



Dark Money for Supreme Court Briefs Tied to Former Federalist Society Leader

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A new review of grant documents, first published on the dark web, provides a snapshot of how groups tied to Leonard Leo — the man who put Amy Barrett on President Trump’s list for the Supreme Court — have been secretly funded to file briefs with the Supreme Court to overturn U.S. laws, including the Affordable Care Act.

Leo, the co-chair of the Federalist Society’s board, was previously the group’s Executive Vice President. Earlier this year, he announced the launch of a for-profit firm called CRC Advisors, which is working closely with Leo-tied non-profits that were being rebranded — including one previously known only as the “Judicial Education Project” (JEP).

His move came in the aftermath of an in-depth [investigation of Leo in 2019](#) by Robert O’Harrow and Shawn Boberg of the *Washington Post*’s investigative unit, which documented how Leo directed millions from big donors to groups spending big to get nominees of Trump confirmed and to block Merrick Garland’s confirmation to the Supreme Court. Senators Stabenow, Schumer, and Whitehouse recently [announced](#) that they will be issuing a new series of reports about the impact of court capture on Americans’ rights, following on earlier [white papers](#), and Senator Whitehouse recently [testified](#) about these issues before the House.

Last year, the *Post* tallied the Leo network’s spending to get federal and state judges appointed and to influence the law at more than \$250 million over the past few years — not counting money given in 2018, which was not publicly available due to tax filing deadlines. Leo-tied groups, like the legally separate Judicial Crisis Network, have also recently funneled money from major donors, who are not publicly known, to fund activities by the [Republican State Leadership Committee](#), which has used a related entity to spend big on negative ads the week before state supreme court elections, and the [Republican Attorneys General Association](#). Earlier this year, JEP filed for the use of a “fictitious name” to do business in Virginia, calling itself the [“Honest Elections Project.”](#) This new Leo-connected group is amplifying claims of voter fraud and downplaying evidence of voter suppression measures, assertions that have been widely [assailed](#).

The newly reviewed grant documents include [emails](#) showing that the Bradley Foundation’s grant officer conferred with Leo at the Federalist Society about how the foundation could fund “two Supreme Court *amicus* projects” without funneling the money through DonorsTrust, in 2014. Leo connected them to Neil Corkery, a long-time ally of his in an array of groups, and the listed leader of JEP. That group was launched in 2004 alongside another group Leo has deep ties

to: the Judicial Confirmation Network, which is now known as the Judicial Crisis Network (JCN). JCN was created at a small dinner party Leo attended with Corkery and others that Justice Antonin Scalia attended too, after the 2004 election.

Corkery is also a central figure in the now-defunct Wellspring Committee, which transferred millions from one secret source to JCN, as it fought to block Merrick Garland's confirmation to the Court and to advance Neil Gorsuch to that seat. Corkery has been on the board of a number of anti-choice and anti-gay rights groups and other entities — sometimes with Gary Marx or Dan Casey. At the time of the Bradley grant, Corkery was operating JEP as president, with Carrie Severino as staff and on the Board. She is a former law clerk for Justice Clarence Thomas.

Severino is now the leader and spokesperson of JCN, which recently announced a multi-million dollar ad campaign in support of Barrett's confirmation. As the *Washington Post* documented, during the fight over Brett Kavanaugh's nomination she had an office just down the hall from the Federalist Society.

The Bradley grant summary states that the request for funding for JEP's amicus briefs was "initiated by Bradley Prize recipient Leonard Leo of the Federalist Society for Law and Public Policy Studies."

According to that document, JEP provided Bradley with a proposal seeking \$200,000 to help subsidize the cost of two amicus briefs, which were described by Bradley as costing \$250,000 each. Bradley's grant officer recommended that its board approve \$150,000 to help underwrite the costs of those briefs to the Supreme Court, stating:

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. (Bradley Grant Proposal Record of the Judicial Education Project)

Bradley's proposal summary expressly stated that the funding was needed "for two important cases pending before the U.S. Supreme Court."

The King Litigation Was an Attack on Health Care

"King" is a reference to King v. Burwell, which the Court decided later that year, in 2015. That case involved a challenge by four individual plaintiffs to an IRS rule providing federal-exchange subsidies nationwide as part of the implementation of the Affordable Care Act (ACA), the signature health insurance reform bill of the Obama administration.

Bradley's recommendation to provide funding to support JEP's amicus brief noted that "the King statutory interpretation case itself was brought with Bradley support by the Competitive Enterprise Institute" (CEI). The Supreme Court's Rule 29.6 required disclosure in the case notes that the plaintiffs were four individuals. There is no reference to CEI in the Supreme Court's docket sheet for the case as a lawyer or litigant, but the group's website stated that CEI "is coordinating and funding both the King v. Burwell case and the D.C. Circuit Halbig v. Burwell case." There is no mention of CEI as an intermediary for Bradley funding of this litigation.

After the Supreme Court ruled against the four plaintiffs and upheld the ACA, the Bradley summary for CEI's grant stated:

[T]he U.S. Supreme Court handed CEI, and perhaps conservatism in general, one of its biggest legal losses ever. The Court ruled against CEI's ambitiously creative challenge to Obamacare's tax subsidies to individuals purchasing insurance coverage through the federal health-insurance exchange. CEI acknowledges that the loss was deeply disappointing — not only because it kept intact subsidies not authorized by statute, but also because it signaled a shift in the Court's respect for the plain meaning of laws enacted by Congress. Nonetheless, it argues, the case succeeded in reshaping the country's public discourse about health-care policy, the rule of law, the role of Congress, and agency accountability. (Bradley Grant Proposal Record of the Competitive Enterprise Institute)

Bradley's grant summary also specifies that CEI has long been funded by the Koch family fortune, Sarah Scaife, Barre Seid, Exxon, Murray Energy, and Pfizer. It also noted that Leo was on CEI's board of legal advisors alongside Michael Greve of George Mason's law school, which has received many millions in Koch money. (CEI was founded by Fred Smith in the 1980s after he worked with Charles Koch at his Council for a Competitive Economy, the predecessor of Citizens for a Sound Economy, now known as Americans for Prosperity. CEI has a long history of peddling climate change denial.)

Billionaire Charles Koch's political arm, Americans for Prosperity, has announced that it will spend millions to push for the quick confirmation of Barrett to the Supreme Court. Koch has spent tens of millions through organizations he controls to attack the ACA over the past decade. He began subsidizing litigation against anti-corruption election laws in the 1970s.

The Koch-founded and -funded Cato Institute also submitted an amicus brief in the *King* case, urging that the Supreme Court strike down the ACA.

The JEP brief that Bradley mentioned as worthy of its philanthropic subsidy had been filed in 2014 by Severino and other lawyers on behalf of seven elected officials: Senators John Cornyn, Ted Cruz, Orrin Hatch, Rob Portman, and Marco Rubio as well as Reps. Dave Camp and Darrell Issa. The main law firm on the brief with JEP was Cooper & Kirk, one of the firms Bradley noted in its grant write-up. The discussion with Leo about funding occurred about two weeks before this brief was submitted to the Court.

So, 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.

The Bradley proposal documents also noted that it was funding two other groups that submitted amicus briefs in the *King* litigation: the Pacific Research Institute (PRI) and the Galen Institute. Both groups specifically requested Bradley funding for amicus briefs seeking to get the Supreme Court to overturn the ACA. PRI's brief is here. The Galen Institute's brief is here, on the website of C. Boyden Gray's law firm.

Galen also received funding for its amicus briefs against the ACA from the Randolph Foundation, which is controlled by Vicks VapoRub heir, Heather Higgins, who leads the Independent Women's Voice (IWV) and Independent Women's Forum (IWF). IWV received \$150,000 from JCN in 2014, and later received \$4 million from Leo's Freedom and Opportunity

Fund over two years as it opposed Garland's confirmation and supported Gorsuch's confirmation. Her groups also played a prominent role in defense of Brett Kavanaugh's nomination, and JEP gave \$300K to IWF in 2018. IWF and IWV leaders are actively pressing for Barrett's rapid confirmation. Notably, Higgins has used claims about the ACA in outreach to swing-state voters right before the election in 2016, and she took credit for moving women in Wisconsin toward Trump in sufficient numbers to help him win the presidency.

IWF joined forces with the Cato Institute in the follow-on case to *King*, a consolidated set of cases under the name *Zubik v. Burwell*. IWF has received both Koch and Bradley funding for other work over the years. It has deep ties to Koch — even being led for years by the former top lobbyist for Koch Industries and being co-led and co-located with Citizens for a Sound Economy/Americans for Prosperity.

Judge Barrett, Trump's nominee for Justice Ruth Bader Ginsburg's seat on the Supreme Court, has criticized the Affordable Care Act. The Court has scheduled oral arguments for November 10 in the latest case attacking that law — which extended access to health care to millions of Americans and which makes it illegal for insurance companies to discriminate against people with pre-existing conditions.

Trump has attacked the ACA repeatedly and sought its repeal, and never forgave Senator McCain for refusing to go along with his plan. Trump's recently issued declaration "policy" about pre-existing conditions would provide no actual enforceable protections, if the Court were to strike down the law as he seeks. That declaration is little more than a talking point that was issued right after Justice Ginsburg died, as he prepared to nominate Barrett to the Supreme Court. With covid-19 spreading in the U.S., millions of Americans may now or in the future have significant pre-existing conditions as a result of this deadly pandemic.

The *Friedrichs* Litigation Was an Attack on Unions

The "Friedrichs" case mentioned by Bradley in its funding document was *Friedrichs v. California Teachers Association*. That case attacked the dues collected by unions from employees to negotiate for benefits for all non-management employees.

Bradley noted in early 2015 that "Various amici in *Friedrichs* likely will include current and former governors, state attorneys general, First Amendment scholars, and leading Bradley-supported education-reform entities — including PRI. At this writing, two or three others may be commissioned." The Koch-funded Cato Institute also filed an amicus brief in *Friedrichs*.

It is noteworthy that in its evaluation of which groups to fund on these issues, Bradley touted that the *Friedrichs*' case and a related case could be a "powerful one-two punch" against unions that could cause them to "lose an estimated \$60 million annually." (That was part of the summary of the Bradley grant recommendation for the group StudentsFirst in 2015.)

After Justice Antonin Scalia died in early 2016, the Court was deadlocked 4-4 in the *Friedrichs* case, which resulted in affirming a lower court decision that had refused to overrule "agency shop" rules for public sector unions. Those long-standing rules prevent free riders from benefiting from union negotiations without dues. However, after Gorsuch was confirmed, the Court struck down those rules in a 5-4 decision with a different plaintiff, Mark Janus, pursuing the same line of arguments as those subsidized by the Bradley Foundation.

(A brief history of the roots of the Janus litigation and the so-called “right-to-work” laws that undermine collective bargaining rights is available [here](#).)

The [amicus brief JEP submitted](#) in the *Friedrichs* case, after receiving Bradley funding, was on behalf of eight law professors, all of whom were then and are still leading voices in the Federalist Society, including one of its co-founders: Steven Calabresi. (One of them has since passed away.) In 2010, the Bradley Foundation awarded Calabresi, Leonard Leo, and other founders or leaders of the Federalist Society the [Bradley Prize](#), a gift of \$250,000, which it has also given to others like [Paul Gigot](#), when he was on the *Wall Street Journal* editorial board.

So, in the case of *Friedrichs*, the Bradley Foundation was in touch with the Executive Vice President of the Federalist Society about helping to subsidize an amicus brief for the U.S. Supreme Court that was later written and filed on behalf of professors, all of whom were contributors to the Federalist Society.

This is only one snapshot of the role that the Bradley Foundation and others have played in funding amicus briefs submitted to the Supreme Court to try to get laws overturned. In this instance, one of the groups that submitted amicus briefs the foundation subsidized is part of Leo’s dark money network, which has spent millions to get the judges he wants on our nation’s highest court.

The documents used to illustrate this story in the public interest are only a few of the thousands of pages of documents in the Bradley files trove, which the Center for Media and Democracy (CMD) began examining in 2017. It noted:

“The documents were made public in October 2016 on two Twitter accounts that cyber security analysts have linked to one of the Russian hackers alleged to have breached the Democratic National Committee. The Bradley Foundation confirmed [in a statement](#) that the hack had taken place and was reported to the FBI. More information about how the Bradley files became public is available [here](#).

The documents open a window to the behind-the-scenes workings of one of America’s largest right-wing foundations. With \$835 million in assets as of June 2016, the Bradley Foundation is as large as the three Koch family foundations combined, yet receives much less attention as a significant funder of the right.”