

116TH CONGRESS
2D SESSION

S. RES. 759

Expressing the sense of the Senate that dark money undermines the integrity of the judicial system and damages the perception that all people receive equal justice under law.

IN THE SENATE OF THE UNITED STATES

OCTOBER 24 (legislative day, OCTOBER 19), 2020

Mr. WHITEHOUSE submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Expressing the sense of the Senate that dark money undermines the integrity of the judicial system and damages the perception that all people receive equal justice under law.

Whereas dark money organizations, funded by anonymous donors, have played an outsized role in the selection of judges and justices of the Supreme Court of the United States (referred to in this preamble as the “Supreme Court”) under President Trump and spent millions of anonymous dollars on advertising campaigns supporting those selections;

Whereas the people of the United States have no idea who is funding these campaigns and what business the funders might have before the courts;

Whereas, under President Trump, the Federalist Society for Law and Public Policy Studies (referred to in this preamble as the “Federalist Society”) has played a central role in the selection of President Trump’s judicial nominees, including his 3 nominees to the Supreme Court, for example—

(1) in 2016, then-candidate Trump said that all of his judicial selections would “be hand-picked by the Federalist Society”;

(2) in 2017, then-White House Counsel Don McGahn boasted that the judicial selection process had been “in-sourced” to the Federalist Society;

(3) Leonard Leo, the Co-Chairman of the Federalist Society, twice took a leave of absence from the Federalist Society to work in the White House and advise President Trump on his Supreme Court nominations;

(4) approximately 86 percent of President Trump’s Supreme Court and appellate court nominees have been members of the Federalist Society; and

(5) Judge Amy Coney Barret has spoken at 26 Federalist Society events since 2014 and, at the time of his confirmation in 2018, Justice Brett Kavanaugh had spoken at over 50 Federalist Society events;

Whereas the Washington Post reported that Leonard Leo has helped raise \$250,000,000 from mostly anonymous donors to promote conservative legal causes and judges;

Whereas groups engaged in these activities do not disclose their funders, meaning the people of the United States have no idea who is behind this sophisticated operation to influence the selection of judges and justices;

Whereas dark money groups like the Judicial Crisis Network (referred to in the preamble as “JCN”) have helped

shape the composition of the Supreme Court by spending tens of millions of anonymous dollars on advertising campaigns opposing or supporting Supreme Court nominees, specifically—

(1) JCN spent \$7,000,000 to block President Obama’s nomination of Judge Merrick Garland to be an Associate Justice of the Supreme Court in 2016;

(2) JCN pledged to spend \$10,000,000 to support President Trump’s nomination of then-Judge Neil Gorsuch to be an Associate Justice of the Supreme Court in 2017;

(3) JCN also spent \$10,000,000 to support President Trump’s nomination of then-Judge Brett Kavanaugh to be an Associate Justice of the Supreme Court in 2018; and

(4) JCN has pledged to spend \$10,000,000 to support President Trump’s nomination of Judge Amy Coney Barrett to be an Associate Justice of the Supreme Court;

Whereas JCN is a dark money organization and does not disclose its funders to the people of the United States;

Whereas JCN has received multiple massive contributions from the anonymous donors, specifically—

(1) a \$15,881,000 anonymous contribution in tax year 2018;

(2) a \$17,100,000 anonymous contribution in tax year 2017;

(3) a \$21,464,995 anonymous contribution in tax year 2016; and

(4) a \$17,920,000 anonymous contribution in tax year 2015; and

Whereas the American people have no idea who made these massive contributions and what business the contributors might have before the courts: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) fair and impartial courts are a bedrock of
3 American democracy and crucial to maintaining the
4 faith of the people of the United States in the justice
5 system;

6 (2) this massive dark money operation to influ-
7 ence the selection and confirmation of judges and
8 justices creates significant conflict of interest con-
9 cerns for the judiciary and undermines the integrity
10 of the courts and the justice system; and

11 (3) the people of the United States deserve to
12 know who is behind this massive dark money cam-
13 paign to capture the courts.

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