

March 18, 2020

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
6th Floor  
441 G Street, NW  
Washington, DC 20530

**Re: Freedom of Information Act Request**

Dear Mr. Hibbard:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Justice (“DOJ”) regulations.

Specifically, CREW requests all communications from January 1, 2020 to the present between DOJ and (1) Senators Mitch McConnell, Chuck Grassley, or Lindsey Graham; (2) Leonard Leo; (3) anyone with an @fedsoc.org email address; or (4) Mike Davis of the Article III Project, regarding the potential retirement of any federal judges. This request includes without limitation the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, Legislative Affairs, and the Office of Legal Policy.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc’ed or bcc’ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOJ regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On March 16, 2020, the *New York Times* reported that Senator Mitch McConnell has been personally urging federal judges to retire so that the Trump Administration and the current Senate can confirm their successors.<sup>1</sup> Mr. McConnell, in combination with Senate colleagues Chuck Grassley and Lindsey Graham, has reportedly spoken to “many” of the Republican-appointed judges eligible for “senior status,” a type of semiretirement that allows a judge to continue hearing cases while opening his or her seat for a new nominee.<sup>2</sup> The media’s revelation of Mr. McConnell’s efforts follows shortly after George W. Bush-appointee Thomas Griffith of the D.C. Circuit Court of Appeals announced his upcoming plans to retire.<sup>3</sup> It is unknown whether Mr. McConnell, Mr. Grassley, or Mr. Graham spoke with Judge Griffith prior to his announcement. Critics of Mr. McConnell have argued that lobbying federal judges to retire is inappropriate and “raises the question of what, if anything, McConnell is offering them to take senior status earlier than planned.”<sup>4</sup>

The requested records will shed light on the extent to which DOJ is aware of and involved in the reported effort by Senators McConnell, Grassley, and Graham to encourage federal judges to retire, thereby allowing the Trump Administration to appoint additional judges to the federal courts. The public has a significant interest in an impartial justice system and thus must understand any plan to structure the court system through the creation of vacancies. The records will also contribute to greater public understanding of any outside influence on DOJ regarding these efforts, including by Leonard Leo of the Federalist Society, who has previously advised the Trump Administration on its judicial nominations.<sup>5</sup>

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and

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<sup>1</sup> Carl Hulse, *McConnell Has a Request for Veteran Federal Judges: Please Quit*, *New York Times*, Mar. 16, 2020, <https://www.nytimes.com/2020/03/16/us/politics/mcconnell-judges-republicans.html?referringSource=articleShare>.

<sup>2</sup> Fred Barnes, *The GOP’s senior strategy*, *Washington Examiner*, Mar. 12, 2020, <https://www.washingtonexaminer.com/opinion/fred-barnes-the-gops-senior-strategy>.

<sup>3</sup> Jacqueline Thomsen, *Judge Thomas Griffith to Retire from DC Circuit, Opening Third Vacancy for Trump*, *Law.com*, Mar. 5, 2020, <https://www.law.com/nationallawjournal/2020/03/05/judge-thomas-griffith-to-retire-from-dc-circuit-opening-third-vacancy-for-trump/>.

<sup>4</sup> Hulse, *New York Times*, Mar. 12, 2020.

<sup>5</sup> Joseph P. Williams, *The Judicial Puppet Master*, *U.S. News & World Report*, Oct. 27, 2017, <https://www.usnews.com/news/the-report/articles/2017-10-27/leonard-leo-is-calling-the-shots-on-judicial-appointments>.

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working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

### **Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [jlutkenhaus@citizensforethics.org](mailto:jlutkenhaus@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at [jlutkenhaus@citizensforethics.org](mailto:jlutkenhaus@citizensforethics.org) or at Jessica Lutkenhaus, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Jessica Lutkenhaus  
Legal Fellow