



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

November 15, 2023

The Honorable Jim Jordan
Chair, House Committee on the Judiciary
2056, Rayburn House Office Building
Washington, DC 20515

The Honorable James Comer
Chair, House Committee on Oversight and Accountability
2410, Rayburn House Office Building
Washington, DC 20515

Re: Committee Involvement in Reported D.C. Investigation into Leonard Leo

Dear Chairman Jordan and Chairman Comer,

I am writing to you today in response to your recent letter to District of Columbia Attorney General Brian Schwalb regarding a potential investigation into Leonard Leo and organizations with which he is affiliated (“Committee Letter”).¹ My organization, Citizens for Responsibility and Ethics in Washington (CREW), recognizes that congressional oversight can increase transparency and help Congress pursue the public good. However, Congress’s oversight authority is not unlimited. Congressional interference in an ongoing investigation is not legitimate oversight; it is itself a weaponization of Congress’s oversight power that threatens to undermine our justice system and the American people’s faith in it.

The U.S. Constitution establishes three branches of government, each with distinct authorities and functions.² While Congress does have the important and appropriate authority to conduct oversight of the executive branch and its agencies, as implied in the U.S. Constitution and confirmed on several occasions by the Supreme Court, as well as authority to conduct oversight of Washington, D.C. as defined by the Home Rule Act, this authority is not intended to be used in a way that interferes with the independence of our justice system.³ That is why, historically, Congress has not interfered with pending investigations.

In the rare instances in which Congress has requested materials from attorneys general pertaining to ongoing investigations, attorneys general have refused to provide

¹ Chairmen Jordan and Comer Launch Inquiry into D.C. Attorney General’s Politically Motivated Investigation of Leonard Leo, House Judiciary Committee (Oct. 30, 2023), <https://judiciary.house.gov/media/press-releases/chairmen-jordan-and-comer-launch-inquiry-dc-attorney-generals-politically>.

² Cong. Rsch. Serv., Separation of Powers: An Overview (2016), <https://crsreports.congress.gov/product/pdf/R/R44334>.

³ Cong. Rsch. Serv., Congressional Oversight Manual (2021), <https://crsreports.congress.gov/product/pdf/RL/RL30240>; *McGrain v. Daugherty*, 273 U.S. 135 (1927), D.C. Code §§ 1-201.01-1-207.71.

them.⁴ In 1941, Attorney General Robert H. Jackson denied requests for FBI and DOJ documents on the basis that their disclosure could “seriously prejudice law enforcement.”⁵ In 1986, Assistant Attorney General for the Office of Legal Counsel (OLC) Charles J. Cooper issued an opinion citing Jackson and emphasizing that providing confidential information about an ongoing investigation would lead Congress to become, “in a sense, a partner in the investigation.”⁶ The Justice Department confirmed this concern in a letter to Chairman Jordan in January 2023 when, responding to requests for documents, it explained that the Department must “avoid even a perception that our efforts are influenced by anything but the law and the facts.”⁷

Although the investigation in question is reportedly being conducted by the District of Columbia’s Attorney General and not the U.S. Department of Justice, the concern remains the same: interference by members of Congress into ongoing criminal or civil investigations, including by way of requests for confidential information, may be viewed as attempts to influence the way the investigation is being conducted. Crucially, the D.C. Attorney General’s office has previously rejected attempts by Congress to interfere in investigations, joining over a dozen states in both 2016 and 2017 opposing a congressional committee’s attempt to obtain information about an ongoing investigation of ExxonMobil.⁸

Furthermore, the legal justifications you provide in support of your inquiry appear to evidence a misunderstanding of the law.

First, your concern that the District does not have jurisdiction in this matter is not supported by law. States can exercise personal jurisdiction over any number of people and entities that are not physically present in the District but are still within the court’s jurisdiction.⁹ This is a simple and foundational principle of American law, but your letter does not acknowledge it. States can exercise jurisdiction over a company that does business in the state, even if the company is incorporated in a different state and has its principal place of business in another state; D.C. can exercise jurisdiction over a murderer from

⁴ Brad Miller, *No, Oversight Power Does Not Let Congress Ride Shotgun in Criminal Investigations*, Verdict (May 25, 2018),

<https://verdict.justia.com/2018/05/25/no-oversight-power-does-not-let-congress-ride-shotgun-in-criminal-investigations>.

⁵ 40 Op. Att’y Gen. 45 (1941), <https://www.justice.gov/ola/page/file/1090506/download>.

⁶ 10 Op. O.L.C. 68, 76-77 (1986), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/linder.pdf>.

⁷ Zachary Cohen, et al., *Justice Department tells Jim Jordan it won’t share information about ongoing investigations*, CNN (Jan. 20, 2023), <https://www.cnn.com/2023/01/20/politics/justice-department-jim-jordan/index.html>.

⁸ Attorney General Racine Joins Multistate Effort Seeking End to Congressional Interference with States’ Exxon Investigation, Office of the Attorney General for the District of Columbia, Aug. 15, 2016,

<https://oag.dc.gov/release/attorney-general-racine-joins-multistate-effort>; Attorney General Racine and Colleagues from 14 States Urge End to Congressional Interference with Exxon Investigation, Office of the Attorney General for the District of Columbia, March 1, 2017,

<https://oag.dc.gov/release/attorney-general-racine-and-colleagues-14-states>.

⁹ The Supreme Court’s personal jurisdiction doctrine, which includes the rights of states to exercise personal jurisdiction over non-state parties, stretches across dozens of well known cases and is taught to first year law students across the country. *See, e.g., Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); *Hanson v. Denckla*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *Burnham v. Superior Court*, 495 U.S. 604 (1990).

Maryland who kills a tourist from Virginia in D.C.¹⁰ The only question under controlling Supreme Court precedent including the 1945 foundational case of *International Shoe Co. v. Washington* is whether Leo and his entities established sufficient minimum contacts with the District—and it seems clear that they have.¹¹

In this case, Leo and his entities conducted significant business within the District: throughout this period, Leo worked full-time for the Washington, D.C.-based Federalist Society,¹² the Concord Fund, previously the Judicial Crisis Network, which paid Leo's CRC Advisors LLC¹³ and BH Group¹⁴ more than \$15 million combined,¹⁵ is headquartered in the District,¹⁶ and the 85 Fund, previously the Judicial Education Project, which paid CRC Advisors and BH Group more than \$42 million combined,¹⁷ is also headquartered in the District.¹⁸ This more than surpasses the minimum contacts standard from *International Shoe*.

Second, your argument that the reported investigation may “infringe upon the fundamental rights of donor privacy and free association”¹⁹ appears to misunderstand the facts and the law. The conduct that appears to be at issue in this reported investigation revolves around Leo, not the donors whose anonymity the Supreme Court's jurisprudence protects. Unlike in *Americans for Prosperity Foundation v. Bonta*, which was explicitly about the California Attorney General's power to compel all state charities to disclose their major donors, the District's investigation does not appear to implicate these organizations' donors at all.²⁰ Rather, the reported investigation seems to focus on Leo's relationship with those nonprofits: whether the nonprofits paid Leo's consulting firms excess fees; whether Leo was involved in the nonprofits' decision to contract with his consulting firms; and whether Leo's consulting firms actually provided the services that they were putatively paid to provide. The D.C. Attorney General would not need to obtain information on the nonprofits' donors to prove, for instance, that the payments to Leo were in violation of the District's law governing nonprofits' distribution of assets to people associated with the nonprofit.²¹ It thus seems

¹⁰ *Id.* This principle is also codified in the D.C. Code, which, for instance, grants the District personal jurisdiction over any person that transacts business in the District, or that contracts to provide services in the District. See DC Code § 13-423.

¹¹ See *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945). For a full accounting of these entities' business dealings with Leo's companies, see Campaign for Accountability, *IRS Complaint re: Several Tax-Exempt Organizations Paying Excessive Compensation, Directly or Indirectly, to Leonard Leo*, Apr. 5, 2023, <https://s3.documentcloud.org/documents/23741538/campaign-for-accountability-irs-complaint-leonard-leo-no-profits.pdf> (“CFA Complaint”).

¹² The Federalist Society's website lists its formal address as 1776 I Street, NW Suite 300 Washington, DC 20006. See <https://fedsoc.org/>. Leo is also currently listed as the Co-Chairman of the Federalist Society. See <https://fedsoc.org/contributors/leonard-leo>.

¹³ CRC Advisors LLC is headquartered in Alexandria, VA. https://irs-efile-renderer.instrumentl.com/render?object_id=202331359349303658.

¹⁴ BH Group is headquartered in Arlington, VA. <https://projects.propublica.org/nonprofits/organizations/811263832/202320109349200127/full>.

¹⁵ See CFA Complaint at 8-9.

¹⁶ The Concord Fund's IRS Form 990 lists its location as 3220 N Street NW Ste 136, Washington, D.C. 20007, https://irs-efile-renderer.instrumentl.com/render?object_id=202331359349303658.

¹⁷ See CFA Complaint at 6-7.

¹⁸ The 85 Fund's IRS Form 990 lists its address as 3220 N Street NW Ste 268, Washington, D.C., 20007, <https://projects.propublica.org/nonprofits/organizations/202466871/202223199349301462/full>.

¹⁹ Committee Letter at 2.

²⁰ *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021).

²¹ DC Code § 29-410.03.

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clear that, based on the limited information that has been reported, the Attorney General's investigation, which has not been publicly confirmed, does not implicate any First Amendment protections—and certainly not those afforded to anonymous donors to charities.

Instead of continuing this apparent effort to interfere in an ongoing investigation by launching inquiries seemingly based on misinterpretations of the law, the Committee on the Judiciary and the Committee on Oversight and Accountability should pursue legitimate oversight and pass legislation to improve Congress's ability to conduct effective oversight. At the start of the legislative session, CREW wrote to House and Senate leadership with 10 recommended bipartisan reforms and investigations to enable Congress and the public to conduct meaningful oversight aimed at addressing corruption, increasing transparency, and reducing government waste.²² We again encourage your committees to take on these recommendations, including investigating the Department of Defense's potential violation of the Emoluments Clause, mandating that the White House disclose information about official visits to the White House and other locations frequented by the president and mandating proactive disclosure of OLC opinions. Furthermore, there are other bipartisan oversight and legislative reform opportunities within your committees, including oversight of the Federal Bureau of Prisons and considering the bipartisan Federal Prison Oversight Act, which would be legitimate and worthwhile uses of your committees' resources.²³

Congress should prioritize advancing the above bipartisan oversight reforms, not interfering in ongoing investigations under the pretense of oversight. We stand ready to work with you and members of your committees on legitimate oversight efforts to advance transparency, accountability and good governance.

Sincerely,



Noah Bookbinder
President and Chief Executive Officer

cc:

The Honorable Jerrold L. Nadler, Ranking Member Committee on the Judiciary
The Honorable Jamie Raskin, Ranking Member Committee on Oversight and Accountability

²² CREW, Letter to House Leadership on Oversight Priorities, Jan. 18 2023, <https://www.citizensforethics.org/wp-content/uploads/2023/01/Letter-Oversight-Priorities-in-118th-Session.pdf>.

²³ Federal Prison Oversight Act, H.R. 3019, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/3019>.