

## After Eight Years On The Sidelines, This Conservative Group Is Primed To Reshape The Courts For Decades

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**The Federalist Society's** annual dinner last week looked like any other black-tie affair in Washington — a sea of tuxedoed and ball-gowned lawyers gathered in an ornate hall in Union Station to sip wine, hob nob, and celebrate the year's achievements.

But after eight years on the sidelines, the nation's preeminent conservative lawyers group was in an especially celebratory mood. No outside group has had more influence on nominees for lifetime federal judgeships in the Trump era than the Federalist Society, and few people more influential in helping achieve that goal than its executive vice president Leonard Leo. At last year's convention, the mood was one of cautious, surprised optimism. Donald Trump had just won the election. The hallways were suddenly filled with US Supreme Court contenders, soon-to-be Justice Department and White House officials, and lawyers whose dreams of a federal judgeship were much closer than they had anticipated a few weeks earlier.

This year, the dinner's featured speaker was new Supreme Court Justice Neil Gorsuch. His confirmation in April to replace the late justice Antonin Scalia has been one of the GOP's proudest achievements this year — and one that Leo played a key role in making happen. Gorsuch took the stage to thunderous applause and a standing ovation. A handshake with Leo quickly turned into a warm embrace.

"Today, I can report that a person can be both a publicly committed originalist and textualist" — pillars of conservative legal thought — "and be confirmed to the Supreme Court," Gorsuch said.

Leonard Leo, left, the executive vice president of the Federalist Society, welcomes Supreme Court Justice Neil Gorsuch on Nov. 16 at the Federalist Society's annual convention.

But the Federalist Society's influence on the judiciary stretches far beyond the high court. Nearly half of Trump's nominees for the lower courts are or were Federalist Society members. And many of the White House and Justice Department lawyers responsible for vetting nominees and making recommendations to the president are past or present members, too.

Of the 58 federal district and appeals court nominees announced by the White House so far, at least 28 have been members of the Federalist Society, according to their Senate questionnaires and other publicly available information. Of Trump's 18 nominees to the federal appeals courts — the final destination for all but a small percentage of cases the Supreme Court agrees to hear — 17 reported a Federalist Society connection.

Democrats, civil rights groups, and liberal legal groups accuse Trump of outsourcing judicial nominations to Leo and the Federalist Society, along with a handful of other conservative groups such as the Heritage Foundation and the Judicial Crisis Network. Past presidents have sought input from outside groups, but Trump's critics say he's crossed a line in how much power he's ceded to an organization that isn't accountable to the public.

Conservatives deny that the Federalist Society is a shadowy cabal pulling the strings — its events aimed at fostering a community for conservative and libertarian lawyers are public, and its donors are listed in annual reports and tax records. Gorsuch himself cracked in his remarks last week that if the group was in fact a secret organization, it shouldn't host an event in the main hall of Union Station.

Leo and other conservatives play down their influence, saying it's the White House lawyers who make final recommendations to the president, and that it's ultimately Trump's decision. But the ties between the Federalist Society and all of those decisionmakers run deep. Conservative lawyers who support the organization say membership has become an important marker for prospective nominees.

“Clearly there's a sense that if a potential candidate has not been actively involved in the Federalist Society, let alone a mere member, that's a curiosity. Why wouldn't they have done that?” said Ilya Shapiro, a senior fellow at the libertarian Cato Institute.

Leo took leave from the Federalist Society — a nonprofit that can't be directly involved in political activity — last year to advise Trump's campaign and transition team on judicial nominations. He returned to the organization this year, but has continued to offer guidance on nominations to the president and the White House counsel's office, according to Leo and a source familiar with the White House process.

In a phone interview with BuzzFeed News, which he gave in his capacity as an informal adviser to the president on judicial nominations and not on behalf of the Federalist Society, Leo said that the White House does consult him on nominees, but he disputed that he was “calling the shots.” “Along with others, the White House from time to time does ask for my perspectives on various people in the legal community, who I may have known for many years. And I'm happy to provide whatever background I can about folks when I know them,” Leo said.

A White House spokesperson declined to comment. In a speech at this year's Federalist Society convention, White House counsel Don McGahn also dismissed the outsourcing claims. “They've been doing a damn good job.”

“Our opponents of judicial nominees frequently claim the president has outsourced his selection of judges,” McGahn said. “That is completely false. I’ve been a member of the Federalist Society since law school, still am, so frankly it seems like it’s been in-sourced.”

Members of the Federalist Society broadly share common ideas about how to interpret and apply the US Constitution and federal and state laws (narrowly, with a focus on the text and the original intent of the framers). They tend to favor limits on government power and hold conservative social values.

For liberals, that narrow reading of the constitution and laws, combined with a conservative set of social views, translates into rulings against women, people of color, LGBT individuals, workers, and the environment.

“They want to see the federal courts and state courts reflecting their view of a constitution that’s mired in the 18th century, that reflects a very antiquated view of our freedoms and fundamental rights,” said Caroline Fredrickson, president of the American Constitution Society, a liberal lawyers group.

The Federalist Society has proven far more successful than its counterparts on the left in organizing the conservative legal community. The Federalist Society has more than 60,000 student and professional members, according to its website. For the tax year from October 2015 to September 2016, it reported \$25 million in net assets to the IRS. By comparison, the American Constitution Society has nearly 8,000 members, and in 2015 reported \$4 million in assets. “They’ve been doing a damn good job,” Fredrickson said.

### **“Remarkably Effective”**

**The idea that** Trump will be able to drastically reshape the judiciary and that the Federalist Society will be there to help has swayed even some of Trump’s most ardent critics. Federalist Society member and professor at George Washington University Law School Orin Kerr, who was a Never Trumper during the campaign, said he’s been pleased with the president’s nominees so far, characterizing them as “the Federalist Society A-Team.”

“For a lot of conservatives the fact that the administration is nominating strong judges who are not Trump-like is a major asset to the Trump administration,” Kerr said. “When Trump does something out of bounds, you’ll hear people say, ‘Well, they have Gorsuch.’”

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Ed Whelan, president of the Ethics & Public Policy Center, said some conservatives feel that Trump’s picks have been even stronger than George W. Bush’s, which he thought reflected that growth of the Federalist Society, both in size and influence.

Leo has “been remarkably effective in building this network of conservative and libertarian lawyers. I think he has a deep commitment to the institution,” Whelan said.

Trump inherited more than 100 federal court vacancies when he took office in January, in part because Republicans blocked a number of Obama’s nominees and refused to hold hearings and votes during his final year in office. The Senate this year has confirmed 12 circuit and district court judges. Forty-six nominees are pending in the Senate, and Republicans are moving to get them through the process as quickly as possible — on Thursday, Senate Judiciary Committee Chairman Chuck Grassley announced he would hold hearings even if both home state senators hadn’t given their approval of a nominee, weakening what little leverage Democrats had left with the White House. Senate Majority Leader Mitch McConnell has made getting judges confirmed a priority.

Federalist Society members aren’t a monolith, but they generally share certain ideas about how to interpret and apply the law. Ilya Shapiro, the Cato Institute fellow, said the Federalist Society serves as a “clearinghouse” for lawyers who are committed “to finding the truth in the law and construing it as faithfully as the text and original public meaning allow.” The fear, he said, is having judges “who move left or are squishy moderates.”

“Republican elected officials have come to understand that it’s not enough simply to appoint judges who are committed Republicans or have punched their ticket somehow in a partisan manner,” Shapiro said. “You need people who are committed ideologically and jurisprudentially.”

Leo said he thought Trump’s nominees were defined by their “intellectual firepower,” their commitment to a conservative approach to the law, and their independence. “You’re seeing, I think, people who have real spunk and vigor and independence and courage,” he said. “They’re people who have demonstrated through various aspects of their careers that they stand for a set of principles, they embrace those, and they’re willing to defend them.” Democrats, civil rights advocates, and lawyers on the left, on the other hand, see dangerous ideologues.

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“A lot of folks might have thought that having the Federalist Society involved would perhaps have more establishment-type conservatives on the bench rather than judges in Trump’s own image, but I think what we’re seeing in some of these recent nominees are exactly the types of nominees with extreme rhetoric and lack of qualification that you would expect from someone like Donald Trump,” said Elizabeth Wydra, president of the Constitutional Accountability Center.

During the fight over Gorsuch’s confirmation, his critics pointed to a dissenting opinion he wrote in August 2016 about a trucker who had been fired for leaving his broken-down vehicle by the side of the road in violation of company policy. The weather was freezing, and the trucker waited

hours for help after reporting the breakdown before he left. Two of the judges on the three-person panel sided with the trucker. Gorsuch wrote that he would have ruled for the company because regardless of the circumstances, federal labor law simply did not protect the trucker's actions. Democrats characterized the dissent as extreme. Conservatives hailed it as an example of the kind of dispassionate decisionmaking judges should strive for — and a way of thinking promoted by the Federalist Society.

“It might be fair to ask whether TransAm’s decision was a wise or kind one. But it’s not our job to answer questions like that. Our only task is to decide whether the decision was an illegal one,” Gorsuch wrote in his dissent.

A source familiar with the White House process said the Trump administration hasn't asked potential nominees for their views on particular social issues. Christopher Kang, who worked on nominations in the White House counsel's office under former president Barack Obama, said that the influence of the Federalist Society raises the question of whether membership serves as a tacit confirmation that nominees do in fact hold fast to conservative social views.

“You wonder if when you have an organization like the Federalist Society giving recommendations, is it with a wink and a nod,” Kang said.

### **Central part of the process**

**Leo sits** at the heart of the network. He is reluctant to talk about his role in judicial nominations, but said that during his time advising the campaign and the transition he and McGahn and other lawyers did draft lists of prospective candidates for the federal bench. He's continued to stay in touch with the White House, and with Trump directly, to offer guidance on nominations.

“There is this misconception that somehow everything is outsourced. That’s just not the way this works,” Leo said. “Don [McGahn] and all of the people in the White House counsel's office have a deep bench of knowledge about people and about talent that individuals have as part of the movement and that is a very important part of how this process works.”

The source familiar with the White House process said the counsel's office does reach out to Leo for advice because of his connections, along with other lawyers — former officials who served under former president George W. Bush, for instance.

“Leonard is a central part of that process because Leonard knows the people who are active in the conservative legal movement all across the country,” the source said.

President Donald Trump meets with conservative leaders on Sept. 25, including Federalist Society executive vice president Leonard Leo, seated fifth from the front on the right side. Leo said he's been impressed with Trump's interest in nominations. At a Sept. 25 dinner at the White House that included Leo and other conservative leaders, Leo said Trump asked a number of questions about nominations: where nominees were in the confirmation process in Senate, how many vacancies still needed nominees, and when new seats might open up.

Asked if Trump's criticism of judges who have ruled against his administration and his other jabs at the justice system — earlier this month he called it a “laughingstock” — had hurt the judiciary at all, Leo brushed it off, saying presidents going back to Thomas Jefferson had criticized judges.

“We have courts that are truly independent and insulated from the political issues of the day,” he said.

Kang said it was common for the White House to solicit opinions from outside groups. But he said there's at least a perception that the Federalist Society and other conservative groups are exercising more authority over nominees than others have in the past.

“The problem with that is, one, that they're incredibly ideological. But two, that probably accounts for one of the reasons why all of the nominees, or most, are white, and men,” Kang said. A recent report by Roll Call found that 91 percent of Trump's lower court nominees are white, and 81 percent are men.

Leo earned a law degree from Cornell Law School in 1989, and clerked for a federal appeals judge, but he has spent most of his career working for the Federalist Society. He said Scalia became a major influence for him starting in law school, and he came to believe that the judiciary was “essential” to enforcing limits on government power, which he saw as necessary to preserving “the dignity and worth of the individual human being.”

Beyond the Federalist Society, Leo wears many other hats. He has long been involved with Catholic and pro-life organizations. When George Mason University announced in March 2016 that it would rename its law school after Scalia, it noted in a press release that Leo had connected the school with an anonymous donor who pledged \$20 million.

The law school has a reputation as being one of the most conservative in the country; the Princeton Review this year ranked Antonin Scalia Law School number five in terms of most conservative student body, based on a student survey. State and university records obtained through a public records request by a group of George Mason alumni and students and provided to BuzzFeed News show that Leo is the president of a third-party beneficiary called BH Fund in charge of enforcing the donor agreement with the law school. He explained that means he is “responsible for making sure that the law school remains true to its principles over the course of the gift.”

“Those principles are not all that different from what you would expect from any academic institution: a commitment to academic freedom and a due respect for intellectual diversity and the freedom of expression. And in particular a commitment to excellence,” Leo said. Leo also sits on the board of trustees for the Catholic University of America and is involved with helping students at his alma mater, Cornell Law School, secure federal court clerkships.

The late Supreme Court justice Antonin Scalia addresses a Federalist Society dinner in 2006.

## **Conservative pipeline**

The Federalist Society was established in 1982, a response to what conservative law students, professors, and lawyers saw as the dominance of liberal legal thinking in academia. Scalia was an early supporter when he was still a professor at the University of Chicago School of Law, and would go on to become a towering figure in the conservative legal movement and within the organization.

“In the law schools the conservative view tends to be a minority view, held by a small proportion of the students, so identifying others who are interested in those issues and coming out a different way is a ... more important network function than it is when that’s the view that everybody has,” said Kerr, the law professor.

The Federalist Society’s member base is bigger than it was when George W. Bush was in office. A [Washington Post article](#) in 2005 put the group’s membership at about 35,000. The group reported \$5.4 million in assets that year to the IRS. Revenue steadily grew over the next decade, and then surged in 2016, at the same time the Trump campaign was trying to win over anxious Republicans by urging them to think about Scalia’s vacant seat on the Supreme Court and the rest of the federal bench.

For the tax year ending Sept. 30, 2015, the Federalist Society reported assets of \$14 million. By Sept. 30, 2016, the group had more than \$25 million in net assets. Tax records and the group’s annual reports show that major donors in recent years have included Koch Industries, the Mercer Family Foundation, the US Chamber of Commerce, and a slew of other conservative nonprofits and lawyers. White House counselor Kellyanne Conway and her husband George Conway, a lawyer and rumored candidate this year for a Justice Department job, are supporters. Other corporate donors have included Chevron Corp., Google, Microsoft, and Pfizer Inc.

The group spends millions of dollars annually supporting hundreds of events across the country and abroad for law students and lawyers, producing videos and publications on a variety of legal topics, and hosting the annual convention in Washington. Top officers also earn healthy salaries — the group paid out \$4 million in salaries in 2016, including \$726,714 to president Eugene Meyer and \$435,000 to Leo.

As the network has grown, it’s become a pipeline to senior jobs in government, academia, and law firms, as well as to the federal bench. In law school, membership in the Federalist Society can help students get a leg up in landing competitive clerkships with conservative judges. Clerkships, in turn, are springboards to coveted positions at top law firms, the White House, and the Justice Department.

As Federalist Society members move up in their careers, they pull the next generation up with them and keep tabs on rising stars. At a [memorial for Scalia](#) in March 2016 in Washington, then-Michigan Supreme Court Justice Joan Larsen, a former Scalia clerk, spoke before a room that included many Federalist Society members. A source who was there told BuzzFeed News that Larsen impressed the audience, which included lawyers who would end up in charge of nominations in the White House and the Justice Department the following year.

Larsen was on the first list of Supreme Court candidates that Trump released in May 2016. Scalia's seat ultimately went to Gorsuch — also a Federalist Society member — but Larsen was nominated for a seat on the US Court of Appeals for the 6th Circuit and was confirmed by the Senate earlier this month.

The White House on Friday released a list of five new names for Trump's Supreme Court short list. All have Federalist Society ties. Of the 25 names now on Trump's list, BuzzFeed News identified a Federalist Society connection, either membership or at least involvement with events, for all but one, Judge Margaret Ryan of the US Court of Appeals for the Armed Forces. A Federalist Society spokesperson declined to comment on whether Ryan had any ties to the group.

“Right now it's fair to say that President Trump has amply exceeded expectations with his judicial picks,” Whelan said.