

Congress of the United States
Washington, DC 20515

December 18, 2023

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

Dear Attorney General Schwalb:

The Committee on the Judiciary and the Committee on Oversight and Accountability are continuing their oversight of the District of Columbia Office of the Attorney General's (OAG) efforts to target Leonard Leo and certain nonprofit organizations with which he is affiliated.¹ The Committees received your response letter dated November 13, 2023, which set forth several purported reasons for why you could not cooperate with our investigation.² These reasons are unpersuasive, and we write to reiterate our requests.

You assert that you cannot cooperate with our oversight because you must “shield[] potential and pending investigations from all the adverse consequences that can flow from disclosure.”³ Your stated commitment to investigative confidentiality, however, appears to be selective. Although you argue that the OAG's policy is to neither “confirm, deny, or otherwise comment” on pending investigations,⁴ the existence of the OAG's investigation concerning Mr. Leo and certain affiliated nonprofits was leaked to *Politico*.⁵ Perhaps unsurprisingly, *Politico* later reported extensively on your response to the Committees just minutes after you had transmitted it.⁶ You cannot have it both ways. You cannot hide behind investigative confidentiality to resist Congressional oversight while also tolerating—if not authorizing—politicized leaks that prejudice the course and outcome of your investigation.

¹ See Lauren Sforza, *Jordan, Comer launch probe into DC AG's investigation of conservative judicial activist*, THE HILL (Oct. 30, 2023).

² Letter from Brian Schwalb, Att'y Gen., D.C., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability (Nov. 13, 2023).

³ *Id.* at 2.

⁴ *Id.* at 1.

⁵ Heidi Przybyla, *D.C. Attorney General is probing Leonard Leo's network*, POLITICO (Aug. 22, 2023).

⁶ See Heidi Przybyla, *D.C. attorney general hits back at Jordan, Comer in Leonard Leo probe*, POLITICO (Nov. 13, 2023). Attorney General Schwalb responded to the Committees' letter at 4:59 p.m. on November 13, 2023. *Politico* published its detailed account of the OAG's response to the Committees at 5:15 p.m. the same day.

Your assertion that a pending investigation may impede congressional oversight is also incorrect. In *Sinclair v. United States*, the Supreme Court noted that the pendency of litigation does not impede Congress’s ability to conduct oversight, stating:

It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.⁷

The Court has further noted that “a congressional committee . . . engaged in legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding . . . or when crime or wrongdoing is exposed.”⁸ As such, the existence of the investigation is not a sufficient basis on which to refuse to cooperate with our oversight.

As we have explained, the circumstances surrounding your investigation create the strong perception that political motivations have led you to weaponize your law-enforcement authority against disfavored people and groups.⁹ Your office’s close ties to the so-called “Center for Accountability”—the progressive “watchdog” organization with ties to liberal dark-money groups that originally asked you to open the investigation¹⁰—raises serious concerns about your stated commitment to not be “unduly influenced by third-party organizations” or “undertake[] investigations for politically motivated reasons.”¹¹ Consistent with our oversight duties, your cooperation will enable us to fully assess whether the OAG is indeed committed to “carry[ing] out [its] duties free from political influence” or is merely doing the bidding of politically motivated dark-money groups.¹²

In addition, the power you claim to possess in your letter goes well beyond your statutory authority to ensure compliance of nonprofit organizations that are registered, maintain an office, or transact business in the District of Columbia.¹³ In your view, if any nonprofit organization or its officers seeks to access the “unparalleled proximity to key players and decision-makers across

⁷ *Sinclair v. United States*, 279 U.S. 263, 295 (1929).

⁸ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

⁹ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability, to Brian Schwalb, Att’y Gen., D.C. (Oct. 30, 2023).

¹⁰ Campaign for Accountability was a project of the Hopewell Fund, whose parent organization is Arabella Advisors. See *Campaign for Accountability*, Influence Watch, <https://www.influencewatch.org/non-profit/campaign-for-accountability> (last accessed Dec. 15, 2023); *Correction: Funding for Nonprofit’s Google ‘Transparency’ Campaign*, The Chronicle of Philanthropy (July 21, 2016). Both Attorney General Schwalb and his deputy, Seth Rosenthal, worked at Venable, the law firm that represents groups within the Arabella Advisors network. See Joe Schoffstall, *DC prosecutors probe liberal dark money network after backlash for investigating conservative orgs*, FOX NEWS (Oct. 5, 2023).

¹¹ Letter from Brian Schwalb, Att’y Gen., D.C., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability at 2 (Nov. 13, 2023).

¹² See *id.*

¹³ See *id.* at 2-3; see also D.C. Code § 29-105.12.

the federal government, such as members of Congress and their staffs,” they must first subject themselves to your authority.¹⁴ Such an expansive interpretation of authority would undoubtedly implicate American citizens and nonprofit organizations with no nexus to the District at all who visit the District to exercise their First Amendment rights to petition their government. Such fundamental activity of an engaged citizenry does not provide you with the jurisdiction you claim to possess.¹⁵ As we made clear in our letter, neither Mr. Leo nor the nonprofits with which he is affiliated have ties to the District such that you can assert jurisdiction over them.¹⁶

Your letter also attempts to dismiss the serious chilling effect that a politically motivated investigation—like your investigation into Mr. Leo and certain affiliated nonprofits—has on First Amendment liberties.¹⁷ While attorneys general are tasked with protecting the public from fraud committed within their respective jurisdictions, the Supreme Court in *Americans for Prosperity v. Bonta* recognized the potential for a “dramatic mismatch” in the manner in which attorneys general exercise their authorities.¹⁸ Because associational rights under the First Amendment are so essential, the Court emphasized that “[e]very demand that might chill association” must withstand “exacting scrutiny.”¹⁹ As the Court explained:

When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual’s ability to join with others to further shared goals. The risk of a chilling effect on association is enough, “[b]ecause First Amendment freedoms need breathing space to survive.”²⁰

In light of Supreme Court precedent, there are serious concerns as to whether your investigation and its effect on the association rights of certain groups, protected by the First Amendment, withstand such an exacting scrutiny.

If, as you allege, the OAG was truly “committed to the impartial pursuit of justice, without regard to political affiliation or motivation and without fear or favor,”²¹ your office would be focused on the real issues affecting Washingtonians, such as rampant youth crime. The very day that you responded to our letter, D.C. Mayor Muriel Bowser acknowledged the rise in

¹⁴ *Id.* at 3.

¹⁵ See D.C. Code § 29-105.05(a) (“Without excluding other activities that do not have the intra-District presence necessary to constitute doing business in the District under this title, a filing entity or foreign limited liability partnership shall not be considered to be doing business in the District under this title solely by . . . [c]arrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors.”).

¹⁶ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability, to Brian Schwalb, Att’y Gen., D.C. (Oct. 30, 2023)

¹⁷ See Letter from Brian Schwalb, Att’y Gen., D.C., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability at 3 (Nov. 13, 2023).

¹⁸ *Americans for Prosperity v. Bonta*, 141 S. Ct. 2373, 2386-87 (2021).

¹⁹ *Id.* at 2387 (emphasis added).

²⁰ *Id.* at 2389 (citing *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

²¹ Letter from Brian Schwalb, Att’y Gen., D.C., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability at 1 (Nov. 13, 2023).

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youth violence in the District by issuing a public emergency.²² The District recently hit two major crime milestones on your watch for this year: 250 homicides—the most killings in two decades—and over 900 carjackings—an increase of 100 percent year-to-date.²³ Instead of resolving actual issues that you have the power to address, you seem to be more determined to pursue politically motivated investigations on behalf of left-wing dark money groups.

Accordingly, the Committees reiterate the requests in our October 30, 2023, letter and ask that you produce all responsive material as soon as possible but no later than January 2, 2024. The Committees are prepared to resort to compulsory process, if necessary, to obtain this material.

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

²² Press Release, Mayor Bowser Issues Public Emergency to Give District New Tools for Responding to Opioid Crisis and Increase in Youth Violence, Exec. Off. of the Mayor, Gov't of the Dist. of Columbia (Nov. 13, 2023); Colleen Grablick, *Mayor Bowser Declares Public Emergencies Over Youth Violence, Opioids*, DCist (Nov. 13, 2023).

²³ Evan Pascal, *Saturday night shooting marks DC's 250th homicide in 2023, most in over 2 decades*, ABC 7 NEWS (Nov. 26, 2023); Ida Domingo, *MPD reports over 900 carjackings in DC so far this year after Thanksgiving incidents*, ABC 7 NEWS (Nov. 24, 2023) (“The numbers also show that of the 157 carjacking arrests this year 66% have involved juveniles.”).