

Congress of the United States

Washington, DC 20515

October 30, 2023

The Honorable Brian Schwalb
Attorney General
Office of the Attorney General
400 6th Street NW
Washington, DC 20001

Dear Attorney General Schwalb:

The Committees on Judiciary and Oversight and Accountability are conducting oversight of the District of Columbia Office of Attorney General’s reported effort to investigate Leonard Leo and certain nonprofit organizations with which he is affiliated.¹ Given prior attempts by state attorneys general to target conservative nonprofits and their donors—and your apparent political motivations for investigating Mr. Leo—the Committees are concerned about potential infringement on free association and donor privacy.² To ensure that these vital constitutional protections are being respected, the Committees are seeking additional information about your efforts and would appreciate your full cooperation with our inquiry.

On March 1, 2023, *Politico* published an article accusing Mr. Leo of benefitting financially from the conservative nonprofits with which he is affiliated.³ Three weeks later, Campaign for Accountability—a progressive “watchdog” organization with ties to liberal dark money—filed a complaint with the Internal Revenue Service (IRS), asking the agency to investigate these nonprofit organizations.⁴ The complaint alleged, without evidence, that Mr. Leo received excessive payments for consulting and other services from the several conservative

¹ See Heidi Przybyla, *D.C. Attorney General is probing Leonard Leo’s network*, POLITICO (Aug. 22, 2023).

² See, e.g., *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021).

³ Heidi Przybyla, *Dark money and special deals: How Leonard Leo and his friends benefited from his judicial activism*, POLITICO (Mar. 1, 2023).

⁴ Caitlin Oprysko, *Watchdog asks IRS for probe of Leo-linked nonprofits*, POLITICO (Apr. 6, 2023); See *Campaign for Accountability*, Influence Watch, <https://www.influencewatch.org/non-profit/campaign-for-accountability>; *Correction: Funding for Nonprofit’s Google ‘Transparency’ Campaign*, the Chronicle of Philanthropy (July 21, 2016). Campaign for Accountability was a project of the Hopewell Fund, whose parent organization is Arabella Advisors. Arabella Advisors has a pending IRS complaint against it that mirrors Campaign for Accountability’s accusations against Mr. Leo and his affiliated organizations. See Joe Schoffstall, *Top Dem dark money network faces IRS complaint over alleged self-enrichment of its founder*, FOX NEWS (Aug. 16, 2023). On October 3, 2023, it was reported that your office launched an investigation into Arabella Advisors and that on September 22, 2023, your office subpoenaed records from Arabella Advisors, its largest clients, and several of its offshoot organizations as part of your investigation. See Andrew Kerr and Joseph Simonson, *DC Attorney General Subpoenas Arabella Advisors’ Dark Money Network Following Free Beacon Report*, WASH. FREE BEACON (Oct. 3, 2023).

nonprofit groups.⁵ Even *Politico* conceded that the complaint offered nothing more than speculation to support its accusations.⁶

In a press release announcing the complaint, the Campaign for Accountability also called on your office to “pursue any appropriate enforcement actions.”⁷ Within months, the District of Columbia Office of Attorney General reportedly commenced its own investigation into Mr. Leo and several nonprofit organizations.⁸

The Committees are concerned that your office’s investigation may be improper and politically motivated. First, it appears that your office does not have jurisdiction over this matter because Mr. Leo and the organizations with which he is affiliated are, according to publicly available information, based outside of Washington, D.C. Worse yet, the Committees are troubled that your investigation could infringe upon the fundamental rights of donor privacy and free association. The U.S. Supreme Court has repeatedly affirmed the associational and privacy rights of donors—including the right of Americans to donate anonymously—especially when these rights are threatened by attorneys general who target nonprofit organizations for political reasons.⁹ As Justice Harlan made clear in the seminal case on this issue:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.¹⁰

There are serious problems occurring in Washington, D.C. that merit your attention, including the 27 percent increase in crime across all crime categories since last year.¹¹

⁵ See Press Release, Campaign for Accountability, Watchdog Requests IRS Investigate Leonard Leo Affiliated Nonprofits for Potential Self-Dealing (Apr. 6, 2023).

⁶ Oprysko, *supra* note 4 (“the complaint . . . doesn’t provide any direct evidence of its accusations.”).

⁷ Press Release, Campaign for Accountability, Watchdog Requests IRS Investigate Leonard Leo Affiliated Nonprofits for Potential Self-Dealing (Apr. 6, 2023); David Smith, *Rightwing legal activist accused of misusing \$73m from non-profit groups*, THE GUARDIAN (Apr. 6, 2023) (“The Campaign for Accountability has written to the attorney general of Washington DC referring the non-profits for potential investigation and enforcement action.”).

⁸ See Przybyla, *supra* note 1.

⁹ See, e.g., *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021); *NAACP v. Alabama ex rel. Patterson*, 78 S. Ct. 1163 (1958).

¹⁰ *Alabama ex rel. Patterson*, 78 S. Ct. at 1170 (internal citations omitted).

¹¹ See *2023 Year-to-Date Crime Comparison*, Metropolitan Police (Oct. 30, 2023), <https://mpdc.dc.gov/page/district-crime-data-glance>. Compared to this time last year, violent crime has soared 39 percent, robberies increased 67 percent, homicides increased 28 percent, motor vehicle theft increased an astounding 109 percent, and sex abuse rose by 8 percent.

Contributing to this increase is the alarming rise in crime committed by juvenile offenders.¹² Instead of using your office’s substantial resources to address these problems, however, your office has reportedly decided to dedicate those resources to a politically motivated probe that “creates an unnecessary risk of chilling free speech.”¹³ The Committees will not tolerate any efforts to undermine donor privacy and chill association of American citizens.

To assist the Committees in the conduct of our oversight duties, we ask that you provide the following documents and information as soon as possible but no later than 5:00 p.m. on November 13, 2023:

1. All documents and communications relating to your inquiry into Mr. Leo and nonprofit organizations affiliated with Mr. Leo, including but not limited to the (a) 85 Fund, (b) Rule of Law Trust, (c) Wellspring Committee, (d) the Concord Fund, (e) Federalist Society for Law & Public Policy Studies, (f) Freedom and Opportunity Fund, and (g) Marble Freedom Trust; and
2. All documents and communications between or among the District of Columbia Office of Attorney General and third-party groups—such as the Campaign for Accountability—referring or relating to Mr. Leo and organizations affiliated with Mr. Leo.

Please treat these requests as continuing in nature and applicable to any information generated after receipt of this letter. In addition, please contact Committee staff no later than November 13, 2023, to schedule a briefing on the status and scope of your investigation.

Pursuant to the Rules of the House of Representatives, the Committee on Oversight and Accountability has specific oversight and legislative jurisdiction over the “[m]unicipal affairs of the District of Columbia in general.”¹⁴ In addition, the Committee on the Judiciary has jurisdiction to conduct oversight of matters concerning “civil liberties” to inform potential legislative reforms.¹⁵

¹² Delia Goncalves, ‘Sometimes kids need to be sat down’ | DC Attorney General on the juvenile justice system, WUSA 9 (June 14, 2023) (“MPD reports 366 carjackings to date, with only 58 cases closed. Out of those 58 closed cases, police data shows young people make up 59% of offenders.”); *See also Biannual Report on Juvenile Arrests Between January and June 2022*, Metropolitan Police (March 14, 2023); *Biannual Report on Juvenile Arrests Between July and December 2022*, Metropolitan Police (March 9, 2023); *Biannual Report on Juvenile Arrests Between January and June 2023*, Metropolitan Police (Aug. 28, 2023).

¹³ *Sec’y of State of Md. v. Joseph H. Munson Co.*, 104 S. Ct. 2839, 2853 (1984).

¹⁴ Rules of the House of Representatives, Rule X.1(1)(5) (2023).

¹⁵ *Id.* at Rule X.1(n)(2).

The Honorable Brian Schwalb

October 30, 2023

Page 4

If you have any questions about this matter, please contact Judiciary Committee staff at (202) 225- 6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability