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Cato Institute demand domestic investigation records in lawsuit against FBI, DOJ

Libertarian group aims to track rogue probes by federal investigators

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The libertarian Cato Institute sued the FBI and Department of Justice on Thursday, vowing to unearth records about whether and when the FBI has overstepped its bounds in targeting and investigating American citizens.

The battle is unfolding amid concerns that FBI is choosing to investigate people because of politics and ideology instead of wrongdoing, with critics pointing to charges that the bureau targeted a conservative group for a probe while simultaneously ignoring U.S. gymnasts' allegations of sexual abuse by ex-Olympic gymnastics doctor Larry Nassar.

The think tank is seeking records to shed light on when the FBI thinks it has gone too far in investigating people who may not have been accused of a crime through various investigative activities such as so-called "assessments." The sought-after records would reveal hidden details about whom the FBI investigated, in violation of its own rules and without producing evidence for doing so, Cato officials say.

"If the FBI is allowed to continue to use assessments as a tool to investigate people without any kind of predicate, you're changing the fundamental fabric of the country, you're changing the fundamental relationship between the citizen and the government," said Patrick Eddington, Cato Institute senior fellow. "And that's the kind of insidious, creeping change that is the most difficult to try to deal with."

FBI's assessments to probe individuals and groups' actions do not require allegations of wrongdoing or a "factual predication," instead only needing an "authorized purpose" and a clear objective, according to the FBI's Domestic Investigations and Operations Guide updated in 2016.

A wide variety of politically oriented groups have already been swept up in FBI assessments, according to records obtained by Mr. Eddington, including the conservative Concerned Women for America, a New York chapter of the League of Women Voters, and the Muslim Justice League in Massachusetts.

The Cato Institute asked the FBI last fall for records regarding when federal agents thought the FBI failed to follow its own requirements for conducting domestic investigations and operations. The FBI answered this summer that it had nearly 1,100 pages of such records and releasing the information would take approximately five and a half years, according to the Cato Institute's lawsuit.

Mr. Eddington said Thursday's Freedom of Information Act lawsuit marks Cato's 11th suit against the FBI or the Justice Department since 2019. He said he thinks the bureau is purposefully moving slowly to protect the FBI's reputation.

"Almost 1,100 pages sounds like a lot until you realize that they told me via email that it only covers a period — 2013 to 2020, essentially," Mr. Eddington said. "What about everything before that? What kind of supposed oversight was taking place? And I have to say the entire idea of internal oversight at any agency or department, I find laughable."

The nearly 1,100 pages of records involve the FBI's internal discussion of its own methods and would not include instances of the FBI conducting assessments of groups that watchdogs and Americans may find objectionable.

For example, the records may not include the FBI's examination of Concerned Women for America in 2016 conducted in part because of how Charity Navigator, a group that grades organizations, scored CWA, according to documents released to Mr. Eddington in response to a FOIA request. The FBI determined there was no reason to investigate the conservative women's group further.

The revelation that the FBI probed the conservative women's group in the months before the 2016 presidential election spurred concern on Capitol Hill. Sen. Charles E. Grassley, Iowa Republican, and Rep. Jim Jordan, Ohio Republican, each wrote letters to the FBI demanding answers about the investigation of the conservative women's group.

While no answers have yet become public, Republicans are working with the FBI and expect them to cooperate, according to a House Republican source.

Details about how the FBI chooses to launch investigations and which matters it prioritizes are receiving newfound scrutiny amid U.S. gymnasts' testimony this week during a U.S. Senate hearing regarding the FBI's handling of sexual abuse charges against ex-Olympic gymnastics doctor Larry Nassar. Gymnast McKayla Maroney testified that she told an FBI agent in the summer of 2015 about the abuse she suffered but she said it was not documented until 17 months later.

While FBI agents in one field office allegedly ignored Ms. Maroney, a different FBI field office probed Concerned Women for America and found nothing worth pursuing.

Mr. Grassley referenced the Nassar investigation in his July letter to FBI over its examination of Concerned Women for America.

"Based on the unredacted information that's been made public to date, I'm concerned about the basis upon which the FBI initiated an assessment of CWA and the authorities it relied on to do so," wrote Mr. Grassley in the letter. "Unfortunately, as the country has witnessed in the recent past, including the Crossfire Hurricane investigation and the Larry Nassar investigation, the FBI has repeatedly failed in its mission and abused its authority."

The FBI did not immediately respond to request for comment from The Washington Times. The FBI's Washington Field Office previously declined to comment on its assessment of Concerned Women for America and directed The Washington Times to the information it released under the FOIA request to Mr. Eddington.

