The Conservative Legal Movement and Its Impact

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By

Samuel Treat

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Chapter I: Introduction

The conservative legal movement is a relatively under examined phenomenon that has substantial and significant implications for our nation. The conservative legal movement began as a counter-mobilization to what many conservatives perceived as a liberal legal movement in the 1930s and 1940s. While the movement's origins were relatively humble, it has expanded exponentially since its beginnings. The conservative legal movement has transformed from a sputtering business-interest dominated niche to a mainstream powerhouse of the legal and political world. The people and organizations who have overseen and facilitated that transformation are, all too often, overlooked by dominant narratives about the political state of the United States. This paper examines the conservative legal movement from its beginnings to its peak— a peak that has impacted our democracy in critical ways. The conservative legal movement has been in motion for over four decades, and in that time has been remarkedly successful in achieving its stated and unstated political and legal objectives; that success, however, is becoming increasingly strife with scandals, allegations of wrongdoing, and possible collusion—all of which has potentially devastating consequences for American democracy.

The conservative legal movement began as a response to the expansion of the federal government through the New Deal and the decisions of the Warren Court that supported and furthered that expansion. To liberals, the Warren Court's decisions, such as *Brown v. Board of Education, Gideon v. Wainwright, Reynolds v. Sims* and more, are iconic. Similarly, the accomplishments of the New Deal are widely celebrated and still used as a framework for major legislation packages (e.g. The Green New Deal). For conservatives the 1930s and 1940s were the opposite of celebratory or iconic—they were a disaster. The legal profession that had been dominated by conservative elites was undergoing a sudden shift, both ideologically and

demographically. Top law schools were shifting to the left, and a new generation of liberal public interest lawyers was emerging. Environmental and civil rights litigation increased decade by decade, even more to the chagrin of conservative legal scholars. The fury and distain that conservative legal scholars felt towards to the development of the so-called ‘administrative state’ began to slowly reach a boiling point, setting the stage for a counter-mobilization effort that would become the conservative legal movement.

The conservative legal movement’s first years were defined by minimal success, however, the failure of the first generation would imprint valuable lessons on the next evolution of the movement. Earlier conservative public interest law firms (CPILFs) were largely constrained by the business interests of their donors. Instead of pursuing ideologically backed litigation, most early CPILFs pursued amicus briefs in cases that would please their donors.[1] This limited their effectiveness, and these first firms did not last long. However, the emergence of the Federalist Society, an organization that created a network of conservative lawyers, helped to facilitate the transition into the second generation of CPILFs.[2] The Federalist Society created connections between conservative law students and lawyers who worked in positions of power, whether that be the federal government or law firms. Using those connections, the second generation of CPILFs began. The Institute for Justice (IJ) and Center for Individual Rights (CIR) were founded by veterans of the first-generation of CPILFs who used the failures they experienced to inform the strategies behind these new firms.[3] Those new strategies enabled both CIR and IJ to pursue ideologically motivated litigation, with both firms taking cases all the way to the Supreme Court. IJ and CIR were the vanguards of a second generation of CPILFs that,

[1] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[2] Ibid.
[3] Ibid.

with the help of the Federalist Society's network, were able to win some of the first victories for the conservative legal movement.

The founding of the Federalist Society ended up having a remarkable impact on shifting the ideology of law schools back towards the right. The Federalist Society connected conservative law students with one another, and then with conservative attorneys once graduated. The network that it built not only created 'safe spaces' for conservatives on law school campuses, but it impacted the thinking and ideology of generations of law students—many who would go on to advance that ideology themselves. One such individual was Leonard Leo, who was so taken by the organization and its mission that almost immediately after graduating law school, he went to work for the Federalist Society—and has been there ever since.[4] Leo, from an early age, was a skilled fundraiser who had a knack for making connections with people in power.[5] Trusting those skills, Leo has worked officially and unofficially for virtually every Republican administration since Reagan. Largely, Leo's roles for both the Federalist Society and the federal government have revolved around the judiciary, particularly judicial selection, nomination, and confirmation. Leo realized early on in his career that if he wanted to aid the conservative legal movement by delivering it major legal victories, he would need to create the conditions that would allow that to occur. Leo, in part through the rapidly expanding Federalist Society, created a pipeline for young, conservative attorneys. Leo's pipeline, and the machine of legal and political elites, donors, and organizations that support it, have been wildly successful.

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[4] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.

[5] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023. https://www.propublica.org/article/we-dont-talk-about-leonard-leo-supreme-court-supermajority.

Leo has personally played a role in the confirmation of all six conservative justices now on the Supreme Court, as well as countless others on lower courts and in different positions of power.

The work of the Federalist Society, Leonard Leo, and their allies has paid off in remarkable ways. The conservative legal movement has, in the last decade, seen victories that have been decades in the making. The movement has successfully created a conservative supermajority on the court, overturned *Roe v. Wade*, and placed conservative attorneys into hundreds of judgeships, clerkships, administrative roles, and important state positions. The pipeline built by Leonard Leo and the Federalist Society is still churning, and favorable rulings are being made all the time. In other words, the conservative legal movement has been wildly successful. However, with great success can come great consequences. The Supreme Court has been the subject of unprecedented scrutiny in the past few years, stemming in large part from allegations of wrongdoing aimed at conservative justices and donors. As a result, public opinion has fallen to all-time lows.[6] The Court, for its part, appears to understand that trust is dwindling, evidenced by the release of a first-ever ethics code for its justices.[7] Investigative reporting has exposed close relationships between major conservative donors and sitting justices, with troubling implications about conflicts of interest. Despite the falling public confidence in the institution and the lingering questions about impropriety, the Court is still actively pursuing the conservative legal agenda.

The conservative legal movement is still ongoing, and the implications that it could continue having for this nation are not yet realized. However, by examining the upcoming docket

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[6] Lin, Katy. "Favorable Views of Supreme Court Fall to Historic Low." Pew Research Center, July 21, 2023. https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/.
[7] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023. https://www.propublica.org/article/we-dont-talk-about-leonard-leo-supreme-court-supermajority.

for the Supreme Court one can understand some of those implications a bit better. While liberals revere the Warren Court and its decisions that expanded rights, conservatives have always hated what the Warren Court produced. It has been evident from the inception of the conservative movement that the destruction of the administrative state has been at the top of its wish list. With victories overturning the right to abortion, ending affirmative action, and others, the conservative legal movement is on its way to accomplishing that goal. In the January docket, the Supreme Court will hear several cases that have the potential to upend governance as we know it in the United States. Inherent in destroying the administrative state is the reversal of the *Chevron* precedent, which allows agencies to interpret and apply statutes to create the regulations they see fit.[8] By reversing it, the Court would hand the conservative legal movement (which many of the justices have both benefitted from and played a role in advancing) one of its greatest victories to date, while essentially turning regulatory duties over to the judiciary—taking it away from the government agencies staffed with experts conducting research to inform regulation. If that occurs, the government, as modern society knows it, will be fundamentally altered. The function of regulatory bodies and government agencies, such as the FDA, EPA, and more will be altered or destroyed entirely. The upcoming docket could provide the conservative legal movement with some of its most sought-after victories, with potentially devastating consequences for the federal government.

The conservative legal movement effect on American society is nearly as important to examine as its effect on the law. The declining trust in the Supreme Court is troubling and shows no signs of reversing anytime soon. The existence of the United States, a representative democracy, depends on the rule of law and the separation of powers. The Court, historically, has

[8] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020

embodied both of those principles better than any other branch of government. Long thought of as a neutral arbitrator of legal issues, recent events have upended that perception. From the increasingly political nature of judicial races in battleground states to the close ties that Supreme Court justices maintain with men like Leonard Leo, it is clearer now more than ever that the judiciary is not insulated from the scandals and corruption that Americans are more accustomed to in other branches of government. The remarkably similar timing of this erosion of trust and major successes for the conservative legal movement is not a coincidence. The conservative legal movement has relied on anonymous donors, huge amounts of money, backdoor connections, and intense networking efforts for its success. Those same strategies, now coming to light, are leading to the Court's decline. If the rule of law, which the Court is the ultimate decider of, is questioned by the majority of the American public, what could that mean for American democracy? The answer may not be known for years, but the stakes have never been higher.

Chapter II: The Emergence of the Conservative Legal Movement

The Conservative Legal Movement, like most movements, did not originate in a vacuum. Instead, the movement began as a result of institutional transformation that benefitted liberals. From the New Deal and the development of a new American administrative state came a generation of public interest lawyers, many of whom shared the same ideological convictions of President Roosevelt.[9] This emergence of liberally minded pro-government lawyers reshaped the legal field and created a liberal legal network (LLN) that was able, due to myriad factors, to rapidly expand in both size and influence. These developments not only transformed the legal profession as a whole, but it fundamentally altered the character of American law schools. At the same time as the overhaul of the legal profession was occurring, the Warren Court was expanding rights and, as a result, the reach of the government.[10] This new age of liberal legal activism, due in large part to the creation and expansion of the liberal legal network, was met (at first) with little to no opposition from conservatives. However, as the shifts in politics and changes in legal interpretations continued to occur, conservatives realized that they needed to mount a counter-mobilization effort. Although early attempts at matching the liberal legal effort failed, from the failures of the first responses came the Federalist Society, a direct response to the network that liberal lawyers and legal scholars had built.[11] This "counter-network" ushered in the true start of the conservative legal movement, setting the stage for greater and greater action.

The rise of the liberal legal network began with the New Deal. At the time, the prototypical lawyer was conservative, east-coast educated, and WASPy.[12] However, the FDR

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[9] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[10] Ibid.
[11] Ibid.
[12] Ibid.

administration focused on the hiring and promotion of public interest lawyers, a space that tended to lean left. These new lawyers, with fresh administrative experience and understanding, were snatched up by major law firms following the conclusion of WWII. The institutional transformation that those lawyers were a part of was a crucial element in the emergence of the LLN. The new political system that FDR had overseen included new government agencies, positions, and policymaking procedures. Elections were becoming less impactful as a source of policy change, as more and more policymaking was occurring within agencies and bureaus that did not experience the same electoral overturn that characterizes the presidency. As a result, policymaking was "increasingly sensitive to expert opinion, issue framing, and professional networks."[13] This new political system, ushered in by over a decade of liberal policy making and government expansion, was the left's game-- as was the new age of lawyering. The right was slow to respond, and no organized conservative response met the transformation of the government and legal profession that the left had successfully overseen.

To understand the way in which the liberal legal network produced favorable results for the left in the courts, one must first understand the 'supply and demand' of the courts. In legal speak, the 'supply' of the court is the litigants and their support structure, while the demand side is the courts themselves.[14] The support structure is key, as litigation does not happen in a bubble; the support side includes legal ideas, strategies, professors, litigants and professionals-- in other words, a network of individuals and ideologies that inform litigation. However, that support structure and the supply side of litigation as a whole have a significant impact on the demand side (the courts and those who comprise them). Justices themselves are lawyers, and as Steven

[13] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.7.
[14] Ibid.

Teles writes, are therefore "unusually sensitive to the dominant opinion in the legal community."[15] Furthermore, if judges are to be understood "as an enterprise" which includes their clerks, some of whom will inevitably constitute the next generation of justices, then the influence of the legal profession and legal academy can be seen as even more pronounced.[16] In other words, whatever the ideology that these justices are most influenced by will have the most favor when it comes to the way in which they will regard said ideology during trial, and even within their decision. Of course, the forming of that ideology occurs long before an appointment to the bench; legal education is the gateway to a legal career, and law schools are at the center of the ideology formation that all legal professionals undertake at some point.

The role of American law schools, and the transformation of them as a whole, cannot be overstated in the construction of the liberal legal network. The shift, however, was not necessarily part of a direct plan by the left to transform legal academies into bastions of liberality. In fact it was seemingly benign decisions of major legal organizations (not political ones) that shifted the needle at first. The Association of American Law Schools and American Bar Association (ABA) began to raise the standards for accreditation at law schools post-war, and, as a result, law schools underwent a drastic renovation. Not only did school increase in size and resources, but ambition began to shift, as well. The traditional route of elite law schools to large, impressive legal firms began to morph as the public interest and legal aid fields expanded (more on that to come). While outside factors were a major part of that shift, such as Ford Foundation support, Supreme Court decisions, and the civil rights movement as a whole, the changes that occurred were not based on radical political movements. For instance, the

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[15] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.13
[16] Ibid.

emergence of clinical legal education in law schools, providing students with a taste of legal aid work, occurred as a result of an ongoing campaign to better prepare law students for the realities of the legal field.[17] Yet, as a result of the direct exposure to those in need of legal aid, more and more students began to cite a "desire to serve the underprivileged" as a primary reason for their enrollment in law school.[18] Changes in curriculum accompanied this new desire to work in public interest law, with more courses focused on poverty, family, criminal, and prison law. This explosion of interest from law students created a greater demand for larger schools and more professors. Between 1962 and 1977, the number of full time law professors in the U.S. increased from 1628 to 3875.[19] The hiring rush occurred at a time when law students, and thus those who would eventually come to serve as professors, were shifting to a much more liberal view of the law and its application. Thus, the concept of the "activist law professor" began to take hold; professors were, generally speaking, not leaders of social movements or active liberal litigants, instead they promulgated liberal views of the law via published articles, scholarly work, and classroom teaching. As a whole, this shift in law school composition and ideology informed generations of lawyers and helped to build the liberal legal network which would work to entrench the decisions of the Warren Court.

The Warren Court was one of the most liberal courts that the nation had ever seen, ushering in a new age of an expanded judiciary, the greatest extension of rights, and a new confluence of morality and legal authority. The Warren Court made landmark decisions that not only changed fundamental aspects of the U.S. social structure (*Brown v. Board*), but also several decisions which had massive implications on the legal field. In particular, the Court's decision in

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[17] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[18] Op Cit, P.39.
[19] Op Cit, P.42.

Gideon v. Wainwright established the right to legal counsel for anyone accused of a crime, based on the court's interpretation of the Sixth and Fourteenth Amendments. Almost overnight, the decision sent shockwaves across the legal world. As Stephen Teles writes, "Gideon had an impact beyond its immediate application to criminal defense, elevating the status of access to legal services -- both criminal and civil-- on the agendas of policymakers and the legal profession."[20] *Gideon v. Wainwright* created a massive need for legal aid. In stepped the Ford Foundation, a liberal philanthropy group that had dedicated itself to the development of civil rights. Funding from the Ford Foundation helped propel the legal aid projects in a number of ways. The foundation gave massive donations to law schools that worked on expanding legal aid programs and clinics, while simultaneously funding the Mobilization for Youth project which influenced the creation of the government's Legal Services Program.[21] The LSP, started to increase the reach and potential of legal aid, transformed into "a remarkably effective strategic litigant."[22] Between 1966 and 1974 the LSP submitted 169 cases to the Supreme Court, of which 77% were accepted for review; that staggering acceptance rate included major cases that transformed the administrative and political character of legal aid. Furthermore, the Ford Foundation donations helped to found the following legal aid or public interest organizations: The Center for Law in the Public Interest, Public Advocates, Sierra Club Legal Defense Fund, Citizens Communications Center, Georgetown Institute for Public Interest Representation, League of Women Voters Education Fund, Education Law Center, International Project, Mexican American Legal Defense and Educational Fund, Native American Rights Fund, and the

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[20] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.. P. 31.
[21] Ibid.
[22] Ibid.

ACLU Women's Rights Project.[23] This newfound liberalized legal system was as successful rhetorically as it was strategically. The new language of the law, so to speak, was of a moral onus to provide legal resources to the underprivileged. The idea that the Warren Court's decisions, especially those which expanded rights and access to legal resources, carried both legal authority and moral weight was becoming widely accepted in law schools. The new interpretation of the law framed it in a heroic way, as a "tool for the pursuit of justice."[24] This new age of legal liberalism-- from the judiciary, the schools, and the social movements of the time (civil rights movement) was met with anger and outrage from conservatives, who, in a matter of decades, had seen a complete reshaping of the legal systems and organizations they had once dominated. As Ken Kersch writes, "The liberal decisions of the Warren Court, of course, hit conservatives… hard provoking an intense reaction."[25] However, intense emotional responses generally resonate little with our legal system and it would take a lot more than anger to build a cohesive conservative response.

A major aspect of the liberal dominance from the New Deal well into the 1970s was the lack of opposition liberals faced. As the liberal legal network expanded and grew, no organized conservative response was successfully mounted. Despite electoral success, conservatives failed to counter the power and expansiveness of the LLN. The lack of conservative experience in the new administrative state created difficulty in accessing the entrenched legal networks of liberally minded federal public servants who comprised the agencies and bureaus now given a major policy making position in this new age of politics. Furthermore, the new age of law professors at

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[23] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.52.
[24] Op Cit, P.45
[25] Kersch, Ken I. *Conservatives and the Constitution: Imagining Constitutional Restoration in the heyday of American liberalism*. New York, NY: Cambridge University Press, 2019.

elite institutions produced barriers for any sort of counter-mobilization effort. In other words, the game had changed, and conservatives were slow to catch up. As the aforementioned liberal public interest law firms (LPILFs) took more and more cases to the Supreme Court, a clear divide began to emerge. The legal and intellectual resources of the LLN dwarfed those of the conservative side. Often, these cases pitted a LLN-backed group against an unsophisticated state attorney, tasked with arguing the conservative side. Despite public backlash, as well as the ire of wealthy individuals and organized groups, the LLN was able to successfully shield court decisions from challenges or reversals. Even when conservatives in elected government positions attempted to work towards reversals, the LLN would mobilize to defeat it.[26] In response to this ever-growing divide, a new generation of conservative public interest firms arose (CPILFs). These CPILFs arose after the constitutional changes to civil rights, criminal procedures, and sexual/religious freedom issues. These issues hit home to the base of the GOP-- religious and social conservatives. Conservatives, despite their electoral success, realized that the legislative arena was not enough. The first generation CPILFs, though, were largely ineffective. Stuck between following the business interests of donors and pursuing an ideologically based agenda, little progress was made. After a decade with little to show for the legal work, many CPILFs closed their doors for good. The Horowitz Report, an overview of the failures of CPILFs presented to a major conservative donor, the Scaife Foundation, exposed the inability of CPILFs to mirror the LLN. In particular, Horowitz criticized the movement as dominated by business interests over ideology, and "identified the university, rather than the corporation, as the key site of competition in law."[27] At the time, conservatives rightly viewed law schools as a breeding

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[26] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[27] Op Cit, P.70.

ground for the liberal public interest law movement. If conservatives wanted to counter mobilize in a meaningful way, they would have to begin competing at the academic and intellectual level. Given the failure of the CPILFs, largely due to the lack of a conservative network of talented lawyers, law students, and organizations, a new method of mobilization was needed. That void would soon come to be filled by an organization that would match liberal efforts on those key levels-- the Federalist Society.

The Federalist Society, despite its enormous power today, originated from meek backgrounds. Founded in 1982 by four conservative students at the University of Chicago Law School, a school that had become a safe haven for conservative legal scholars due to its development of the law and economics field, the Federalist Society emerged as a legitimate contender with the LLN. From its inception, the goal was clear, as laid out by one of its founders, Steven Calabresi, "Law schools and the legal profession are currently strongly dominated by a form of orthodox legal ideology which advocates a centralized and uniform society. While some members of the legal community have dissented from these views, no comprehensive conservative critique or agenda has been formulated in this field."[28] In essence, the Federalist Society sought to create a counter-network and conservative agenda to rival the one liberals had built, particularly on the law school front. The first event, a conservative symposium at Yale Law School, was a tremendous success; from there the founders realized that there was an untapped national demand for the sort of organization they envisioned.

In order to capitalize on the ranks of conservative law students who felt alienated and alone from the lack of exposure to conservative ideology and thinkers in law school classes, the founders of the Federalist Society sought to center conservative ideas as the pillar of their new

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[28] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.138

organization. The notion that exposure to ideas through debate and discussion would increase membership was crucial to the building of the organization. Furthermore, the Federalist Society's commitment to the evaluation and articulation of a range of ideas, rather than one monolithic position on each issue has remained central throughout the organization's history. This can be seen clearly in the first distribution of material from the newly formed group, a guide entitled "How to Form a Conservative Law Student Group."[29] In that guide, the guidelines included avoiding factionalism, tailoring the ideas discussed to be as attractive as possible to students who may not yet consider themselves "conservative," an emphasis on true debate with both sides well-represented, and a word of caution against using labels (even the word "conservative" at times, could push people away).[30] With that pamphlet as a guide, student chapters of the Federalist Society began to appear at law schools around the nation. However, student chapters were not the end goal for the organization. Soon after solid ranks of law students were recruited, the organization turned its attention to the professional legal field.

The Federalist Society expanded its organizational reach with the creation of a Lawyers Division in 1986, with its first chapter opening in Washington D.C. This expansion corresponded with a dramatic increase in funding for the Federalist Society; the organization went from a budget of $120,000 in 1982 to over $1,000,000 in 1986.[31] In large part, this was due to the renewed support from conservative foundations, such as the Olin Foundation, Bradley Foundation, and Scaife Foundation-- all of which had leaders which established personal relationships early on with Federalist Society founders.[32] The increase in funding helped elevate

[29] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[30] Op Cit, P.145.
[31] Ibid.
[32] Ibid.

the Federalist Society to a new level of prowess in the legal conservative world. Although the Lawyer Divisions (chapters organized by city) had expanded the professional reach of the organization, the true weight of the impact of the Federalist Society can be best seen in its effect within government. As demonstrated prior, the status quo by the 1980s, even when Republican administrations were in power, was that liberal lawyers were the primary hires for key government positions. In part, this was due to the lack of openly conservative lawyers who demonstrated a desire to work for the federal government. The Federalist Society not only helped connect like-minded attorneys with each other, but its presence on campuses helped create those attorneys. It wasn't long after its inception that Federalist Society membership became a key criterion for hiring candidates into conservative administrations. As Steven Markman, the assistant Attorney General in the Reagan administration stated, "The Federalist Society really did help to not only identify additional [candidates], but… it also helped to create more individuals who found these views attractive…. And I think the Federalist Society helped to identify, to track, people who proved to be… capable of filling those positions."[33] What Markman is referring to is the indirect work of the Federalist Society; the Federalist Society itself does not supply 'shortlists' of candidates, but instead, its network does the work for it. Often, the public assumption (if there is one, at all) is that the Federalist Society is directly facilitating appointments, hiring, and litigation. While its involvement in those arenas could certainly lead to those assumptions, it is important to distinguish between the indirect and direct outputs of the Society. In fact, the only direct output of the Federalist Society is debate forums, chapter meetings, speaker presentations, and national gatherings. The indirect outputs, however, are what it is best known for.

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[33] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P. 158

The Federalist Society's stated and pursued goals do not include affecting judicial nominations or the advancement of their members in positions of power; instead, the Federalist Society merely pursues the creation and use of a network of like-minded lawyers who desire to discuss conservative ideology and ideas. This distinction is critical, as many scholars believe that the impactful indirect outcomes (nominations, in particular) could not have occurred if they were directly pursued.[34] As Stephen Teles writes, "None of the Society's effects on the politics of judicial nomination, networking, placement of members, or facilitating connections across government is denied or forsworn by its leaders. That said, the Society could never have procured these effects had it pursued them directly."[35] Yet, despite a lack of intentional pursuit of power, the results of the Federalist Society speak for themselves. At the time of writing, at least five of the current Supreme Court Justices are current or former members of the Society. Justices Alito and Thomas in particular, have been regular attendees at the society's exclusive events, often delivering keynote addresses.[36] Furthermore, the influence over Republican administrations has been striking. Vice President Dick Cheney spoke to the role of the Federalist Society in hiring for roles within the Bush Administration, "There are many members of the Federalist Society in our Administration. We know that because they were quizzed about it under oath."[37] The same can be said for the conservative administrations that preceded the second Bush, as from the Reagan administration on, the White House and the Department of Justice "served as incubators for conservative lawyers, predominantly members of the Federalist Society."[38] These lawyers were able to use that 'incubatory' time as a way to help climb the legal ladder, many

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[34] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[35] Op Cit, P.163
[36] Avery, Michael, and Danielle McLaughlin. *The Federalist Society: How Conservatives took the law back from Liberals*. Nashville, Tennessee: Vanderbilt Univ. Press, 2013.
[37] Op Cit, P.11
[38] Op Cit, P.22

ending up with important positions or even judicial nominations. Once that first generation of conservative public interest lawyers (government employed ones particularly, although CPILFs will be discussed further on) had matriculated, the next generation had a network to rely on for clerkships, internships, and job opportunities-- all of which allowed conservatives to do more than just get their foot in the door, they began to kick it open. While far from the stated purpose, the founders of the Federalist Society long understood that the easiest way to change the law in the post-War political arena was to influence the courts, specifically the judges. Through the network they had assembled, that change began to come.

The conservative legal movement began as a counter-mobilization effort to the burgeoning liberal legal movement that preceded it. From the New Deal to the Warren Court, the 1930s to 1970s saw the creation and expansion of the so-called liberal legal network (LLN). The LLN entrenched itself in the 'new age' of politics, where the expansion of government agencies saw a new arena of policymaking. The remaking of the legal profession occurred simultaneously, as a new generation of diverse and philosophically driven lawyers sought to upend the legal status quo. This transformation can be clearly seen in the nation's elite law schools, where activist professors, legal clinics, and shifting demographics created liberal safe havens. Despite electoral success, conservatives failed to mount much resistance to this liberal takeover. From the ashes of the early failures came the Federalist Society. Despite the narrow mission, the impact of the Federalist Society has been tremendous. The decades after its establishment have seen the counter-mobilization effort transform into a full-blown movement. This transformation would not have been possible if not for the ongoing efforts of men like Leonard Leo, and firms like the Center for Individual Rights and the Institute for Justice.

Chapter III: The Convergence of the Movement and The Second Coming of Public Interest Law

The rise of the conservative legal movement is well documented, but the apotheosis of it is less so. A possible explanation for the lack of scholarship around the culmination of the movement is that we are arguably still in the midst of that peak. However, even if that is the case, we still must examine how we got here. As covered in the last chapter, the birth of the conservative legal movement was not always successful or easy. The failures of the first-generation of conservative public interest law firms (CPILFs) were stark, especially when compared to the success of liberal public interest law (NAACP, ACLU, NRDC, etc.). With massive contributions from the Ford Foundation to keep the machine running on the left, conservatives struck out to create a second-generation of CPILFs, hoping to mount a challenge to the decades of decisions that expanded rights and increased government oversight. Fresh off the rapid rise of the Federalist Society, the founders of the Center for Individual Rights and the Institute for Justice looked to carry forward the momentum that the expanding network of conservative legal minds was building. These second-generation CPILFs were ideologically driven, removing the shackles of business interests that had restrained the first-generation CPILFs. IJ and CIR, both founded with the lessons of the first generation of CPILFs, were incredibly different in their structure and strategy. The different approaches to case-selection and legal strategy enabled each to find success in different venues and on different issues. The development of IJ and CIR as two powerhouse conservative public interest firms marked a monumental moment for the conservative legal movement, and both organizations were able to deliver remarkable legal (and non-legal) victories for its donors, often attracting more in the process.

The Center for Individual Rights was founded in 1989 by Michael Greve and Michael McDonald, both of whom had been involved in first-generation CPILFs. Drawing on the issues that they saw first-hand, the vision of CIR took a dramatic turn away from the coupling of business interests and conservative ideology the original conservative law firms were built upon. Greve recognized that the problem with public interest law was that once a firm had reached the size and scope to effect real change, they had to be constantly fundraising to maintain that size, and then fundraising became the primary goal-- not legal action. One aspect of the size issue that CIR's founders saw was the general-purpose function of the firms; the early firms would essentially take on any case that fit within its general framework. CIR would not be that way, and instead, specialization would be inherent to its mission from day one. By creating a small, focused firm, lawyers could be selective with cases, but even more importantly, fundraising could be kept to a small group of dedicated donors.

After watching the failures of the first generation CPILFs, Greve and McDonald had come to the conclusion that "businessmen could not be counted on to pursue the interests of a free market."[39] Instead of pursuing businesses, Greve and McDonald tapped into a pool of individual donors emerging from a space that did not exist yet when the first CPILFs began-- the new generation of young libertarians who were gaining massive wealth from the exploding technology industry at the time. This pursuit of individual donors, rather than businesses or corporations, gave CIR freedom to pursue ideologically driven goals that did not need anything to do with business interests. Some of those donors would even seek out CIR themselves, due to their infatuation with the ideology-- not potential business interests. To further that shift away from the business-linked failure of the first generation, the Center for Individual Rights sought to

[39] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.228

link itself with top legal academies and think-tanks, an effort that had not been undertaken by the earlier firms. That shift demonstrates the growth of the conservative public interest movement towards more autonomy, no longer reliant on the interests of wealthy corporations or foundations.[40] The decrease in size as well as the effort to move away from business interests allowed the CIR to focus on case selection and litigation in ways that its predecessors never could.

At its inception, the Center for Individual Rights was designed to be highly specialized in the cases it took. And yet, that specialization was not designed with a particular issue in mind. Instead, CIR's founders undertook a sort-of "strategic opportunism" that allowed them to pursue and evaluate only the cases that they thought would be the most successful in litigation. The way that this method played out was that CIR would pursue several cases they found attractive, but then only put its resources and energy behind the cases that began to gain traction in the courts.[41] CIR had no shortage of potential cases to choose from, as their initial splash onto the conservative legal scene had brought them plenty of attention and networking opportunities. In the "target-rich environment" that CIR found itself in, it could be picky about which cases, of the many that came through the doors, it would put its full-fledged force behind.[42] This sort of attraction of cases, followed by strategic sorting rather than planning, allowed Greve and McDonald to gain experience in a number of conservative legal hot-button issues. The founders viewed the left, and especially left-leaning institutions as engaged in a serious form of hypocrisy. Their philosophy, throughout their time litigating, began to shift from mainline conservative to a more libertarian outlook; the liberal legal system, what they viewed as a regulatory state, created

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[40] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012
[41] Ibid.
[42] Op Cit, P.237

so much frustration from Greve and McDonald that their legal strategy was characterized by a "marked libertarianism in [CIR's] caseload."[43] Nowhere is this more exemplified than by the hot-button issue that answered the question of what CIR would specialize in-- academic free speech. In the 1990s the idea of "political correctness" was blossoming, becoming, as Michael McDonald put it: "the PC craze."[44] In particular, the two Michaels viewed universities and their campuses as the hotbed of this new obsession with political correctness they believe the Left had. CIR had found its niche, it would work on attacking PC issues and the "institutions controlled by the Left"' that upheld the standards of political correctness.[45] At the beginning of their battle against political correctness, CIR consciously avoided taking cases that dealt with the other academic hot-button issue of affirmative action. The reasoning for the avoidance was that CIR hoped to attract "non-radicalized liberals" as part of its "splitting the Left" strategy, and they feared that racial quotas and affirmative action was too hot-button of an issue if they hoped to see success in their pursuit of that strategy. However, only a few years into the academic freedom battle, CIR did an about-face, beginning a campaign to end affirmative action practices in higher education. Armed with a defining mission, CIR turned to finding the army of conservative lawyers it would need to successfully push forward its "academic freedom" agenda.

The question, now that the specialization issue had been solved, became how to staff lawyers to pursue the heated and high-stakes litigation it desired. The pursuit of challenging affirmative action and free-speech issues on campus would take a plethora of resources and efforts to be successful. Here, the Federalist Society came to the rescue. Established less than a decade before the Center for Individual Rights was founded, the Federalist Society had already

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[43] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.231
[44] Op Cit, P.232
[45] Op Cit, P.233

built itself a reputation for being full of high-powered conservative legal minds, so much so that the DOJ under Republican administrations were already using Society membership as a hiring criterion. The Reagan administration, which had ended just before the creation of the CIR, gave many top conservative lawyers valuable government experience-- just as the liberal administrations earlier in the century had done the same for liberal lawyers. Michael McDonald, a founder of the CIR, said “We thought that with the influx of talented Reagan-era attorneys back into private practice, and through the Federalist Society, we had a great pool of talent to draw on to fit case to attorney.”[46] By using the Federalist Society as a networking tool, CIR was able to easily identify conservative lawyers who were also skilled in the specialized areas of the law that CIR needed for its caseload. Not only that, but by drawing on the Reagan-administration alumni who had returned to private practice at large firms, CIR could leverage the resources of those larger firms. Furthermore, Federalist Society Lawyer Division meetings became a strong source of recruitment and legal advice. Federalist Society meetings became a place for Greve and McDonald to “solicit information and advice about cases and issues that fit the Center’s agenda.”[47] Arguably, these interactions were the beginning of a true conservative rival to the liberal legal network. The synergy between conservative public interest law firms, government administrations, and third-party networks was a new reality in the conservative legal world. As Stephen Teles writes, “For [the conservative legal network] to spin effectively, the conservative movement needed organizations like the Federalist Society to connect alumni to causes and groups like CIR to activate this “latent resource” for political action.”[48] These connections, in particular the utilization of the Federalist Society membership ranks, allowed the CIR to function

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[46] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.226
[47] Ibid.
[48] Op Cit, P.227

in a way that none of its predecessors could. By relying on private practice lawyers who could draw upon the resources of their high-powered legal firms, CIR was able to keep costs low while still employing strong legal minds to pursue its caseload.

Armed with a bevy of like-minded lawyers and the resources of high-powered firms, CIR was ready to capitalize on the influx of possible cases it was receiving from conservative students and professors who believed their rights were being infringed upon by the liberal establishment at their institutions of higher learning. With their litigation in *Hopwood v. Texas*, a case that would become the first successful challenge to a university's affirmative action policy in admission since 1978, CIR believed challenging this use of race in admissions would not be overly polarizing to "non-radicalized liberals."[49] Furthermore, by 1993, CIR had a well established reputation for challenging free-speech restrictions on college campuses, particularly in favor of conservative students and professors. Described as the "scourge of political correctness," CIR viewed attacking affirmative action as going "hand in hand" with the free speech issues it had been focused on. By attacking affirmative action, they increased the chances of conservative professors being hired, and then CIR would protect those professor's free speech upon arrival to their new position. As Michael McDonald noted, "Everytime we'd do an academic case, the client or his colleagues would inevitably ask us to do race cases."[50] Eventually, CIR began taking these cases on; beginning with its victory in *Hopwood*, CIR undertook major litigation against affirmative action policies, often ending up in front of the Supreme Court. Perhaps most notably, CIR lawyers successfully challenged affirmative action policies at the University of Michigan in two landmark Supreme Court Cases, *Gratz v. Bollinger*

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[49] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.236
[50] Ibid.

and *Grutter v. Bollinger*, both in 2003. The win in *Gratz*, especially, was not only huge for the mission of CIR, but they spoke to the shifting tides across the legal landscape. The development of a true rival to the LLN had arrived. The founders of the Institute for Justice looked to capitalize on these successes and grow the movement even further, especially through the deployment of alternative strategies and concepts to that of CIR.

Founded in 1991 by Clint Bolick and William Mellor, both seasoned veterans in the conservative legal movement, the Institute for Justice (IJ) was remarkably different from CIR at its inception. Mellor had headed one of the few first-gen CPILFs that had something to show for its existence; Mellor's Center for Applied Justice had published a series of books that became the basis for IJ's organizational strategy, operational design, and legal approach.[51] From the beginning, IJ had a clear vision for the issues it wanted to focus on and the way it wanted to pursue those issues. The key issues that Bolick and Mellor had decided to focus on were: economic liberty, educational choice, property rights, and the First Amendment.[52] The contrast between IJ and CIR can best be seen here, as CIR began by searching for the issues that had the most opportunity for traction in the courts, while IJ began with a clear vision that has remained consistent throughout its history. IJ also had a more concise ideological framework than CIR, and while CIR did shift libertarian throughout its history, IJ has remained committed to "pursuing libertarian goals by targeting groups associated with liberalism" since it first opened.[53] Targeting the so-called 'administrative state' was no easy task, and IJ's lofty goals reflected that. IJ's philosophy include overturning liberal precedents, but its short term goals were relatively

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[51] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012
[52] Ibid.
[53] Op Cit, P.238

"modest."[54] This created early difficulties convincing donors to get on board with years-long litigation projects, sometimes with little to no to show for it in the short term. Understanding that donors would be hard to come by, especially after Mellor had pulled from the typical conservative pool with his first underperforming CPILF, IJ decided they needed to focus on recruiting one major donor to get things off the ground, with the belief that their litigation would attract more donors in the future. Charles Koch, perhaps the most well-known conservative billionaire, agreed to donate $500,000 per year for the first three years of operation, provided that certain milestones were met.[55] That seed fund allowed IJ to begin pursuing the issues that it felt strongest about, both in the courts and outside of them.

The Institute for Justice, now with Koch seed money, was ready to begin a new sort of legal strategy that they hoped would beat liberals at their own game, so to speak. Mellor and Bolick purposefully represented poor, black clients as their plaintiffs when litigating against large government institutions. They believed that by selecting clients who were "sympathetic by prevailing legal standards" IJ could work to enhance its public profile, improve its odds of success in court, and change the reputation of conservatives as being associated with racism.[56] The founders of IJ believed that they were doing more than just trying to win lawsuits, they sought to break the stigmas that surrounded conservatives, namely racism and ties to big business; they thought that by doing this, it would create prime conditions for conservatives to make headway on myriad issues.[57] This meant that IJ was not only fighting a legal battle, but a social and moral one as well; IJ founder Clint Bolick once framed his organization's pursuits by

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[54] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012
[55] Ibid.
[56] Ibid.
[57] Ibid.

saying, "Given that our goal is to give people greater control over their destinies, we should never cede either the moral high ground or the opportunity to put a human, compassionate face on our philosophy."[58] Often, by using poor, black faces as the forefront of their legal campaigns, IJ would attract some unlikely allies. For instance, in its largest case yet, *Kelo v. New London*, in which IJ represented landowners whose land was threatened by the city of New London's use of eminent domain, the NAACP submitted an amicus brief supporting IJ's work.[59] The *Kelo* case ended up being one of the defining moments in IJ's early history. While IJ ended up losing the case in front of the Supreme Court, *Kelo* could hardly be characterized as a total loss for the Institute. The publicity generated thousands of smaller donations, as well as several higher dollar donations from well-known donors, but even more than the financial boom it brought to IJ, *Kelo* gave Mellor and Bolick valuable experience arguing fact-intensive cases in high courts. Following the *Kelo* "loss," IJ used the donations generated to establish the Strategic Research Program. In the release it sent to donors about the new program, IJ stated, "Groups such as the NAACP have used strategic research for years, but there is no other group on our side of the ideological spectrum that has come close to conducting and using research as part of a focused litigation agenda, especially combined so potently with media relations and outreach components."[60] The media relations and outreach components referenced include the campaign "Hands off our Home" which established chapters across the U.S., aimed at targeting state laws and use of eminent domain.[61] The Institute for Justice made a strong impact on the conservative legal movement through its unique approach to presenting cases in ways that attempted to break

[58] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.239
[59] Ibid.
[60] Op Cit, P.243
[61] Ibid.

down conservative stigmas, and, furthermore, was able to gain success in garnering donations, support, and attention even when it lost in court.

The success that the Institute for Justice and the Center for Individual Rights have seen in their litigation and public image campaigns was the culmination of countless failures by firms, lawyers, and organizations early on in the conservative legal movement. The learning processes that occurred after the failure to mount a true conservative counter mobilization effort were crucial to informing the new age of conservative public interest law that emerged. The obstacles that those first firms faced, especially the identification and recruitment of skilled lawyers sympathetic to the conservative legal movement, were made far easier to overcome by the growth of the movement. In particular, IJ and CIR were only able to emerge and begin successful work after the establishment of the Federalist Society. Described as the "conservative movement's core investment," the work of the Federalist Society facilitated the expansion of a network of like-minded attorneys, which in turn worked to advance and grow the ideas of the movement.[62] On the fundraising side of things the second generation of CPILFs, hesitant to draw on the same pool that had funded unsuccessful ventures just years prior, relied on individual donors, not businesses or foundations for initial funding. The lack of interaction with businesses was part of a conscious decision on the part of experienced lawyers like Michael Greve and Clint Bolick to avoid the business-interest vs. ideology battle that plagued many of the first-generation firms. The success of IJ and CIR, as well as the emergence of the Federalist Society, created a new coalescence of conservative legal minds, elevated to a status in society that they had not occupied for decades. With traction building, both in court and in public image, conservatives would continue looking to capitalize on this new age of prowess in coming years. Crucially,

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[62] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012. P.263

Leonard Leo, a key Federalist Society executive, would seek to synthesize Republican electoral success with the victories of the conservative legal movement, exacting his will on nominees and the court at large.

Chapter IV: The Churning of the Machine: Leonard Leo and his power

Leonard Leo, a short, stout man with round eyeglasses, is relatively unassuming to the naked eye. And yet, it would be no overstatement to declare that Leo has been the single most influential person in the conservative legal movement. Leo's power is so ubiquitous in the conservative legal world that it can be hard to pinpoint where it stems from. As this chapter will demonstrate, Leo is remarkably adept at keeping irons in multiple fires at a time. For one, he has a knack for connecting wealthy donors who have specific policy priorities with the public servants who can act on those priorities. This ability is in part due to the fact that he has created a pipeline for a generation of conservative lawyers who would go on to become those public servants, often with Leo's help. Furthermore, Leo has cultivated connections to Supreme Court justices and the White House administrations that place them, resulting in a transformed judiciary. His work in the judiciary, though, goes far beyond the Supreme Court. Leo has played a crucial role in state judiciaries across the nation, using his allied groups and organizations to pour millions of dollars into elections that may have otherwise flown under the radar. Indeed, the totality of Leo's involvement and influence may not yet be totally known.

Leonard Leo's path to power is remarkable and telling. In his senior high school yearbook, Leo was named "Most Likely to Succeed," and is pictured at a table counting dollar bills.[63] This is fitting for a man who, since his youth, has been a skilled and calculated fundraiser. His yearbook declares his nickname as "Moneybags Kid," an homage to Leo's success in raising funds for his senior prom and class trip. That skill set, as predicted by the yearbook, would go on

[63] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023. https://www.propublica.org/article/we-dont-talk-about-leonard-leo-supreme-court-supermajority.

to serve Leo exceptionally well. Attending college in the midst of the growing conservative legal movement, Leonard was taken by the work of Yale Law School's Robert Bork and the University of Chicago's Antonin Scalia; at the time, Bork and Scalia were building a case for a largely unexplored legal doctrine-- originalism. The rise of originalism was a direct response to the "living Constitution" ideal that governed many of the Warren Court's most upsetting (to conservatives) decisions. In 1985, Edwin Meese, the Attorney General for the Reagan Administration who was one of the largest proponents of originalism, gave a speech on the subject to the Federalist Society Lawyers Division in Washington D.C. Leo, who at the time was doing a summer internship in D.C., attended.[64] This speech, Leo would later say, "had an enormous impact on my thinking."[65] That chance encounter with the Federalist Society would forever change Leo's trajectory, and as a result, that of the entire judiciary.

At Cornell Law School, Leonard Leo founded the first Federalist Society Chapter. Shortly after graduation Leo moved to D.C. to begin work for the Federalist Society main offices, where he has been ever since. However, Leo has taken several leaves of absence from the Society to spend time working on judicial selection, nomination, and confirmation. The first of those leaves actually occurred before Leo even began his Federalist Society position. The year was 1991 and George H.W. Bush had just selected a young appeals court judge named Clarence Thomas to fill a vacant Supreme Court seat. Thomas and Leo were already close friends, having met just a few years earlier while Leo was working as a clerk for a different federal judge.[66] Thomas' nomination quickly turned sideways for the H.W. Bush administration, as Anita Hill, a

[64] Avery, Michael, and Danielle McLaughlin. *The Federalist Society: How Conservatives took the law back from Liberals*. Nashville, Tennessee: Vanderbilt Univ. Press, 2013.
[65] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[66] Ibid.

law professor and former colleague of Thomas' from his time at the Equal Employment Opportunity Commission, accused him of numerous instances of sexual harassment. Just four years earlier President Ronald Reagan had nominated Robert Bork for a Supreme Court seat; Bork's nomination was met with fierce liberal backlash and the Reagan administration was not prepared to adequately defend him, resulting in Bork's defeat.[67] Bork was a longstanding ally of the Federalist Society, and his defeat became a rallying cry for conservative legal minds, who felt that Bork was a "martyr" for the conservative legal movement.[68] Leo, like many other prominent figures including Federalist Society founder Michael Calabresi, felt that Bork's defeat was "character assassination" perpetrated by liberal legal elites.[69] Now, faced with another contentious nomination battle, conservatives-- especially Leonard Leo-- were not going to let Thomas meet the same fate as Bork did. Leo's leave of absence came after the White House reached out to him and tasked him with gathering information on Anita Hill to attempt to discredit her allegations.[70] Ultimately, whether thanks to Leo's work or not, Thomas was confirmed. That confirmation would be the first, but far from the last, that Leonard Leo was directly involved in.

In 1992 the Supreme Court heard *Planned Parenthood of Southeastern Pennsylvania v. Casey,* a case in which the court had the chance to overturn the right to abortion that had been established in *Roe v. Wade.* Instead of overturning it, the Court affirmed the right. Three of the justices who penned the plurality opinion in the case were nominated by Republican presidents-- Anthony Kennedy, Sandra Day O'Connor and David Souter. This was seen, by conservatives, as

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[67] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[68] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.
[69] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[70] Ibid.

the ultimate betrayal of their cause.[71] For Leonard Leo, this moment was crucial; he realized that even conservative nominees could swing left once appointed to the bench. As one author put it, "To undo landmark rulings like Roe, [Leo's] movement would need to make sure the court heard the right cases brought by the right people and heard by the right lower court judges."[72] Leo had a plan to build the legal infrastructure that would create all of those "right" conditions. Following *Casey*, Leo began creating a pipeline for young conservative lawyers. In order to ensure that justices would be reliably conservative on the bench, candidates needed to be identified as early as law school. Luckily, Leo's Federalist Society was the perfect tool for doing that work. Once identified, Leo and the Society would help advance their careers via clerkships, meet-and-greets, and well-placed calls. By maintaining control of this pipeline, Leo ensured that these attorneys would be kept within the same ideological sphere for their entire career; this was done purposefully to keep potential judicial candidates from shifting left.[73] Leo's power over clerkships and coveted positions made him a sought-after figure for ambitious conservative lawyers. As one colleague of Leo's put it, "You wanted Leonard on your side because he did have influence if you wanted to become a Supreme Court clerk or an appellate clerk. He was very good at making it in people's best interests to be cooperating with him. I don't know if he did arm-twisting exactly. It was implicit, I would say."[74] Leo's influence was no secret to conservative donors, either. As Leo's role at the Federalist Society expanded into becoming the go-to fundraising man, the budget for Fed Soc quadrupled, with big name industry executives and major conservative foundations making sizable donations.[75] Following notable setbacks for

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[71] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020.
[72] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[73] Ibid.
[74] Ibid.
[75] Ibid.

the movement, Leo had taken it upon himself to create a safeguarded infrastructure to prevent the same sort of mistakes that had devastated conservatives in the early years of Leo's career. Under the next Bush administration, Leo's influence and power to pursue those goals would only expand.

By 2000, the year in which President George W. Bush came to power, Leonard Leo had cemented himself as a, if not the, key player within the conservative legal world. Bush surrounded himself with Federalist Society members, and four of the highest ranking members, including Leo, were specifically charged with advising judicial selection.[76] Referred to as the "Four Horsemen," this group held routine conference calls with President Bush.[77] Furthermore, Leo was responsible for recommending lawyers (who were typically Federalist Society affiliated) for key administrative jobs.[78] Emails from the time also show frequent communication with a young White House lawyer (whom Leo helped hire) named Brett Kavanaugh. Those emails show that Kavanaugh, an active Federalist Society member, and Leo were teaming up in an attempt to push lower court nominees through the Senate, where their confirmation had stalled.[79] At one point, a White House aide referred to Leo as the point person for "all outside coalition activity regarding judicial nominations.[80] In 2005, Leo was given the opportunity to utilize the pipeline he had created. That year, the Bush administration found itself with two Supreme Court vacancies to fill. Quickly, Leo became the head of the team responsible for choosing and pushing through the nominations."[81] The group submitted a list of eighteen

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[76] Avery, Michael, and Danielle McLaughlin. *The Federalist Society: How Conservatives took the law back from Liberals*. Nashville, Tennessee: Vanderbilt Univ. Press, 2013.
[77] Ibid.
[78] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[79] Ibid.
[80] Ibid.
[81] Ibid.

nominees to Bush, from which he chose John Roberts to fill the first vacancy.[82] The choice prompted Leo and his allied lawyers to create the Judicial Confirmation Network, which was set up "specifically to ease the path of Bush nominees," to "coordinate grass-roots pressure on Democratic senators from conservative states," and "reach out to other conservative groups to coordinate their message."[83] The Judicial Confirmation Network (JCN) was a tax exempt nonprofit, meaning that the organization could spend an unlimited amount of money without ever revealing who its donors were. Using the JCN, Leo did something novel for the time-- he treated confirmation battles like political campaigns. With large sums of anonymous money, JCN began running pro-John Roberts ads and spokespeople for the group would publish glowing quotes about Roberts.[84] Roberts was confirmed with little opposition. At the time, "boundaries were porous" between the Federalist Society, JCN, and the White House. Leonard Leo, the man who connected the three, was understood by White House staffers to be informally in charge of JCN.[85] Following the successful confirmation of John Roberts, President George W. Bush did something that surprised and upset many of his conservative allies-- he nominated his counsel Harriet Miers for the remaining vacancy on the Supreme Court. Many in the conservative legal world saw Miers nomination as a personal favor for a friend; a friend who, to some, appeared unqualified and too far left-- especially on the key issue of abortion.[86] Met with this conservative backlash, Bush withdrew Miers nomination, opting to replace her with the much further right Samuel Alito. The nomination of Alito prompted JCN to begin running pro-Alito ads and its allies began doing appearances on political talk shows, drumming up support for the new

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[82] Avery, Michael, and Danielle McLaughlin. *The Federalist Society: How Conservatives took the law back from Liberals*. Nashville, Tennessee: Vanderbilt Univ. Press, 2013.
[83] Op Cit, P.33
[84] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[85] Ibid.
[86] Ibid.

nominee. Alito, like Roberts, was confirmed without significant controversy. With these key figures now entrenched on an ever-more conservative court, Leo took JCN and turned his (and its) attention elsewhere.

Leonard Leo turned his attention to transforming the entire judiciary-- no longer just the Supreme Court. Leo's pipeline machine was churning at this point, and he was ready to put it to action across the nation. Leo had already established close relationships with Supreme Court justices, and was seen with them on elaborate vacations, private jet flights, and key speaking engagements. Leo funded these elegant events with his extensive network of wealthy conservative donors. He relied on his network of contacts, many of whom sought his approval or skills in career advancement, to help place up-and-coming Federalist Society lawyers in important clerkships, judgeships, and positions within the federal government, including the White House. Leo would personally phone state attorneys general to recommend specific hires for positions like solicitors general, a role Leo considered undervalued for its role in representing state interests in the Supreme Court.[87] Now, with allies in important roles across the country, seemingly unlimited funding, and deep connections to the most important court in the country, Leo turned his attention to reshaping state judiciaries. In Missouri, Leo attempted to bully then-governor Matt Blunt into turning against the state's 60-year tradition of using a non-partisan committee to select candidates for the Missouri State Supreme Court.[88] The 'Missouri Plan" method of selecting justices via a nonpartisan committee was despised by conservatives, particularly Leo's backers. They believed it to be a facade for packing the bench with liberal minded justices. By 2007, the plan had been adopted by a number of other states. As Michael

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[87] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[88] Ibid.

Wolff, former Chief Justice of the Missouri Supreme Court, stated, "If you could beat the Missouri Plan in Missouri, you could tell the rest of the states [who used the Missouri Plan] 'There is no more Missouri Plan.' It was a big deal."[89] Leo began a lobbying campaign to destroy the Missouri Plan for good. Leo made frequent calls to Governor Blunt's chief of staff, as well as Blunt himself. At one point, Leo threatened the chief of staff with "fury from the conservative base, the likes of which you and the Governor have never seen."[90] Blunt did not give in to Leo's demands, accepting one of the nominees presented to him from the nonpartisan committee, as had been tradition for six decades; Leo called him a "coward," stating that "conservatives neither have the time nor the patience for the likes of him."[91] While it is unclear what caused the decision, Blunt retired promptly after his first term, leaving politics at the young age of 37.[92] Leo's hardball, strong-arm style of politics would not end in Missouri though, nor would his campaign to upend state judiciaries.

Despite the failure to coerce the Missouri governor to capitulate to his demands, Leo continued his campaign targeted at reshaping state judiciaries. Leo, who by then was the executive vice-president and head of the Lawyers Division for the Federalist Society, saw the infant Judicial Confirmation Network as his tool to execute his vision.[93] Shortly after the Missouri incident, the Judicial Confirmation Network was renamed the Judicial Crisis Network--Leo's early failure in Missouri only made the mission more urgent. Despite that failure, Leo and his team learned valuable lessons from Missouri, namely, they came to understand that impacting judicial committees would prove to be more difficult than impacting judicial elections.

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[89] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[90] Ibid.
[91] Ibid.
[92] Ibid.
[93] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.

JCN realized that judicial elections, even for state supreme courts, are often low-information down ballot elections, where money can make a sizable impact. In 2008, Wisconsin State Supreme Court Justice Louis Butler Jr., the state's first African-American State Supreme Court Justice, became the target of JCN. Butler had angered major business groups in the state with an unfavorable ruling in a lead paint case.[94] JCN moved in, leading to a "contentious and expensive" campaign, with questionable tactics.[95] One advertisement paid for by JCN featured a side-by-side of two photographs: one showed Justice Butler and the other showed a registered sex offender, both of whom were Black.[96] These sorts of advertisements may have been borderline even in a political race, but they were simply unheard of in judicial elections. Leo combined JCNs aggressive advertisements with his knack for fundraising from wealthy donors. Leo provided Butler's challenger, Michael Gableman, with a list of wealthy donors, telling Gableman, "Tell them Leonard told you to call."[97] Each donor gave the maximum amount allowed. Gableman defeated Butler, the first time an incumbent had been defeated in four decades. Leo's power, often displayed through the work of organizations like the Judicial Crisis Network, goes beyond deep pockets and aggressive campaigning. His network of conservative lawyers works to help him facilitate the appointment of his people to important positions.

The 2010 midterms were an all-around success for the Republican Party, with Republican majorities (and even supermajorities) appearing in many state houses and legislatures across the country. However, Leo knew that even with electoral success, judges could still overrule conservative bills and ideology. In Wisconsin, a key battleground state, Republican Scott Walker

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[94] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[95] Ibid.
[96] Ibid.
[97] Ibid.

won his election, making the judicial battle all that more important for Leo. Leo raised over $200,000 to successfully elect a judge sympathetic to the sometimes-controversial Walker. It seems that there was an understanding that, when the time came, Walker would repay the favor. That opportunity came several years later, when a vacancy that Walker could fill emerged on the Wisconsin Supreme Court. Leonard Leo was quick to act, phoning Walker to instruct him to appoint Dan Kelly, the head of the Milwaukee Federalist Society Lawyers Chapter and former attorney for an anti-abortion group; Kelly was appointed shortly after.[98] Leo and the Judicial Crisis Network continued their fight, focusing on some of the most hotly contested states to conduct their work in. North Carolina, similarly to Wisconsin, is a swing-state with an elected judiciary. Beginning in 2012, JCN began pouring millions into North Carolina, and, for the first time in years, conservatives were consistently outspending liberals.[99] The top spender in the state was a group called the Republican State Leadership Committee (RSLC), which, unsurprisingly, Leo had a hand in-- JCN was the largest and most frequent donor to RSLC.[100] Like Wisconsin, this spending transformed the previously uncontentious landscape of judicial elections; the flood of money from political groups led to the emergence of frequent political ads, many that were characterized as “misleading and distortive.”[101]

The money and advertisements, like Wisconsin, worked in North Carolina. In 2022, with the help of Leo, JCN, and RSLC, North Carolina’s Supreme Court was flipped to a 5-2 conservative majority. Its first act was something absolutely unheard of for a newly elected court-- it reheard two cases that the prior court had just decided. In both cases, one of which dealt

[98] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. “We Don’t Talk about Leonard: The Man behind the Right’s Supreme Court Supermajority.” ProPublica, October 11, 2023.
[99] Ibid.
[100] Ibid.
[101] Ibid.

with gerrymandering and the other dealt with a controversial voter ID law, the court reversed its more liberal predecessor's ruling, delivering victories for conservatives. It is hard to imagine a bigger payoff for the work and money that Leo and his allied groups poured into the state. Wisconsin and North Carolina are just two case studies, as JCN and Leo have used money, networking connections, and advertising campaigns across the country. Leo's ability to manipulate electoral outcomes, when combined with his ability to put his allies in power, has made him one of the most successful political figures in history. The career of one young lawyer epitomizes Leo's power and success.

The career of Lawrence VanDyke is a prime example of how Leo's influence can serve to help an individual, who can then use the position to help Leo (and his movement). VanDyke was a Federalist Society member at Harvard Law School before being hired as Montana's solicitors general working under Tim Fox, Montana's attorney general and known ally of Leonard Leo's. Solicitors general has typically been a fairly mundane job, but Leo recognized its importance as the solicitors general is typically the representative of the state in federal court. VanDyke was part of Leo's new quest to reshape state attorneys general offices, especially at the solicitors general position where VanDyke "joined a new generation who had a distinctly aggressive, national approach to the law."[102] This approach was evident to those who worked with VanDyke, who seemed to care less about the necessary grunt work that comes with the role, and more about high-profile litigation of hot-button issues going on in other states.[103]

VanDyke would often urge Montana to join amicus briefs in major cases, such as the Hobby Lobby religious freedom case and the New York gun law case following Sandy Hook. As

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[102] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[103] Ibid.

ProPublica reported, even in the strongly conservative Montana office, VanDyke "alienated himself" from colleagues, often holing up in his office (where he proudly displayed a Leonard Leo bobblehead).[104] In 2014, VanDyke abruptly quit the Montana AG's office, in part it seems, because of disagreements about the type of work VanDyke was expected to do. Then VanDyke, with Leo's support, ran for Montana Supreme Court. That race, like the others that the Judicial Crisis Network and the Republican State Leadership Committee have been involved in, became one of the most bitter contests in state history, setting a record for independent expenditures in a Montana Supreme Court race.[105] The JCN funded RSLC contributed more than $400,000 to support VanDyke, who still lost.[106] Following the loss, "Leo made at least one call on VanDyke's behalf to an official who might be in position to give him a job."[107] VanDyke was hired as Nevada's solicitors general shortly after, before he was hired by Donald Trump to work in the Justice Department. After only a short time, Trump nominated him for the 9th U.S. Circuit Court of Appeals, where VanDyke has served since. Recently, VanDyke was the subject of an article referring to him as, "The Worst Trump Judge in America."[108] The article references an American Bar Association report on VanDyke which refers to him as "arrogant," "lazy," and "lacking in knowledge" and that he "lacks humility… does not have an open mind, and does not always have a commitment to being candid or truthful."[109] Despite those allegations, as well as others made by colleagues concerned about VanDyke's ability to "be fair to persons who are… part of the LGBTQ community," VanDyke appeared as the last name on Trump's Federalist

[104] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Larock, James. "The Worst Trump Judge in America Is Lawrence Vandyke." Balls and Strikes, June 23, 2023. https://ballsandstrikes.org/fedsoc-twelve/the-worst-trump-judge-is-lawrence-vandyke/.
[109] Ibid.

Society-provided shortlist of Supreme Court candidates in 2020.[110] Despite obvious character and professional flaws, with the help of Leonard Leo, Lawrence VanDyke was able to quickly climb the political ladder, ending with a federal appellate judgeship-- a judgeship that Leo can now rely on for reliably conservative opinions. In fact, many of VanDyke's rulings have focused on restricting immigration and overturning gun laws, crucial wins for Leo and his movement.

Lawrence VanDyke is just one example of Leonard Leo's power in politics and judicial makeup-- even at the state level. Leo's pipeline and the people it produces have been remarkably successful, and will continue to be well-positioned to enshrine conservative ideology in court for years to come. Leo's campaign to reshape state attorney general offices', specifically through the work of solicitors generals (like VanDyke was) has borne fruit already: obtaining injunction blocking federal agencies from working with social media companies to fight disinformation, persuading SCOTUS to undo the Biden student debt relief plan, and limiting EPA regulatory ability with greenhouse gasses. Most notably, the recent *Dobbs* decision which overturned the right to abortion established by *Roe* was argued by Mississippi's solicitors general.[111] Leo has a had a role in the careers and ideological shaping of an entire generation of conservative attorneys, including several very high-profile ones. Leo has acknowledged helping the careers of Andrew Ferguson, the solicitors general for Virginia, Kathryn Mizelle, the federal judge responsible for striking down a federal mask mandate during the COVID-19 pandemic, and Aileen Cannon, the federal judge currently overseeing the Mar-a-Lago documents case.[112] While

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[110] Larock, James. "The Worst Trump Judge in America Is Lawrence Vandyke." Balls and Strikes, June 23, 2023. https://ballsandstrikes.org/fedsoc-twelve/the-worst-trump-judge-is-lawrence-vandyke/.
[111] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[112] Ibid.

these are just a handful of examples, it is clear that Leo’s work has been nothing short of a miracle for the conservative legal movement.

Chapter V: The Payoff: Conservative Motivations, Victories, and Consequences

The contemporary situation for the conservative legal movement is an advantageous one. With a majority on the Supreme Court, seemingly for years to come, the aforementioned "right" conditions for landmark litigation are upon us. The movement is already starting to bear some of the fruits of its labor, with decisions like *Dobbs* and *Students for Fair Admissions* overturning decades-old precedent. It would be impossible to discuss the contemporary positionality of the conservative movement without the inclusion of President Donald Trump. Trump worked closely with Leonard Leo and the Federalist Society to nominate the "right" justices, both to the Supreme Court and to other federal judgeships. The reshaping of the judiciary that occurred under his watch is unparalleled in the modern era. However, the sort of insider politics that has surrounded those nominations, especially that of Brett Kavanaugh, and the court decisions that followed have raised sweeping questions about the judiciary. This chapter will seek to answer some of those questions by exploring the motivations of major leaders, such as Leonard Leo, and by attempting to understand the ways in which the conservative legal movement has brought the court to the place that it is at in terms of public perception. Finally, this chapter will seek to understand what might come next for a movement that has seen massive success, albeit with serious consequences along the way.

The spectacle surrounding the nomination and confirmation around Brett Kavanaugh was a defining moment of 2018. Unbeknownst to many, this nomination was years in the making, beginning with Trump's success in the 2016 Republican primary. Once it was clear that Trump was going to be the Republican nominee, the behind-the-scenes work began. It should come as no surprise that one man deeply involved in this work was Leonard Leo. While many conservatives were wary of Trump, or even against him at the outset, Leo understood the power

that Trump would hold, if elected-- especially given the Supreme Court vacancy that Senate Majority Leader Mitch McConnell had ensured would remain open until the conclusion of the 2016 election. The election itself, then, became, to Leo and his like-minded allies, more important than ever. Leo expressed his anxiety about this, saying, “Staring at that vacancy, fear permeated every day in that countdown to November 8th.”[113]

Leo’s fear was assuaged by Trump’s victory, while for other conservatives, Trump’s election provoked fear of what Trump would do with the open seat he had. Trump appeared to understand those concerns, and at one of his early press conferences declared, “I’m gonna submit a list of justices, potential justices of the United States Supreme Court that I will appoint from the list. I won’t go beyond that list. And I’m gonna let people know. Because some people say, maybe I’ll appoint a liberal judge. I’m not appointing a liberal judge.”[114] Later that same day, Leo hand delivered a list of potential nominees to Donald Trump. That list was part of Trump’s bid to typical conservatives who were nervous about what Trump’s uncertain nature and knack for bravado would mean for the party and its future. As one scholar wrote, “The list of high court candidates that Trump produced with the help of the Federalist Society, upending convention with typical Trumpian bravado, was explicitly aimed at calming their concerns, and it succeeded beyond the wildest expectations of its creators.”[115] Further alleviating concerns was Trump’s announcement that the initial vacancy on the Supreme Court would be filled with Neil Gorsuch, a reliably conservative Tenth Circuit judge from Colorado-- and picked from the approved list. Gorsuch’s nomination, however, would not be the focal point of judiciary battle during Trump’s term.

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[113] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020.P.21.
[114] Op Cit, P.19
[115] Op Cit, P.21

As early as the transition of power between President Barack Obama and President Donald Trump, Leonard Leo was sure that Justice Anthony Kennedy would retire during Trump's tenure in office. Leo's assurance was, in part, because of secret conversations he was having with Justice Kennedy's son, who told Leo that his father was elated at the results of the 2016 election.[116] Kennedy's eventual retirement (which came in 2018) gave Trump another seat to fill, and once again, Leo was the man to decide who would fill it. The first few drafts of the list that would eventually contain the name of the next Supreme Court justice did not contain Brett Kavanaugh's name. Even though Kavanaugh and Leo had worked closely in the early 2000s in the Bush administration, Leo was not convinced that Kavanaugh was as conservative as he wanted. Leo was concerned about how Kavanaugh's commitment to conservatism would play out in the court and thought he might be another mistake in the line of conservative justices who leaned left in the end. This concern was informed by a ruling in which Kavanaugh did not attack the constitutionality of the Affordable Care Act when given the chance as a judge on the U.S. Court of Appeals for the D.C. Circuit (*Seven-Sky v. Holder*).[117] Kavanaugh understood that, as one Trump White House official put it, "[Leonard Leo] is the stamp of approval."[118] Kavanaugh knew that his inclusion on the list would only come if he could prove himself as a reliable conservative, and he began his own campaign to prove that-- striking at the heart of the underlying motivations of the conservative legal movement that he himself was a product of.

Before one can understand Brett Kavanaugh's personal crusade to become a Supreme Court justice, one must understand the ultimate motivations of the people who could help make him a Supreme Court justice. The motivations of leaders of the conservative legal movement,

[116] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020.
[117] Ibid.
[118] Op Cit, P.25

from the Federalist Society to the Institute for Justice to Leonard Leo can largely be understood as one of two things. One of the motivations is the social realm, reshaping culture; this battle has taken various forms over the years, for contemporary conservatives it could be "wokism," affirmative action, abortion, gay marriage, or any other host of social issues. For Leonard Leo, who, at this point could accurately be described as a "kingmaker," it seems that his personal motivation is of the social nature. Leo is a devout Catholic who hasn't missed a mass since 2007 and considers his faith central to everything he does.[119] A friend of Leonard Leo was quoted as saying, "For Leonard, it's all about *Roe.*"[120] Indeed, Leo's track record speaks for itself. From the elevation of known anti-abortion lawyers like the aforementioned Dan Kelly to State Supreme Court positions, to the influential role that Leo has played the nomination and confirmation of known anti-abortion justices to the Supreme Court, Leo has consistently worked to elevate fiercely anti-abortion lawyers to positions in which they can act upon those ideals.[121] As one notable conservative blog wrote, "No one has been more dedicated to the enterprise of building a Supreme Court that will overturn *Roe v. Wade* than the Federalist Society's Leonard Leo."[122] Leo's power and relationship to the abortion issue was well known to Brett Kavanaugh, who had worked closely with Leo decades earlier. Kavanaugh knew that to make it onto "the list" he would have to convince Leo that he was prepared to overturn *Roe v. Wade*.

[119] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[120] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020.P.23
[121] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[122] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020. P.23.

The other motivation can be understood as one-time White House aide and longtime conservative pundit Steve Bannon put it, as the “destruction of the administrative state.”[123] Beginning with the New Deal and reinforced by the decisions of the Warren Court, the growing size and scope of the federal government was the bete noire for many legal conservatives. One ruling from 1984, *Chevron v. NRDC*, was particularly irksome. When it was decided *Chevron* seemed like a win for conservatives. The case dealt with the Environmental Protection Agency (EPA), which at the time maintained that the Clean Air Act allowed states to treat all pollution-emitting devices in a regulatory field as one, or as a “bubble.”[124]

The bubble provision allowed companies to modify or change aspects of power plants (or other major emission sources) without a permit, and was subsequently challenged by a number of environmental groups. In particular, the Natural Resources Defense Council (NRDC) filed suit, eventually taking the case to the Supreme Court. The Court ruled in favor of *Chevron*, holding that judges reviewing regulation are to defer to the judgment of agencies that wrote the law (in this case, the EPA). That ruling became a major tool to regulators, who were, through *Chevron*, given the ability to decipher and apply the meaning of relevant statutes to create regulations that, if challenged, justices would defer to. Modern conservatives, though, believe that the *Chevron* ruling “cedes too much power to agencies and encourages excessive regulation.”[125] Over time, *Chevron* has become a major target for the conservative legal movement-- especially for major donors, many of whom had financial interest in undoing the regulatory state. One commentator believes that “[Donors] were eager to undo what they viewed

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[123] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020. P.63.
[124] "Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc." Oyez. Accessed December 18, 2023. https://www.oyez.org/cases/1983/82-1005.
[125] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020.P.36.

as the out-of-control regulatory apparatus that had been assembled since Franklin Roosevelt's New Deal."[126] This sentiment was echoed by Trump White House Counsel Don McGahn, who worked closely with Leonard Leo on the nominations. McGahn, in a speech to a Federalist Society meeting, detailed how strongly conservatives felt, "The greatest threat to the rule of law in our modern society is the ever-expanding regulatory state, and the most effective bulwark against that threat is a strong judiciary."[127]McGahn's understanding of the role that the judiciary could play in helping to undo the "out-of-control regulatory apparatus" is one widely shared by top conservative donors and legal minds.[128] In fact, a major aspect of Neil Gorsuch's nomination was his long track record of anti-regulatory decisions. As author and political observer Ruth Marcus noted, "Gorsuch's attack on *Chevron* had been a key factor in helping him secure the nomination."[129] Now, Brett Kavanaugh would have to work to convince McGahn, Leo, and, perhaps more importantly, the wealthy donors, that he was prepared, as Gorsuch was, to wage a campaign against the regulatory state.

Kavanaugh understood that if he wanted a shot at a Supreme Court nomination, he would have to prove himself as anti-abortion and anti-regulation. To do that, Kavanaugh began using speaking engagements to pitch his case and attempt to prove his conservatism. Kavanaugh was a keynote speaker at the American Enterprise Institute, a conservative think-tank, for their Constitution Day celebration. In his speech, Kavanaugh hailed the merits of Justice William Rehnquist, one of the only two dissenters in the *Roe* decision. Kavanaugh went on to discuss Justice Rehnquist's decision in *Washington v. Glucksburg*, a case that dealt with the

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[126] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020. P.63.
[127] Ibid.
[128] Op Cit, P.64
[129] Op Cit, P.36

government's authority over assisted suicide; Kavanaugh believed that the reasoning Rehnquist applied to the *Glucksburg* decision was contrary to the dominant reasoning in *Roe.*[130] Therefore, said Kavanaugh, he gave little legal merit to the *Roe* decision, believing that *Glucksberg* was the more prominent and legally important precedent. This was Kavanaugh's pitch to Leo, McGahn, and the other key players who would be responsible for nominee selection. Kavanaugh was not only outlining his feelings for *Roe*, but demonstrating the legal reasoning he would apply if given the opportunity. And, when faced with the *Dobbs* decision several years later, this logic would become the basis for the approach to history and tradition that now dominates the Court. Kavanaugh's pitch regarding the regulatory state was similarly bold and telling. During a keynote address at a Notre Dame Law School symposium, Kavanaugh outlined his feelings about *Chevron*. "The *Chevron* doctrine encourages agency aggressiveness on a large scale. Under the guise of ambiguity, agencies can stretch the meaning of statutes enacted by Congress to accommodate their preferred policy outcomes."[131] Kavanaugh was making it clear to conservatives that he believed *Chevron* rigged the legal system in favor of the (often liberal) regulators and the so-called administrative state; nothing could have made conservatives, especially donors, happier. Brett Kavanaugh, of course, went on to receive the nomination and was confirmed, despite major controversy at his hearings.

The story of now-Justice Brett Kavanaugh's nomination is representative of many aspects of the contemporary state of the conservative legal movement. For one, Kavanaugh's personal quest to prove his ideology to those in power exemplifies what the underlying motivations to keep this conservative legal machine churning, a machine that has continued to churn with him,

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[130] Marcus, Ruth. *Supreme Ambition: Brett Kavanaugh and the Conservative takeover*. New York, NY: Simon & Schuster Paperbacks, 2020.
[131] Op Cit, P.36.

Gorsuch, and now Amy Coney Barrett on the bench. The issues that Kavanaugh used to sell himself to Leonard Leo and others on have been the issues on the docket-- with decisions that the conservative legal movement has waited decades for. The prime example is the ruling in *Dobbs v. Jackson Women's Health Organization* which overturned *Roe v. Wade* and with it, the constitutional right to abortion. The *Dobbs* decision, an almost unheard-of reversal of precedent, delivered the greatest legal victory that the right had seen in years. Now, with abortion dealt with, it seems the Court is turning its attention to the second motivation discussed earlier-- the regulatory state. The Court is set to hear opening arguments for *Loper Bright Enterprises v. Raimondo* in January, a case that could overturn the *Chevron* precedent. The Supreme Court will also hear *Relentless, Inc. v. Department of Commerce* in January, another case challenging agencies' regulatory abilities. In either of those cases the now-conservative dominated Court could issue a ruling that either completely overturns *Chevron* or narrows it to whatever extent the Court sees fit. If one is to believe Kavanaugh's own words, it seems likely that he and his like-minded colleagues will dismantle *Chevron* and the regulatory ability of federal agencies that comes with it. However, this rise in conservative litigation, power, and landmark decisions has not come without major questions and consequences for the conservative legal movement and the individuals who comprise it.

In November of 2023 the Supreme Court of the United States issued an ethics code for justices on the bench, the first of its kind for the country's highest court. This unprecedented move came after two years of unprecedented news for the Court. First, in 2022 *Dobbs* decision was marked with controversy, both for the decision and for the actions of the Court around it. Before the official decision was made in June, a leaked draft of the decision was published by Politico in May. This was unheard of; never in Supreme Court history had a draft been leaked to

the press before it was published. The leak, of course, sent shockwaves around the nation. However, it may not have been the first leak of a major decision in the last decade. Reporting by the New York Times suggests that Justice Samuel Alito revealed the outcome of *Burwell v. Hobby Lobby,* a case that dealt with contraception access, to a known anti-abortion leader.[132] Emails obtained by the Times, as well as a personal letter sent to Chief Justice John Roberts, suggest that Reverend Rob Shenck was privy to the outcome of the *Hobby Lobby* case weeks before its decision was made public-- even to the point that he knew the author of the decision (Justice Alito) and the vote split (5-4).[133] Rev. Shenck's knowledge of the decision was in part due to his close connections to the Court, which bear similarities to the connections of other figures, such as Leonard Leo. According to the New York Times, "Mr. Schenck, who used to lead an evangelical nonprofit in Washington, said he learned about the Hobby Lobby opinion because he had worked for years to exploit the court's permeability."[134] The notion that the Court is permeable to the point of leaked drafts in major cases speaks even more so to the tenuous position the Court has been in for the last decade. The leak, according to the Times, came from Justice Alito himself, who disclosed the news to Schenk's "star donors" over a private meal, who, in turn, phoned Schenk to inform him of the "good news."[135] However, the leak did not make it to the press and went unreported for years. That is, until the *Dobbs* leak hit the papers.

Following the *Dobbs* leak, Chief Justice John Roberts made an unprecedented move by ordering an investigation into the leak by the Supreme Court's marshal. That report, released in

[132] Kantor, Jodi, and Jo Becker. "Former Anti-Abortion Leader Alleges Another Supreme Court Breach." The New York Times, November 19, 2022. https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html?smid=tw-nytimes&smtyp=cur.
[133] Ibid.
[134] Ibid.
[135] Ibid.

January of this year, failed to identify the leaker.[136] However, when Rev. Shenck heard about the investigation, he immediately sent a letter to Chief Justice John Roberts, outlining his allegations regarding Justice Alito leaking the *Hobby Lobby* case.[137] Rev. Shenck never heard back, and the Court has yet to address his allegations, save for Alito denying any involvement with the leak. For the Court, the refusal to address either leak in a substantive manner spells trouble.

The Supreme Court, long considered a neutral arbitrator that has traditionally enjoyed higher public trust and approval than any other government branch, has seen that reputation take hit after hit in recent years. Furthermore, the Court has been bombarded with allegations of impropriety and overly close relations with major donors, some of whom have business before the Court. In particular, Justice Clarence Thomas has come under extreme public scrutiny for his close personal relationship with Texas real-estate billionaire Harlan Crow. In April 2023, ProPublica released a bombshell report documenting twenty years of gifts, vacations, loans, and more between Crow and Thomas.[138] None of those gifts, trips, or transfers of money and property was disclosed; notably, Supreme Court justices do not have a legal obligation to disclose personal gifts. However, as ProPublica reports, "The extent and frequency of Crow's apparent gifts to Thomas have no known precedent in the modern history of the U.S. Supreme Court."[139] The reporting shows many examples of international travel on Crow's yachts, stays at Crow's private resorts, and gifts from Crow to Thomas-- none of which Justice Thomas reported.

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[136] Howe, Amy. "Supreme Court Investigators Fail to Identify Who Leaked Dobbs Opinion." SCOTUSblog, January 23, 2023. https://www.scotusblog.com/2023/01/supreme-court-investigators-fail-to-identify-who-leaked-dobbs-opinion/.

[137] Kantor, Jodi, and Jo Becker. "Former Anti-Abortion Leader Alleges Another Supreme Court Breach." The New York Times, November 19, 2022. https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html?smid=tw-nytimes&smtyp=cur.

[138] Kaplan, Joshua, Justin Elliott, and Alex Mierjeski. "Clarence Thomas Secretly Accepted Luxury Trips from GOP Donor." ProPublica, April 6, 2023. https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow.

[139] Ibid.

The allegations of wrongdoing by Justice Thomas do not end with his relationship to billionaires, though. Thomas's wife, Ginni Thomas, has been documented as taking part in efforts to overturn the 2020 election.[140] This raises issues for Thomas, who did not recuse himself from several cases regarding January 6th and the movement to overturn President Joe Biden's election. One case is particularly troubling. Justice Thomas was the lone dissenter in a case where the Supreme Court considered a petition from Arizona Republicans who wanted to prevent the January 6th Congressional Committee from obtaining their phone records; his wife, Ginni, had contacted Arizona Republicans to "urge them to help overturn the election results" and was even questioned by the January 6th Committee.[141] Thomas's refusal to recuse himself from this case, as well as his dissent, speak to a greater issue within the court. Justices, it seems, are shirking the traditional non-conflict routes that have traditionally been taken. Thomas also refused to recuse himself, and was the only dissenter, in a case where the court denied President Trump's attempt to prevent Congress from acquiring specific documents that were pertinent to the inquiry into January 6th.[142] This instance is all the more troubling when one considers that Ginni Thomas was physically present at the January 6th "Stop the Steal" rally which resulted in the storming of the Capitol Building. Additionally, text messages between Ginni Thomas and White House Chief of Staff Mark Meadows provide further evidence that she was "directly engaged in activities to fraudulently overturn the election."[143] Thomas' refusals to recuse himself, while troubling, are part of a larger story with Justice Thomas. According to a report by

[140] Kanu, Hassan. "Justice Thomas' Rare Recusal Was an Attempt at Damage Control and Little Else." Reuters, October 2023. https://www.reuters.com/legal/government/column-justice-thomas-rare-recusal-was-an-attempt-damage-control-little-else-2023-10-24/.
[141] Ibid.
[142] Ibid.
[143] Olinsky, Ben. "New Allegations of a Leak by Justice Alito Underscore the Need for Supreme Court Reform." Center for American Progress, June 30, 2022. https://www.americanprogress.org/article/new-allegations-of-a-leak-by-justice-alito-underscore-the-need-for-supreme-court-reform/.

Reuters, "Thomas seems to identify conflicts less than any of the other justices."[144] Analysis by Bloomberg Law demonstrates that justices recused themselves in roughly 3% of cases between 2018 and 2021-- for Justice Thomas it was 0%.[145] The public outcry that has followed these revelations may be one explanatory factor in the publication of the first Supreme Court ethics code, however, questions about Thomas are not the only ones that linger.

Since the *Dobbs* leak revealed the *Hobby Lobby* leak allegations, Justice Samuel Alito Jr. has been the subject of intense scrutiny by court watchdogs and the public at large. Some have speculated that the *Dobbs* leak came from Alito himself; yet, due to the lack of responsiveness from Chief Justice John Roberts and the failure of the investigation, the truth may never be known. Regardless, Alito has a number of other accusations of wrongdoing that he must address. Reporting earlier this year from ProPublica uncovered a previously unreported (either by the media or the justice) fishing trip to Alaska where Alito was joined by billionaires Paul Singer and Robin Arkley II, as well as Leo.[146] Leo, just two years earlier, had been instrumental in the nomination and confirmation of Alito. Singer and Arkley are both major Federalist Society donors, and have been instrumental in funding the conservative legal movement.[147] Since that 2008 trip, Singer's hedge fund has been involved in at least ten cases before the Supreme Court-- Alito did not recuse himself in a single case.[148] Alito is currently under fire by Senate Democrats for his refusal to recuse himself from the case *Moore v. United States*-- a case with major

[144] Kanu, Hassan. "Justice Thomas' Rare Recusal Was an Attempt at Damage Control and Little Else." Reuters, October 2023. https://www.reuters.com/legal/government/column-justice-thomas-rare-recusal-was-an-attempt-damage-control-little-else-2023-10-24/.
[145] Kanu, Hassan. "Justice Thomas' Rare Recusal Was an Attempt at Damage Control and Little Else." Reuters, October 2023. https://www.reuters.com/legal/government/column-justice-thomas-rare-recusal-was-an-attempt-damage-control-little-else-2023-10-24/.
[146] Elliott, Justin, Joshua Kaplan, and Alex Mierjeski. "Alito Took Unreported Luxury Trip with GOP Donor Paul Singer." ProPublica, June 21, 2023. https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court.
[147] Ibid.
[148] Ibid.

implications for the wealth tax. David Rivkin, Leonard Leo's personal attorney, is an attorney representing Moore. In addition to Alito's close connection to Leo, Rivkin has interviewed Alito multiple times for favorable pieces in the Wall Street Journal.[149] Furthermore, Rivkin is heavily involved in the Federalist Society as the co-head of the organization's appellate practice.[150] Senator Sheldon Whitehouse (D-R.I.) spoke to the connections among Rivkin, Alito, and Leo, saying there's "reason to believe [Rivkin] recruited Alito to prop up a legal theory he was using to prevent his client (and Alito's friend) from answering questions about gifts Leo organized for Alito."[151] The questionable nature of these connections is only amplified by a recent probe into Leonard Leo's finances, which Rivkin told Politico Leo would not comply with.[152] Revelations like these seem to be becoming more and more common for a court that has long held a special place as "above the political fray." Instead of responding to questions asked of him by reporters, Justice Alito took to the Washington Post to publish an op-ed decrying the allegations and denying wrongdoing.[153] However, as one court watchdog puts it, "the mere perception of impropriety underscores the urgent need for a binding and enforceable code of ethics."[154] The keywords in that statement are "binding" and "enforceable," as many legal scholars believe that

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[149] Durkee, Alison. "Samuel Alito Refuses to Recuse from Supreme Court Case with Attorney Who Interviewed Him for Wall Street Journal." Forbes, September 12, 2023. https://www.forbes.com/sites/alisondurkee/2023/09/08/samuel-alito-refuses-to-recuse-from-supreme-court-case-with-attorney-who-interviewed-him-for-wall-street-journal/?sh=5ad50e332a03.

[150] Eggleston, W. Neil, John S. Baker, and Richard Brookhiser. "David B. Rivkin, Jr.." The Federalist Society, 2023. https://fedsoc.org/contributors/david-rivkin.

[151] Durkee, Alison. "Samuel Alito Refuses to Recuse from Supreme Court Case with Attorney Who Interviewed Him for Wall Street Journal." Forbes, September 12, 2023. https://www.forbes.com/sites/alisondurkee/2023/09/08/samuel-alito-refuses-to-recuse-from-supreme-court-case-with-attorney-who-interviewed-him-for-wall-street-journal/?sh=5ad50e332a03.

[152] Pryzbyla, Heidi. "Leonard Leo Says He Will Not Cooperate with D.C. Attorney General Tax Probe." POLITICO, October 2023. https://www.politico.com/news/2023/10/03/brian-schwalb-arabella-investors-00119751.

[153]Alito, Samuel A. "Justice Samuel Alito: ProPublica Misleads Its Readers - WSJ." WSJ Opinion, June 2023. https://www.wsj.com/articles/propublica-misleads-its-readers-alito-gifts-disclosure-alaska-singer-23b51eda.

[154] Olinsky, Ben. "New Allegations of a Leak by Justice Alito Underscore the Need for Supreme Court Reform." Center for American Progress, June 30, 2022. https://www.americanprogress.org/article/new-allegations-of-a-leak-by-justice-alito-underscore-the-need-for-supreme-court-reform/.

the code released earlier this year is neither binding nor enforceable.[155] Instead, it seems that the ethics code was released more to win back public opinion and keep critics at bay-- at least momentarily.

The conservative legal movement has won great victories in the past decade. It has cemented a 6-3 majority on the nation's highest court, filled the lower courts with conservative judges, and won landmark cases. At the same time, the justices who compromise that conservative majority, who delivered the favorable decisions, have been rocked with scandals and unprecedented allegations of wrongdoing. Polling data from Pew Research Center earlier this year (2023) show that “the share of Americans with a favorable opinion of The United States Supreme Court has declined to its lowest point in public opinion surveys.”[156] Similarly, the General Social Survey (GSS) conducted by the Associated Press-NORC Center for Public Affairs Research reported in May, 2023 that “confidence in the Supreme Court is at its lowest since the GSS began [in 1973].”[157] Pew’s research shows that only 44% of Americans have a favorable view of the court, while the GSS reported that only 18% of Americans had a “great deal of confidence” in the Court, with 36% having “hardly any confidence.” The ethics code seemed to be a response to the falling public opinion, but the damage may have already been done. For some, it is easy to point to the publicly unpopular decisions in the last few years-- restrictions to contraception, abortion access, the rollback of voting rights-- as the source for public trust falling. However, it is important to note that this is not the first time in Supreme

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[155] Vansickle, Abbie, and Adam Liptak. “Supreme Court Adopts Ethics Code after Reports of Undisclosed Gifts and Travel.” The New York Times, November 13, 2023. https://www.nytimes.com/2023/11/13/us/politics/supreme-court-ethics-code.html.

[156] Lin, Katy. “Favorable Views of Supreme Court Fall to Historic Low.” Pew Research Center, July 21, 2023. https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/.

[157] Staff, Associated Press. “Public Confidence in the U.S. Supreme Court Is at Its Lowest since 1973 - AP-NORC.” AP, May 18, 2023. https://apnorc.org/projects/public-confidence-in-the-u-s-supreme-court-is-at-its-lowest-since-1973/.

Court history when the public has been unhappy with decisions. It is, however, as the data shows, the first-time confidence has fallen this low. Even in 2000, when the Supreme Court controversially decided the outcome of the presidential election, a politicized ruling to be sure, confidence in the court did not waver.[158] With that in mind, one must consider the alternative-- that the conservative legal movement has contributed to the decrease in public trust in the court.

The erosion of public trust in the highest court in the United States comes at the same time as the conservative legal movement is seeing its greatest victories. While some may chalk the timing up to coincidence, one must consider the alternative-- the conservative legal movement, directly or indirectly, bears responsibility for the position which the court currently sits in. The greatest evidence for this argument is the work of Leonard Leo. The behind-closed-doors connections that Leo has forged between himself, wealthy donors, and sitting justices are finally starting to come to light. It is hard to judge whether Justice Thomas and Justice Alito would have the sorts of close relationships to wealthy donors if it were not for the work of Leonard Leo-- much less be sitting on the Court. Furthermore, the decades of legal work from organizations like the Institute for Justice, the Center for Individual Rights, and the Federalist Society have slowly started to win controversial victories. The controversy is, at least in part, due to the seemingly close relationships between those bringing the cases and those deciding them. Those relationships, though, are also what has enabled the conservative legal movement to have the success that it is having. Leo's pipeline is working exactly as it is meant to-- the right cases are being brought to the right courts and being heard by the right justices. The byproduct of Leo's involvement with each aspect of those "right" conditions are the legitimate concerns about conflict of interest, wealthy donors bringing their business before the Court, and lack of

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[158] Lin, Katy. "Favorable Views of Supreme Court Fall to Historic Low." Pew Research Center, July 21, 2023. https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/.

enforcement for wrongdoing. The close-knit nature of the justices, the donors, and the movement leaders has simultaneously advanced the conservative legal movement to the most advantageous position it has been in and caused a deep erosion in public trust towards the court.

Chapter VI: Conclusion

The conservative legal movement and its effect on the court has never been more worthy of examination than in today's world. With an enshrined supermajority on the Supreme Court and a remarkably well-funded machine churning, the conservative legal movement is as powerful as it has ever been. For the last forty years, the movement has been about the destruction of the administrative/regulatory state and the reversal of major judicial decisions that are perceived to have benefitted liberals. With those efforts now coming to fruition, it is important to understand how the U.S. got to this point.

The conservative legal movement began from relatively meek origins as a countermovement to the expansion of the liberal legal network (LLN) from the 1930s to the 1950s. The New Deal and the Warren Court decisions that followed expanded the federal government and the rights it afforded to citizens. The LLN expanded rapidly through an increasingly liberal legal academic world, in part due to major changes in law school curriculum. The creation of government agencies and regulatory bodies allowed for liberal public interest lawyers to gain valuable insight into the new, expanded government. Those lawyers then took their experience and used it to litigate major legal victories for liberals, expanding rights and protections. This growth and expansion was increasingly well-funded through government grants to liberal public interest law firms like the ACLU and NAACP, as well as funding from liberal foundations like the Ford Foundation.[159] The first efforts to mount a conservative response were a failure. The necessity for fundraising created an untenable link between the early conservative legal movement and business interests. The early conservative public interest law firms spent much of their time assisting major donors with business-related efforts instead of pursuing

[159] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.

ideologically driven litigation. However, the second generation would not make the same mistake.

The second wave of conservative public interest law built on the failures of its predecessor to avoid the same mistakes. The conservative legal movement in the 1980s was aided by the newly formed Federalist Society, who helped connect like-minded students and lawyers. The Institute for Justice and the Center for Individual Rights, the two foremost second generation CPILFs, used the Federalist Society as a tool for recruitment and idea testing.[160] With the support of individual donors who did not expect business returns from their donations, IJ and CIR were able to unhitch themselves from the business interests that plagued the first generation of CPILFs. IJ and CIR, while different in strategy and structure, were both able to pursue ideologically driven litigation—all the way to the Supreme Court. With the Federalist Society, the conservative legal movement gained a reliable network for conservative organizations to draw from. Its Lawyers Division helped firms like IJ and CIR develop litigation strategies and recruit attorneys to fulfill those strategies. In turn, IJ and CIR benefitted the Federalist Society by advancing its members' ideological interests in court. That synergy greatly benefitted the conservative legal movement as a whole, creating opportunity for it to grow in power and size.

Instrumental in that growth would be a man named Leonard Leo, who, after being exposed to the Federalist Society as a young law student, had founded a chapter at Cornell Law School. Leo, after graduation, would accept a role at the Federalist Society headquarters in Washington, D.C. and he has been there ever since. Leo worked through the Federalist Society network to help build a pipeline for conservative law students to become conservative lawyers, who Leo and the Society would then help with career advancement—provided they would assist

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[160] Teles, Steven M. *The Rise of the Conservative Legal Movement: The battle for control of the law*. Princeton, New Jersey: Princeton University Press, 2012.

in the advancement of conservative ideology. This system has produced exceptional results, with countless Federalist Society members serving in key government and private sector roles. Leo has played a role in the selection, nomination, or confirmation process for every sitting conservative member of the Supreme Court.[161] In fact, one would be hard pressed to find any single individual who has done more for the conservative legal movement than Leonard Leo has.

The Supreme Court has begun delivering the conservative legal movement the victories it has been striving to achieve for the past forty-plus years. The most controversial of those decisions thus far is *Dobbs* which overturned *Roe*. As celebrated as that moment was for conservatives, the undoing of abortion rights is barely the tip of the iceberg for the movement. Indeed, while reversing major rulings about social issues has always been a driving motivation, the conservative legal movement has the stated goal of destroying the entire administrative state. The Court prepares ready to begin that work in January, in a docket with several cases the court will have the opportunity to undo *Chevron* and strike major blows to the federal government's regulatory ability. At the same time, the Court faces the lowest public opinion polling data it has ever experienced.[162] Conservative justices, helped into the role by Leonard Leo and his network of deep pocketed donors, are under fire for their relationships with major donors. Perhaps in response to the falling confidence, the Court released its first ever ethics code for its justices. That code lacked any enforcement mechanisms and has not reversed public opinion. The conservative legal movement has been victorious, but at the cost of deeply eroding public trust in perhaps the most vaulted institution in American politics.

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[161] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.

[162] Lin, Katy. "Favorable Views of Supreme Court Fall to Historic Low." Pew Research Center, July 21, 2023. https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/.

With the Supreme Court firmly under its grasp, the question becomes what is next for the conservative legal movement. To answer that, look no further than Leonard Leo. Leo, a man many feel is responsible for not only the conservative majority in the Court, but also the connections raising questions of wrongdoing, has set his sights on a greater battle than the nations' courts. Leo, fresh off receiving a sum of over $1 billion from a wealthy businessman, has turned his efforts towards reshaping American society. Leo is the head of a largely unknown group called the Teneo Network. In a video for the group, Leo explains its purpose, "I spent close to 30 years, if not more, helping to build the conservative legal movement. At some point or another, I said to myself, 'Well if this can work for law, why can't it work for lots of other areas of American culture and American life where things are really messed up right now?'"[163] The group describes itself as "private and confidential" with the stated goal as a mission to "crush liberal dominance" in arenas of American life besides the law—where Leo led groups had already found success.[164] The Teneo Network already boasts some impressive membership; it is comprised of conservative business people, media figures, and several prominent conservative politicians, such as Missouri Senator Josh Hawley.[165] While the "private and confidential" nature of the group has limited information available about the group's activities, Leo's recent speech to the Catholic Information Center sheds some light on his thinking.[166] Leo described the principles of Catholicism as under attack from "vile and immoral current-day barbarians, secularists and bigots" who he referred to as "the progressive Ku Klux Klan."[167] The Teneo Network, it seems,

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[163] Kroll, Andy, Andrea Bernstein, Ilya Marritz, and Nate Sweitzer. "We Don't Talk about Leonard: The Man behind the Right's Supreme Court Supermajority." ProPublica, October 11, 2023.
[164] Ibid.
[165] Ibid.
[166] Ibid.
[167] Ibid.

is Leo’s way of fighting back. If the success of the conservative legal movement can be replicated in the social arena by Leo and his machine, then Americans ought to be wary.

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