's Americans for Prosperity as well, in addition to being a major donor to GOP politicians in North Carolina and nationally.

It is also noteworthy that once a case is accepted by the Supreme Court, Republican attorneys general (who are all members of RAGA) routinely file state briefs in support of the right-wing party line. GOP attorneys general filed amicus briefs in four of the five cases the Center for Media and Democracy examined above (all but *Thompson*).

As noted above, RAGA's top funder in 2020 was Trump's "judge whisperer" Leonard Leo's The Concord Fund, which gave RAGA \$3 million. In 2019, the Judicial Crisis Network (which changed its name to the "Concord Fund" in December of that year) gave \$1 million to RAGA. In addition, Creative Response Concepts, a client of RAGA's that receives \$7,500 per month for consulting, is run by Greg Mueller, Leo's partner in CRC Advisors.⁸⁸ Republican Attorneys General have also used amicus briefs to advance other key GOP planks, as with *Gill v. Whitford* and attacks on the Affordable Care Act.⁸⁹

We also examined other major Supreme Court cases involving the structure of our democracy.

The Court is more politicized and partisan than at any time in modern U.S. history. In the past 52 years, Republican presidents have selected 16 of the Justices seated on the U.S. Supreme Court (counting both of William Rehnquist's confirmations). Democratic presidents have successfully appointed four, although they led the White House for 20 of those years. In all, the GOP has appointed 80% of the Supreme Court Justices confirmed since 1969.

And the Court is wielding its power to undermine the power of ordinary people in our democracy. With Chief Justice John Roberts at the helm, the Supreme Court has already begun Leo's revolution to change the structure of modern American democracy through a trio of cases.

Limiting Americans' Voting Rights. In a 5-4 decision, along partisan lines, in *Shelby County v. Holder* (2012), the Court overruled key protections against voter suppression in the Voting

⁸⁸ David Armiak, "RAGA Raised \$1.6 Million as Republican AGs Challenged Election Results," *ExposedbyCMD* (Feb. 10, 2021), <https://www.exposedbycmd.org/2021/02/10/raga-raised-1-6-million-as-republican-ags-challenged-election-results/>; <https://twitter.com/annalecta/status/1214619843938439168>.

⁸⁹ Mary Bottari, "SCOTUS Prepares to Hear Case that Could Put an End to Hyper-Partisan Gerrymandering and One Party Rule," *ExposedbyCMD* (Sept. 13, 2017), <https://www.exposedbycmd.org/2017/09/12/scotus-wisconsin-gerrymandering>; "Attorney General Schimel Withholds Documents Related to His Legal War Against the Affordable Care Act," *ExposedbyCMD* (Sept. 25, 2018), <https://www.exposedbycmd.org/2018/09/24/attorney-general-schimel-withholds-documents-related-his-legal-war-against-affordable-care-act/>.

Rights Act of 1965 by declaring them no longer necessary, despite new GOP restrictions that disparately impact black voters. Similarly, in that case, the Court struck down the application of crucial enforcement mechanisms of the Voting Rights Act (provisions which would have prevented some of the voter suppression that occurred in 2020). Half of the lawyers seeking to restrict the Voting Rights Act were Federalist Society members. Roughly \$12.5 million has been provided to the amici groups in this case from the Koch network of donors, not counting any donations from companies.

Limiting Power to Secure Fair Maps. In another 5-4 decision in *Rucho v. Common Cause* (2019), the Court declared that federal courts do not have the power to overturn extreme partisan map-drawing that grossly distorts our representative democracy (such as GOP candidates winning 10 of 13 congressional seats but only 53% of the vote statewide). In this case, nearly half of the lawyers were Federalist Society members, and Koch's donor network has given at least \$2 million to the amici.

Limiting Power to Curb Corruption. In the 5-4 *Citizens United v. FEC* decision in 2010, the Court barred Congress from regulating groups raising and spending money for "independent" spending to influence an election. It struck down key provisions of the Bipartisan Campaign Reform Act (McCain-Feingold) designed to limit the corrosive and distorting influence of dark money. That law, McCain-Feingold, was opposed by Sen. Mitch McConnell and others in the GOP. In the case, which rewrote First Amendment jurisprudence, 17 of the lawyers on the amicus briefs were Federalist Society members. Over time the Koch network of funding has given roughly \$28.5 million to the amici groups, not counting any funding this past year or any from Koch Industries.

These 5-4 rulings are structural edicts, thumbs on the scales of justice, that have changed key rules in our democracy that benefit the same political party that appointed those Justices.

Thus, the stability of the law does not appear to be of great concern to the GOP activist justices who have been eagerly reversing precedents by striking down decades of settled law at the behest of amicus groups funded by billionaires and secretive donors. This is affecting almost every major area of law.

New vehicles are being deployed by right wing networks to further influence the outcome of litigation through amici, as the Center for Media and Democracy detailed last month in a report about amicus briefs being coordinated by a new operation called "American Juris Link," a litigation effort "incubated" by the right-wing mainstay SPN. It was launched in 2019 with start-up funds from the Bradley Foundation, and additional cash from DonorsTrust and the Charles Koch Foundation.⁹⁰

American Juris Link's president Carrie Ann Donnell, who just so happens to also serve as director of the Federalist Society's Pro Bono Resource Center, describes the new effort as, "basically like the SPN for litigators."⁹¹

⁹⁰ David Armiak, "New Right-Wing Litigation Center Working to Upend COVID-19 Public Health Restrictions, Fight Unions," *ExposedbyCMD*, (February 15, 2021), <https://www.exposedbycmd.org/2021/02/15/new-right-wing-litigation-center-working-to-upend-covid-19-public-health-restrictions-fight-unions/>

⁹¹ *Ibid*

SPN's executive vice president Tony Woodlief, Ballotpedia's publisher Leslie Graves (no relation to the author of this testimony), and Rule of Law Defense Fund's executive director Peter Bisbee all serve on the board of American JurisLink. The Rule of Law Defense Fund is the sister organization of the Republican Attorneys General Association, which came under a storm of criticism for its role in promoting the Jan. 6 events that led to the violent insurrection at our Capitol.

SPN President and CEO Tracie Sharp praised the new partnership with American Juris Link as "a durable freedom infrastructure...where you have think tanks...locking arms with litigators to really press forward to be strategic, to be agile." "This is how we are going to have state solutions, national impact in both the short term and the long term," Sharp said.⁹²

Accordingly, the Center for Media and Democracy supports the AMICUS Act, which would bring much needed transparency about who is really funding the growing industry of amicus briefs.

III. No Required Code of Conduct for Supreme Court Justices

In addition to these two major problems, which affect both the integrity of the Supreme Court and the appearance of its impartiality, the lack of a binding code of ethics makes our nation's top court uniquely weak when it comes to standards of conduct. Our highest court should be bound by the highest standards, not the lowest or non-enforceable ones.

As Alliance for Justice noted in a letter signed by more than 100 law professors, "Adherence to mandatory ethical rules by justices, and requiring transparent, reviewable recusal decisions that do not turn solely on the silent opinion of the challenged justice, will reinforce the integrity and legitimacy of the Supreme Court."⁹³

Numerous groups, including the Center for Media and Democracy, have called for an enforceable Code of Conduct for the Supreme Court.⁹⁴ The Court has also been criticized for allowing a justice to rule on his or her own recusal issues, with no review by other judges. Earlier this year, True North Research detailed how Justice Amy Coney Barrett's father was centrally involved in expanding the offshore drilling operations of Shell Oil, and she refused to recuse herself from a case pending before the Supreme Court in which Baltimore sued Shell for the damages it is experiencing from the climate changes that are underway. Given Michael Coney's central role advising Shell, he could well be called as a witness if the case is allowed to proceed.⁹⁵ The Supreme Court does not provide any means for other Justices to review this type of conflict of interest.

⁹² *Ibid*

⁹³ <https://www.afj.org/article/alliance-for-justice-applauds-h-r-1-scotus-ethics-provision/>

⁹⁴ Lisa Graves, "Supremely Unseemly Conduct by Supreme Court Justices Spurs Call for Mandatory Ethics Rules," *PR Watch*, (January 9, 2012), <https://www.prwatch.org/news/2012/01/11226/supremely-unseemly-conduct-supreme-court-justices-spurs-call-mandatory-ethics-ru>

⁹⁵ Lisa Graves and Caroline Jones, "Justice Barrett's Ties to Shell and API Are Far Deeper Than Reported; Her Father Could Be Deposed in Climate Change Suits," *True North Research*, (January 14, 2021), <https://truenorthresearch.org/2021/01/background-justice-coney-barretts-ties-to-shell-and-api-are-far-deeper-than-reported-her-father-could-be-deposed-in-climate-change-litigation/>

The Supreme Court is also not bound to follow ethics rules that bind all other courts, its self-imposed standards are not appealable, and an array of troubling conduct is not very visible. What little is known about some of the practices that have been allowed is exceedingly troubling. This includes serious concerns about gifts, favors, travel, and more. That is why the Center for Media and Democracy supports the crucial reforms introduced by Sen. Whitehouse.

Here are seven examples that illustrate the different kinds of ethics issues involving the Supreme Court that can undermine public confidence in its integrity and independence.

First, there is the Court's refusal to require litigants to disclose who the major funders are of groups filing amicus briefs, not just those that earmarked funds specifically for the litigation. This is an area of willful ignorance by the Court and one that demands reform.

Second, there is the problem of gifts, including gifts from friends.

Perhaps the most egregious known example of this involves Justice Thomas. As the *New York Times* reported, after Thomas became a federal judge, he reportedly met Harlan Crow, the CEO of Crow Family Holdings and an heir to the fortune made by his dad, who was the largest landlord and real estate developer in the U.S.⁹⁶ At the time, Crow had already been a trustee and funder of the American Enterprise Institute, a right-wing think tank that pushes for changes in federal laws and regulations. Crow also co-founded the Club for Growth, which spends money to influence elections in favor of GOP candidates, and he has spent millions on Super PACs to try to help Republicans win the White House.⁹⁷ (He also is known for his extensive private collection of statues of dictators.)

News accounts have cited the friendship between Crow and Thomas as the reason why Thomas has not reported any of the very generous hospitality shown by Crow to count as a disclosable gift. This has included staying on Crow's yacht, letting Thomas and his wife fly on his private plane, and letting them stay at his palatial homes.

While Congress does provide a detailed set of rules for the kind of personal hospitality that can and cannot be accepted and the rules for disclosing different kinds of gifts from friends, the Supreme Court has nothing like the Senate Ethics Manual to guide them in such matters (even though that manual provides loopholes for certain personal hospitality as well).

It is our view that Supreme Court Justices should not be permitted to accept such lucrative gifts as vacations on a billionaire's yacht, travel on his private planes, or stays at luxury homes—and any such gifts that are permissible if made by a friend whose friendship precedes one's judgeship should be disclosed and their value or equivalent tabulated.

Third, there is the problem of inadequate disclosure of the sources of income of a Supreme Court Justice's spouse.

⁹⁶ Mike McIntire, "Friendship of Justice and Magnate Puts Focus on Ethics," *The New York Times*, (June 18, 2011), <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>

⁹⁷ Rachael Marcus, "Donor Profile: Harlan Crow," *The Center for Public Integrity*, (May 19, 2014), <https://publicintegrity.org/politics/donor-profile-harlan-crow/>

The first time this became an issue was when Common Cause revealed that Justice Thomas had failed to disclose \$686,859 in income earned by his wife Ginni at the Heritage Foundation between 2003 and 2007.⁹⁸

Subsequently, the public learned that Crow had reportedly staked Ginni Thomas in her non-profit operation, dubbed Liberty Central, to the tune of around a half million dollars.⁹⁹ According to a special report for CounterPunch by Pam Martens, Ginni Thomas was slated to receive another \$2 million from a Liberty Central donor, whose identity is secret to this day.¹⁰⁰ Martens noted that Liberty Central also hired Leonard Leo's close friend, Greg Mueller, to aid her communications efforts through CRC Public Relations.

After public outcry over this, along with reports of Ginni Thomas' efforts to attack the Affordable Care Act and other progressive measures, Thomas left the nonprofit in the hands of a former Koch group staffer, Sarah Field. served as her general counsel in creating the group, and is now the main advisor to Americans for Prosperity in its work on judicial appointments. Matt Schlapp, a former Koch lobbyist who now leads the American Conservative Union/CPAC, served on Liberty Central's board. Thomas has since left to lead a for-profit firm she named Liberty Consulting.

Clarence Thomas does not disclose on annual financial disclosure statements how much revenue Liberty Consulting receives, how much income Ginni Thomas brings home, or which persons or groups she works for or with as a consultant each year. What is clear is that Ginni Thomas has earned untold sums of money from her private firm, and there is no way for any litigant to object and raise a conflict of interest claim about her undisclosed financial relationships with individuals or groups that have a stake in litigation before the Court, or that file amicus briefs.

Fourth, there is a problem with how Supreme Court Justices take advantage of junkets or entertainment paid for by groups with a substantive or ideological stake in litigation.

This presents yet another example involving Justice Thomas. A decade ago, an invitation from Charles Koch inviting wealthy right-wing donors to a retreat to plan for the coming elections was leaked.¹⁰¹ The invitation revealed a fact that was previously not publicly known: in 2008, Justice Thomas had attended Koch's donor retreat with his wife, Ginni, and reportedly gave a speech about his memoir, which was published in 2007. (Koch's invitation also outed Justice Antonin Scalia as having attended the Koch donor gathering in 2007.)¹⁰²

After an uproar, the Federalist Society told reporters that Thomas was in Palm Springs at the exact time of the multi-day Koch donor soiree because he was attending a small Federalist

⁹⁸ Kim Geiger, "Clarence Thomas failed to report wife's income, watchdog says," *Los Angeles Times* (Jan. 22, 2011), <https://www.latimes.com/politics/la-xpm-2011-jan-22-la-na-thomas-disclosure-20110122-story.html>.

⁹⁹ Mike McIntire, "Friendship of Justice and Magnate Puts Focus on Ethics," *The New York Times*, (June 18, 2011), <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>

¹⁰⁰ Pam Martens, "Special Report: Koch Entertained Justice Thomas At His Private Club," CounterPunch (Oct. 3, 2011), <https://www.counterpunch.org/2011/10/03/koch-entertained-justice-thomas-at-his-private-club/>

¹⁰¹ Kate Zernike, "Secretive Republican Donors Are Planning Ahead," *New York Times* (Oct. 19, 2010) <https://www.nytimes.com/2010/10/20/us/politics/20koch.html>

¹⁰² See Eric Lipton, "Advocacy Group Says Justices May Have Conflict in Campaign Finance Cases," *The New York Times* (Jan. 19, 2011), <https://www.nytimes.com/2011/01/20/us/politics/20koch.html>.

Society meeting there. When asked whether Thomas' travel was paid for by Koch, the Federalist Society told the press that it had paid for his travel and not Koch, whose foundations had given the Federalist Society nearly \$2 million from 1991 through 2009.

But there was more to the story. When reporters looked more closely at the four-day event in Palm Springs that Thomas was said to have simply dropped by, they learned that Thomas also attended a private dinner at the private club that Koch is a member of, called the Vintage Club. Membership at that time required ownership of a multi-million dollar house plus annual dues of \$32,000. Charles Koch and his wife, Elizabeth, were Thomas' hosts at that exclusive dinner at that exclusive address. When asked by reporters where the Thomases stayed on that trip, the Supreme Court spokesperson refused to provide that information.

Later that year, the Supreme Court granted a writ of certiorari in *Citizens United*. Numerous groups filed amicus briefs with the Court, including American Justice Partnership and Let Freedom Ring, two groups represented by Cleta Mitchell, then of Foley & Lardner, on their brief. Eight days after the Supreme Court issued its ruling in *Citizens United* in 2010, Mitchell filed forms for the formation of Ginni Thomas' Liberty Central nonprofit. Mitchell told the press that she knew Ginni Thomas from the Heritage Foundation, which had paid Thomas over \$1 million in income in the prior decade, according to a special report by Pam Martens.¹⁰³ In almost that same period, the Koch family fortune had given Heritage more than \$4 million in donations.

As Martens detailed, there were even more connections between Ginni Thomas, the Kochs, and the groups siding with Citizens United in seeking to strike down the McCain-Feingold campaign law:

[A] letter from Virginia Thomas was sent to the West Virginia Secretary of State on behalf of Liberty Central, enclosing the prior year's IRS tax filing. The letter advises the Secretary of State's office to call Liberty Central's attorney, Jason Torchinsky, if any additional information is needed. Torchinsky is an attorney for the Koch-financed Americans for Prosperity. The Federalist Society at the University of Iowa hosted Torchinsky to speak on the Citizens United decision on October 23, 2009, while the case was pending before the Supreme Court.

The Lincoln Journal Star web site reported on March 20 of this year that Torchinsky, representing Americans for Prosperity (AFP), filed a letter with the Nebraska Accountability and Disclosure Commission effectively stating that it was exempt from the state's campaign finance laws: "AFP's communications are not distributed 'in assistance of, or in opposition to, the nomination or election of a candidate.' Rather, AFP's communications are distributed to inform citizens of certain aspects of legislative records, cite specific pieces of legislation and discuss policy implications. A communication that merely informs citizens of a legislator's record does not constitute 'express advocacy,' and does not 'assist' or 'oppose' the election of a candidate."

Jack Gould, spokesman for the Nebraska chapter of Common Cause responded: "AFP has found a way to avoid all of Nebraska's disclosure laws...Every individual and organization has a right to speak, but big money gets to speak louder and more often.

¹⁰³ Pam Martens, "Koch Entertained Justice Thomas At His Private Club," *CounterPunch*, (October 3, 2011), <https://www.counterpunch.org/2011/10/03/koch-entertained-justice-thomas-at-his-private-club/>

The public has a right to know who is speaking and how much money they are spending.”

Torchinsky is a law partner at Holtzman Vogel PLLC. His fellow law partner at the firm is Tom Josefiak, a former Federal Elections Commission Chairman who was one of a group filing an amicus in the *Citizens United* case.

This is yet another very troubling chapter in the lack of adequate regulation of both the business ties in the family of a Supreme Court Justice and the interests of groups filing amicus briefs.

Since the *Citizens United* ruling, Koch’s groups have raised and spent more a billion dollars to influence elections in the United States, relying substantially on the lack of disclosure and limits made possible by that Supreme Court ruling and by the obstruction of even minimal disclosure rules by GOP legislators, who have been aided by Koch groups in their efforts to retain power.

Thomas is not the only Supreme Court Justice whose gifts of travel or dinner have raised concerns. Justice Scalia and Justice Gorsuch have also been subject to public concerns.

Fifth, there is the related issue of attendance at events, like Federal Society galas, where Justices sit at tables with major donors. For several years, for example, Thomas sat at one of the head tables of the Federalist Society galas purchased by the Searle Freedom Trust. A few years ago, judges considered barring judicial membership in policy groups like the Federalist Society, but after [pressure from right-wing groups](#), that proposal was dropped.¹⁰⁴

Sixth, there is the issue of who is arranging the summer vacations of Supreme Court justices. After Justices Gorsuch and Kavanaugh were confirmed, the Scalia Law School at George Mason announced that it had arranged for summer teaching roles for them in Italy and England, respectively. This came after Charles Koch gave the law school \$10 million, as noted above, and an anonymous donor provided another \$20 million to the school, with the condition that Leonard Leo be given special rights to oversee aspects of the school and schedule events.¹⁰⁵ While many judges have occasionally served as adjunct professors at law schools across the country, no other law school currently appears to have as many Supreme Court and lower court judges involved in it or appears to be as dominated by a benefactor with such substantial investments in groups that are as active in influencing elections and litigation as Koch.

Seventh, and finally, there is the issue of who is underwriting the training of Supreme Court justices and other judges.¹⁰⁶ This too is an area in which the Koch fortune has played a substantial role. Starting in the 1990s, Charles Koch began funding seminars for judges to

¹⁰⁴ The Editorial Board, “Judicial Political Mischief,” *The Wall Street Journal*, (January 21, 2020), <https://www.wsj.com/articles/judicial-political-mischief-11579652574?mod=searchresults&page=1&pos=1>

¹⁰⁵ Mark Joseph Stern, “What the Koch Brothers’ Money Buys: Internal emails from George Mason University show how cash turns into special favors,” *Politico* (May 2, 2018). <https://slate.com/news-and-politics/2018/05/we-now-know-how-the-koch-brothers-and-leonard-leo-buy-special-favors.html>

¹⁰⁶ John J. Fialka, “How Koch Industries Tries To Influence Judicial System,” *Wall Street Journal* (Aug. 9, 1999), <https://www.wsj.com/articles/SB934154205365701316>; Jack Stripling, “How George Mason Became Koch’s Academic Darling,” *Chronicle of Higher Education* (May 13, 2016) <https://www.chronicle.com/article/how-george-mason-became-kochs-academic-darling/>

spread his economic theories to the judiciary. Those programs, which were initially organized through Kansas-based universities, were ultimately moved to George Mason. At the same time, Koch also helped launch numerous right-wing litigation groups, such as the Institute for Justice and Washington Legal Foundation, in addition to funding numerous groups that file multiple amicus briefs.

Over a decade ago, after numerous complaints that there was not adequate disclosure of the true funders of these judicial seminars and other junkets underwritten by corporate-funded groups or staffed with corporate lawyers, Congress sought to regulate these so-called seminars. However, the Administrative Office of the U.S. Courts pushed hard against any mandatory regime and convinced enough legislators in Congress that it could secure transparency through voluntary disclosure.

That approach has proven ineffective. A review of the voluntary disclosure process for judicial education reveals at least four failings: 1) the forms do not consistently list the underlying funders (so for example George Mason often lists George Mason as the funder, without revealing who actually funded the event); 2) there appears to be no significant enforcement to ensure that the forms are complete and up-to-date; 3) the forms are not searchable online for keywords, such as common instructors; and 4) the forms where judges disclose that they attended a seminar (their financial disclosure forms, not the seminar forms) are not readily accessible to the public online, can only be inspected in-person, and so cannot easily be searched to check for those seminars that are disclosed.

This disclosure process is also plainly inadequate and in need of reform.

Conclusion

For all of these reasons and more, the Center for Media and Democracy urges this subcommittee to explore ways to bring more transparency and integrity to the federal judiciary, and supports reforms that would require greater disclosure toward that end, such as the For the People Act, the newly reintroduced DISCLOSE Act, the AMICUS Act, and the Judicial Travel Accountability Act.

Thank you for considering our views.

Appendix

Figure 1.

Top Funders of Right-Wing Groups Submitting Amicus Briefs (2015-19)

These right-wing groups filed amicus briefs in at least three of the five Supreme Court cases analyzed by CMD.

| Organization | Koch Groups | DonorsTrust & Donors Capital Fund | Bradley Foundations | Searle Freedom Trust | Sarah Scaife Foundation | Adolph Coors Foundation | TOTAL | Member of SPN? |
|--|---------------------|-----------------------------------|---------------------|----------------------|-------------------------|-------------------------|----------------------|-----------------|
| Americans for Prosperity Foundation | \$30,542,218 | \$10,958,841 | \$1,188,000 | \$125,000 | \$0 | \$120,000 | \$42,934,059 | yes (affiliate) |
| Buckeye Institute | \$701,825 | \$2,411,400 | \$655,000 | \$1,100,000 | \$400,000 | \$50,000 | \$5,318,225 | yes |
| Cato Institute | \$9,806,889 | \$4,753,008 | \$1,736,500 | \$1,785,000 | \$465,000 | \$300,000 | \$18,846,397 | yes |
| Center for Constitutional Jurisprudence (Claremont Institute)* | \$1,692 | \$408,240 | \$551,000 | \$430,000 | \$1,700,000 | \$50,000 | \$3,140,932 | former |
| Competitive Enterprise Institute | \$297,362 | \$5,079,050 | \$1,477,000 | \$2,665,000 | \$1,600,000 | \$50,000 | \$11,168,412 | yes |
| Empire Center for Public Policy | \$0 | \$710,200 | \$225,000 | \$351,500 | \$0 | \$65,000 | \$1,351,700 | yes |
| Freedom Foundation | \$275,000 | \$530,800 | \$3,086,000 | \$725,000 | \$350,000 | \$90,000 | \$5,056,800 | yes |
| Goldwater Institute | \$167,000 | \$2,437,403 | \$656,000 | \$1,178,750 | \$0 | \$60,000 | \$4,499,153 | yes |
| James Madison Institute | \$845,000 | \$380,390 | \$225,000 | \$0 | \$0 | \$0 | \$1,450,390 | yes |
| Landmark Legal Foundation | \$0 | \$127,000 | \$0 | \$0 | \$750,000 | \$0 | \$877,000 | former |
| Liberty Justice Center | \$0 | \$386,000 | \$100,000 | \$450,000 | \$0 | \$0 | \$936,000 | yes |
| Mackinac Center | \$1,113,500 | \$7,744,071 | \$996,000 | \$1,279,388 | \$0 | \$95,000 | \$11,227,959 | yes |
| National Right to Work Legal Defense Foundation | \$54,542 | \$374,521 | \$578,000 | \$50,000 | \$125,000 | \$0 | \$1,182,063 | yes |
| NFIB Small Business Legal Center/NFIB | \$0 | \$275,000 | \$0 | \$0 | \$0 | \$0 | \$275,000 | no |
| Pacific Legal Foundation | \$1,206,161 | \$598,524 | \$150,000 | \$1,590,000 | \$875,000 | \$440,000 | \$4,859,685 | yes |
| Pelican Institute for Public Policy | \$122,000 | \$356,400 | \$85,000 | \$95,000 | \$0 | \$25,000 | \$683,400 | yes |
| Republican Attorneys General Association** | \$1,615,360 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,615,360 | no |
| Southeastern Legal Foundation | \$0 | \$2,000 | \$0 | \$0 | \$250,000 | \$230,000 | \$482,000 | no |
| TOTAL | \$46,748,549 | \$37,532,848 | \$11,708,500 | \$11,824,638 | \$6,515,000 | \$1,575,000 | \$115,904,535 | |

*Center for Constitutional Jurisprudence is housed in the Claremont Institute. Funding numbers reflect money given to the institute. **2015-20.

Table: Center for Media and Democracy - Source: Internal Revenue Service - Created with Datawrapper

Figure 2. Funders of Organizations That Filed Amicus Briefs in Janus v. AFSCME

| Organization | Koch Groups | Donors Trust & Donors Capital Fund | Bradley Foundations | Searle Freedom Trust | Sarah Scaife Foundation | Adolph Coors Foundation | TOTAL |
|--|---------------------|------------------------------------|---------------------|----------------------|-------------------------|-------------------------|---------------------|
| Buckeye Institute | \$701,825 | \$2,411,400 | \$655,000 | \$1,100,000 | \$400,000 | \$50,000 | \$5,318,225 |
| Cato Institute | \$9,806,889 | \$4,753,008 | \$1,736,500 | \$1,785,000 | \$465,000 | \$300,000 | \$18,846,397 |
| Center for Constitutional Jurisprudence (Claremont Institute)* | \$1,692 | \$408,240 | \$551,000 | \$430,000 | \$1,700,000 | \$50,000 | \$3,140,932 |
| Competitive Enterprise Institute | \$297,362 | \$5,079,050 | \$1,477,000 | \$2,665,000 | \$1,600,000 | \$50,000 | \$11,168,412 |
| Empire Center for Public Policy | \$0 | \$710,200 | \$225,000 | \$351,500 | \$0 | \$65,000 | \$1,351,700 |
| Freedom Foundation | \$275,000 | \$530,800 | \$3,086,000 | \$725,000 | \$350,000 | \$90,000 | \$5,056,800 |
| Goldwater Institute | \$167,000 | \$2,437,403 | \$656,000 | \$1,178,750 | \$0 | \$60,000 | \$4,499,153 |
| James Madison Institute | \$845,000 | \$380,390 | \$225,000 | \$0 | \$0 | \$0 | \$1,450,390 |
| Landmark Legal Foundation | \$0 | \$127,000 | \$0 | \$0 | \$750,000 | \$0 | \$877,000 |
| Liberty Justice Center | \$0 | \$386,000 | \$100,000 | \$450,000 | \$0 | \$0 | \$936,000 |
| Mackinac Center | \$1,113,500 | \$7,744,071 | \$996,000 | \$1,279,388 | \$0 | \$95,000 | \$11,227,959 |
| National Right to Work Legal Defense Foundation | \$54,542 | \$374,521 | \$578,000 | \$50,000 | \$125,000 | \$0 | \$1,182,063 |
| NFIB Small Business Legal Center/NFIB | \$0 | \$275,000 | \$0 | \$0 | \$0 | \$0 | \$275,000 |
| Pacific Legal Foundation | \$1,206,161 | \$598,524 | \$150,000 | \$1,590,000 | \$875,000 | \$440,000 | \$4,859,685 |
| Republican Attorneys General Association** | \$1,615,360 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,615,360 |
| Southeastern Legal Foundation | \$0 | \$2,000 | \$0 | \$0 | \$250,000 | \$230,000 | \$482,000 |
| TOTAL | \$16,084,331 | \$26,217,607 | \$10,435,500 | \$11,604,638 | \$6,515,000 | \$1,430,000 | \$72,287,076 |

*Center for Constitutional Jurisprudence is housed in the Claremont Institute. Funding numbers reflect money given to the institute. **2015-20.

Figure 3. Funders of Organizations That Filed Amicus Briefs in Seila Law v. CFPB

| Organization | Koch Groups | Donors Trust & Donors Capital Fund | Bradley Foundations | Searle Freedom Trust | Sarah Scaife Foundation | Adolph Coors Foundation | TOTAL |
|--|---------------------|------------------------------------|---------------------|----------------------|-------------------------|-------------------------|---------------------|
| Americans for Prosperity Foundation | \$30,542,218 | \$10,958,841 | \$1,188,000 | \$125,000 | \$0 | \$120,000 | \$42,934,059 |
| Buckeye Institute | \$701,825 | \$2,411,400 | \$655,000 | \$1,100,000 | \$400,000 | \$50,000 | \$5,318,225 |
| Cato Institute | \$9,806,889 | \$4,753,008 | \$1,736,500 | \$1,785,000 | \$465,000 | \$300,000 | \$18,846,397 |
| Center for Constitutional Jurisprudence (Claremont Institute)* | \$1,692 | \$408,240 | \$551,000 | \$430,000 | \$1,700,000 | \$50,000 | \$3,140,932 |
| Competitive Enterprise Institute | \$297,362 | \$5,079,050 | \$1,477,000 | \$2,665,000 | \$1,600,000 | \$50,000 | \$11,168,412 |
| Landmark Legal Foundation | \$0 | \$127,000 | \$0 | \$0 | \$750,000 | \$0 | \$877,000 |
| NFIB Small Business Legal Center/NFIB | \$0 | \$275,000 | \$0 | \$0 | \$0 | \$0 | \$275,000 |
| Pacific Legal Foundation | \$1,206,161 | \$598,524 | \$150,000 | \$1,590,000 | \$875,000 | \$440,000 | \$4,859,685 |
| Republican Attorneys General Association** | \$1,615,360 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,615,360 |
| Southeastern Legal Foundation | \$0 | \$2,000 | \$0 | \$0 | \$250,000 | \$230,000 | \$482,000 |
| TOTAL | \$44,171,507 | \$24,613,063 | \$5,757,500 | \$7,695,000 | \$6,040,000 | \$1,240,000 | \$89,517,070 |

*Center for Constitutional Jurisprudence is housed in the Claremont Institute. Funding numbers reflect money given to the institute. **2015-20.

Figure 4. Funders of Organizations That Filed Amicus Briefs in *AFPP v. Becerra*

| Organization | Koch Groups | DonorsTrust & Donors Capital Fund | Bradley Foundations | Searle Freedom Trust | Sarah Scaife Foundation | Adolph Coors Foundation | TOTAL |
|--|---------------------|-----------------------------------|---------------------|----------------------|-------------------------|-------------------------|----------------------|
| Americans for Prosperity Foundation | \$30,542,218 | \$10,958,841 | \$1,188,000 | \$125,000 | \$0 | \$120,000 | \$42,934,059 |
| Buckeye Institute | \$701,825 | \$2,411,400 | \$655,000 | \$1,100,000 | \$400,000 | \$50,000 | \$5,318,225 |
| Cato Institute | \$9,806,889 | \$4,753,008 | \$1,736,500 | \$1,785,000 | \$465,000 | \$300,000 | \$18,846,397 |
| Center for Constitutional Jurisprudence (Claremont Institute)* | \$1,692 | \$408,240 | \$551,000 | \$430,000 | \$1,700,000 | \$50,000 | \$3,140,932 |
| Empire Center for Public Policy | \$0 | \$710,200 | \$225,000 | \$351,500 | \$0 | \$65,000 | \$1,351,700 |
| Freedom Foundation | \$275,000 | \$530,800 | \$3,086,000 | \$725,000 | \$350,000 | \$90,000 | \$5,056,800 |
| Goldwater Institute | \$167,000 | \$2,437,403 | \$656,000 | \$1,178,750 | \$0 | \$60,000 | \$4,499,153 |
| James Madison Institute | \$845,000 | \$380,390 | \$225,000 | \$0 | \$0 | \$0 | \$1,450,390 |
| Landmark Legal Foundation | \$0 | \$127,000 | \$0 | \$0 | \$750,000 | \$0 | \$877,000 |
| Liberty Justice Center | \$0 | \$386,000 | \$100,000 | \$450,000 | \$0 | \$0 | \$936,000 |
| Mackinac Center | \$1,113,500 | \$7,744,071 | \$996,000 | \$1,279,388 | \$0 | \$95,000 | \$11,227,959 |
| National Right to Work Legal Defense Foundation | \$54,542 | \$374,521 | \$578,000 | \$50,000 | \$125,000 | \$0 | \$1,182,063 |
| NFIB Small Business Legal Center/NFIB | \$0 | \$275,000 | \$0 | \$0 | \$0 | \$0 | \$275,000 |
| Pacific Legal Foundation | \$1,206,161 | \$598,524 | \$150,000 | \$1,590,000 | \$875,000 | \$440,000 | \$4,859,685 |
| Pelican Institute for Public Policy | \$122,000 | \$356,400 | \$85,000 | \$95,000 | \$0 | \$25,000 | \$683,400 |
| Republican Attorneys General Association** | \$1,615,360 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,615,360 |
| Southeastern Legal Foundation | \$0 | \$2,000 | \$0 | \$0 | \$250,000 | \$230,000 | \$482,000 |
| TOTAL | \$46,451,187 | \$32,453,798 | \$10,231,500 | \$9,159,638 | \$4,915,000 | \$1,525,000 | \$104,736,123 |

*Center for Constitutional Jurisprudence is housed in the Claremont Institute. Funding numbers reflect money given to the institute. **2015-20.

Figure 5. Funders of Organizations That Filed Amicus Briefs in *Cedar Point Nursery v. Hassid*

| Organization | Koch Groups | DonorsTrust & Donors Capital Fund | Bradley Foundations | Searle Freedom Trust | Sarah Scaife Foundation | Adolph Coors Foundation | TOTAL |
|--|---------------------|-----------------------------------|---------------------|----------------------|-------------------------|-------------------------|---------------------|
| Americans for Prosperity Foundation | \$30,542,218 | \$10,958,841 | \$1,188,000 | \$125,000 | \$0 | \$120,000 | \$42,934,059 |
| Buckeye Institute | \$701,825 | \$2,411,400 | \$655,000 | \$1,100,000 | \$400,000 | \$50,000 | \$5,318,225 |
| Cato Institute | \$9,806,889 | \$4,753,008 | \$1,736,500 | \$1,785,000 | \$465,000 | \$300,000 | \$18,846,397 |
| Center for Constitutional Jurisprudence (Claremont Institute)* | \$1,692 | \$408,240 | \$551,000 | \$430,000 | \$1,700,000 | \$50,000 | \$3,140,932 |
| Liberty Justice Center | \$0 | \$386,000 | \$100,000 | \$450,000 | \$0 | \$0 | \$936,000 |
| NFIB Small Business Legal Center/NFIB | \$0 | \$275,000 | \$0 | \$0 | \$0 | \$0 | \$275,000 |
| Pacific Legal Foundation | \$1,206,161 | \$598,524 | \$150,000 | \$1,590,000 | \$875,000 | \$440,000 | \$4,859,685 |
| Pelican Institute for Public Policy | \$122,000 | \$356,400 | \$85,000 | \$95,000 | \$0 | \$25,000 | \$683,400 |
| Republican Attorneys General Association** | \$1,615,360 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,615,360 |
| TOTAL | \$43,996,145 | \$20,147,413 | \$4,465,500 | \$5,575,000 | \$3,440,000 | \$985,000 | \$78,609,058 |

*Center for Constitutional Jurisprudence is housed in the Claremont Institute. Funding numbers reflect money given to the institute. **2015-20.

Figure 6. Funders of Organizations That Filed Amicus Briefs in Thompson v. Marietta

| Organization | Koch Groups | DonorsTrust & Donors Capital Fund | Bradley Foundations | Searle Freedom Trust | Sarah Scaife Foundation | Adolph Coors Foundation | TOTAL |
|---|---------------------|-----------------------------------|---------------------|----------------------|-------------------------|-------------------------|----------------------|
| Americans for Prosperity Foundation | \$30,542,218 | \$10,958,841 | \$1,188,000 | \$125,000 | \$0 | \$120,000 | \$42,934,059 |
| Buckeye Institute | \$701,825 | \$2,411,400 | \$655,000 | \$1,100,000 | \$400,000 | \$50,000 | \$5,318,225 |
| Cato Institute | \$9,806,889 | \$4,753,008 | \$1,736,500 | \$1,785,000 | \$465,000 | \$300,000 | \$18,846,397 |
| Competitive Enterprise Institute | \$297,362 | \$5,079,050 | \$1,477,000 | \$2,665,000 | \$1,600,000 | \$50,000 | \$11,168,412 |
| Empire Center for Public Policy | \$0 | \$710,200 | \$225,000 | \$351,500 | \$0 | \$65,000 | \$1,351,700 |
| Freedom Foundation | \$275,000 | \$530,800 | \$3,086,000 | \$725,000 | \$350,000 | \$90,000 | \$5,056,800 |
| Goldwater Institute | \$167,000 | \$2,437,403 | \$656,000 | \$1,178,750 | \$0 | \$60,000 | \$4,499,153 |
| James Madison Institute | \$845,000 | \$380,390 | \$225,000 | \$0 | \$0 | \$0 | \$1,450,390 |
| Landmark Legal Foundation | \$0 | \$127,000 | \$0 | \$0 | \$750,000 | \$0 | \$877,000 |
| Liberty Justice Center | \$0 | \$386,000 | \$100,000 | \$450,000 | \$0 | \$0 | \$936,000 |
| Mackinac Center | \$1,113,500 | \$7,744,071 | \$996,000 | \$1,279,388 | \$0 | \$95,000 | \$11,227,959 |
| National Right to Work Legal Defense Foundation | \$54,542 | \$374,521 | \$578,000 | \$50,000 | \$125,000 | \$0 | \$1,182,063 |
| Pacific Legal Foundation | \$1,206,161 | \$598,524 | \$150,000 | \$1,590,000 | \$875,000 | \$440,000 | \$4,859,685 |
| Pelican Institute for Public Policy | \$122,000 | \$356,400 | \$85,000 | \$95,000 | \$0 | \$25,000 | \$683,400 |
| Southeastern Legal Foundation | \$0 | \$2,000 | \$0 | \$0 | \$250,000 | \$230,000 | \$482,000 |
| TOTAL | \$45,131,497 | \$36,849,608 | \$11,157,500 | \$11,394,638 | \$4,815,000 | \$1,525,000 | \$110,873,243 |