



Responses from

Scott Walter

Capital Research Center

to the Questions for the Record

following a hearing conducted by the

Senate Committee on the Judiciary

Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights

“What’s wrong with the Supreme Court: The Big-Money Assault on Our Judiciary”

Senator Whitehouse’s Questions

- 1. You testified that a network of nonprofits that are clients of the consultancy Arabella Advisors raised \$1.5 billion from 2014 to 2017 to advocate for liberal candidates and causes. Of that amount, precisely how much, in dollars, did those organizations bring in through funds that work with Arabella Advisors, as opposed to other funding sources?*

With all due respect, your question is unclear; I do not know what you mean by “funds that work with Arabella Advisors” versus “other funding sources.” Nor do I understand why you would think I would know what donors gave what amounts to the “dark money” network associated with Arabella Advisors, no part of which discloses its donors.

I can, however, explain exactly what the \$1.5 billion figure represents. In my written testimony,¹ I cited a lengthy report we published on Arabella Advisors’ empire.² That report clearly indicates we studied 2014-2017 revenues, the same years your “Captured Courts” report repeatedly cites from the *Washington Post*’s long attack on conservatives active in judicial issues. We looked only at the four in-house nonprofits that (1) are run by the for-profit Arabella Advisors LLC and (2) themselves “fiscally sponsor” hundreds of pop-up groups such as Demand Justice and Fix the

¹ In my written testimony, I wrote: “*Captured Courts* repeatedly cites its targets’ \$250 million in revenues from 2014-2017; over the same years, Arabella’s nonprofits raised \$1.5 billion.” Scott Walter, Testimony before the U.S. Senate Judiciary Committee Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights, Hearing on “What’s Wrong with the Supreme Court: The Big-Money Assault on Our Judiciary,” March 10, 2021, p. 5.

² Hayden R. Ludwig, *The Shadow over America: An Update on Arabella Advisors’ \$600 Million Empire in 2018* (Washington: Capital Research Center, 2020); https://capitalresearch.org/app/uploads/CRC_TheShadowOverAmerica-09-10-2020_FINAL.pdf.

Courts. Those four umbrella nonprofits collectively raised \$1.5 billion in anonymous donations from 2014-2017. Figure 3 on page 7 of our report supplies the complete data (reproduced here):

Figure 3. Arabella Network Revenues

	New Venture Fund	Sixteen Thirty Fund	Hopewell Fund	Windward Fund	Annual Total
2018	405,281,263	143,837,877	66,892,414	19,238,519	635,250,073
2017	358,858,641	79,559,836	130,616,293	12,656,323	581,691,093
2016	357,581,316	21,258,592	16,552,056	15,812,062	411,204,026
2015	318,405,056	5,617,209	6,895,271	1,297,000	332,214,536
2014	179,424,945	16,523,735	-	-	195,948,680
2013	112,942,320	5,269,965	-	-	118,212,285
2012	52,519,099	812,500	-	-	53,331,599
2011	36,542,348	93,600	-	-	36,635,948
2010	16,813,261	-	-	-	16,813,261
2009	26,812,567	4,828,000	-	-	31,640,567
2008	6,011,782	-	-	-	6,011,782
2007	1,663,363	-	-	-	1,663,363
2006	545,100	-	-	-	545,100
Totals	\$1,873,401,061	\$277,801,314	\$220,956,034	\$49,003,904	
	Grand Total:				\$2,421,162,313

Source: New Venture Fund, Sixteen Thirty Fund, Hopewell Fund, and Windward Fund, IRS Form 990, 2013–2018.

Your unclear question suggests that you do not understand how the Arabella Advisors’ empire of “dark money” is structured, in which case we suggest you read our report. Your question implies that you imagine my testimony referred to independent nonprofit groups that “are clients of the consultancy Arabella Advisors.” True, our investigations reveal millions of dollars of fees paid by 501(c)(3) foundations and 501(c)(3) public charities to Arabella Advisors—fees that Arabella does not itself disclose but which the foundations and charities report on their IRS Form 990s. But our \$1.5 billion figure has no connection to those fees; it only covers the revenues of Arabella’s four in-house nonprofits that are not “clients” of Arabella but rather are the umbrella nonprofit groups that Arabella runs and which in turn “fiscally sponsor” hundreds of dark projects such as Demand Justice. Fiscally sponsored projects, by definition, are not independent nonprofits, and therefore they do not reveal their donors, and they fail to reveal all sorts of internal information that independent nonprofits must reveal in their IRS filings, such as board members, vendors, outside fundraisers, largest donation amounts, salaries, etc. That is why I testified to you that your left-wing friends often use more opaque techniques to obscure their operations than the nonprofits you targeted in your “Captured Courts” report.

All the revenues of Arabella’s in-house nonprofits (New Venture Fund, Sixteen Thirty Fund, Hopewell Fund, and Windward Fund) were counted in our \$1.5 billion figure. If you’d prefer a shorter explanation of Arabella’s empire than our full report, the *Wall Street Journal* published an op-ed of ours that they entitled, “Inside the Left’s Web of ‘Dark Money’: Sheldon

Whitehouse won't tell you about the Arabella Advisors empire that skirts disclosure requirements."³

2. *Of that \$1.5 billion amount cited in Question #1, precisely how much was spent on operations to influence the federal judiciary, including the selection and confirmation of judges, the development of legal theories, and/or the funding of amicus curiae briefs in federal court?*

Thank you for identifying the precise reason we label as “dark money” the networks of nonprofits in the Arabella Advisors empire: We don't know the answer to your question because of the opaque way Arabella and its hundreds of projects operate. Please see my response to Question 1 regarding Arabella's use of “fiscal sponsorship” to prevent the public from learning the answers to all such questions. Please contrast Arabella's opaqueness with the *Washington Post's* long attack on conservatives active in judicial issues, which is the source for the \$250 million-over-five-years revenue figure you so often cite. The *Post* was able to compile that number from the public filings made by a variety of conservative groups, whereas I have far less information about Arabella's network with which to answer your question. Perhaps you should consider having Arabella leaders testify, so that you can ask them this question. We promise to publicize your questions and their answers, if any.

3. *Are you aware of any particular organization or individual affiliated with any of the “left-wing entities” mentioned in your testimony who has created lists of judicial nominees in direct consultation with a presidential candidate, taken temporary leave to advise a sitting president on filling a judicial vacancy, and/or selected judicial nominees for a sitting president? If so, who?*

No. I should add, however, that Arabella's fiscally sponsored project Demand Justice has coordinated a list of judicial candidates for President Joseph Biden and has been active, including through public advertising, in influencing the new Administration's judicial nominees, as Bloomberg Law, NPR, and others have noted.⁴

In addition, Senate Judiciary Committee documents that became public in 2003 indicated that a large number of left-leaning groups were consulted—and apparently even exercised veto powers over—your party's treatment of judicial nominations. For example, in one memo to Sen. Kennedy of Massachusetts, it was stated, “...Ultimately, if [Chairman Pat] Leahy insists on having an August hearing, it appears that the groups are willing to let [Timothy] Tymkovich [10th Circuit] go through (the core of the coalition made that decision last night, but they are checking with the gay rights groups).”⁵ The memos indicate that Ralph Neas, then head of People for the American Way, was deeply involved in this work with the committee. Perhaps his

³ Scott Walter, “Inside the Left's Web of ‘Dark Money,’” *Wall Street Journal*, Oct. 22, 2020; <https://www.wsj.com/articles/inside-the-lefts-web-of-dark-money-11603408114>.

⁴ See “Biden Pulled Left in Quest for Judges Outside Corporate Law,” Bloomberg Law, Feb. 12, 2021; <https://news.bloomberglaw.com/us-law-week/biden-pulled-left-in-quest-to-see-judges-outside-corporate-law>; Nina Totenberg, “Biden Makes 1st Judicial Nominations, Including A Supreme Court Contender,” NPR, March 30, 2021; <https://www.npr.org/2021/03/30/977831327/biden-makes-first-judicial-nominations-including-a-supreme-court-contender>. Demand Justice's “short list” is available at <https://demandjustice.org/supreme-court-shortlist/>.

⁵ Quoted in “‘He is Latino,’” *Wall Street Journal*, Nov. 14, 2003; <https://www.wsj.com/articles/SB106877910996248300>.

successor whom you called as a witness at the hearing could provide you with more information on this issue.

4. *You and CRC have both worked in the past with Richard Berman, the chief executive of public relations firm Berman & Company.⁶ Did Mr. Berman and/or Berman & Company assist you or CRC in putting together any of your testimony before the Committee and/or work with CRC on any of the reports you cited in your testimony? If so, how?*

No. We do not rely on Mr. Berman or his firm for research. The firm has sometimes been a vendor for such support tasks as website maintenance or graphic design.

5. *CRC has amplified claims of the Heartland Institute attacking the science of climate change⁷; both groups have a long history of promoting climate change denial. Does CRC receive any project grants or general support from donors who have tried to impede measures to mitigate climate change or limit the amount of carbon from human activities in our atmosphere and oceans?*

We do not require donors to answer questions about their activities with respect to climate change as a condition of their donation to us, so we do not know.

6. *Have you or CRC ever done any work for, or received funding from, an organization known as the “Honest Elections Project” (a.k.a. the “85 Fund,” formerly “Judicial Education Project”)?*

First, CRC does not perform contract work. Second, in accordance with *NAACP v. Alabama*,⁸ we do not answer questions about our donors’ identities or those who opt not to support our research.

7. *Have you or CRC ever done any work with, or received funding from, Hans von Spakovsky, Christian Adams, or Cleta Mitchell on the subject of elections or voting?*

First, Mr. von Spakovsky, Mr. Adams, and Ms. Mitchell have all cited our investigative research on persons and groups that influence the public policy process, and we have cited their work on

⁶ Mary Bottari, *Bradley Foundation Bankrolls Front Groups of Discredited PR Spin Doctor Richard Berman*, PRWatch (May 9, 2017), available at <https://www.prwatch.org/news/2017/05/13240/bradley-foundation-bankrolls-front-groups-richard-berman>.

⁷ See, e.g. Matt Patterson, *Green Watch May 2012: The Heartland Institute Under Attack*, <https://capitalresearch.org/article/the-heartland-institute-under-attack/>; see also Hayden Ludwig, *Liberal-funded eco-right infiltrates CPAC – and the conservative movement*, Heartland Freedom Pub (blog) (Mar. 10, 2020).

⁸ 357 U.S. 449.

any number of public policy issues. Second, in accordance with *NAACP v. Alabama*, we do not answer questions about our donor identities. Third, we do not perform contract work.

8. *You have been a member of the Council for National Policy,⁹ which has made efforts to promote claims of widespread voter fraud,¹⁰ even though such claims have been widely debunked. Do you believe the 2020 presidential election was stolen?*

No.

9. *Has CRC taken any steps to correct or clarify claims it made that spread doubt about the legitimacy of election results in Georgia and other states?¹¹*

The footnote to your question, quoting one of our reports, does not support the premise of your question. Neither in the quotation you cite, nor anywhere else, have we made such claims about the legitimacy of election results in Georgia or other states.

We have, on the other hand, documented the vast amounts of money received by government election officials across the country from one 501(c)(3) nonprofit, Center for Tech and Civic Life, funded largely with a \$350 million grant from one billionaire, Mark Zuckerberg (with additional funding from Google, Facebook, Rock the Vote, and others). We have analyzed how those contributions demonstrate a pattern of influencing the outcome of the election. This level of influence is troublesome even in those states and counties where a majority voted for the previous President. For example, we have recently published an analysis of the Center's grants to Texas county election offices that found inequities in both in the distribution of funds—which went strongly to counties supplying most of their votes to your party's presidential nominee vs. counties supplying votes to your party's opponent—and also in the disproportionate increase in turnout for your party's nominee in funded counties. These starkly partisan outcomes appear to violate federal tax laws. IRS guidance states: “voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.”¹² Thus we have urged the authorities in Texas and Washington, DC, to determine just what happened with this private funding of government election offices. So far, the Center for Tech and Civic Life has refused to disclose their funders and their grant amounts to government offices, even when asked by asked by the *New York*

⁹ Council for National Policy membership directory, April 2020, p. 173, *archived at*

<https://assets.documentcloud.org/documents/7241474/CNP-Membership-Directory-April-2020.pdf>.

¹⁰ Robert O'Harrow, *Videos show closed-door sessions of leading conservative activists: 'Be not afraid of the accusations that you're a voter suppressor'*, Washington Post (Oct. 14, 2020)

¹¹ See, e.g. Scott Walter, *George election officials, a billionaire, and the “nonpartisan” Center for Tech & Civic Live*, Capital Research Center (Nov. 27, 2020) (“Even more ominous, CTCL gave grants to nine of the ten counties with the greatest Democratic shifts in their 2020 voting. Those nine grantees averaged a 13.7 percent shift blue-ward . . . Whether or not CTCL has crossed a legal line, the starkly partisan outcomes from its giving in the Peach State should lead the appropriate authorities in Georgia and Washington, DC, to determine just what has happened.”)

¹² Internal Revenue Service, “The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations”; <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>.

Times,¹³ the Associated Press,¹⁴ National Public Radio,¹⁵ American Public Media,¹⁶ the *New Yorker*,¹⁷ and others, despite the fact that federal law requires nonprofits to disclose grants of \$5,000 or more to government entities in public IRS filings.¹⁸

You make a priority of investigating nonprofits that influence the selection of judges and justices. Our reporting has documented how one billionaire and one nonprofit may have powerfully influenced the election of the man who will nominate all federal judges and justices for the next four years. We would be honored to work with you to investigate this funding stream.

10. Did CRC through its staff or social media efforts promote the January 6 Trump rally and march to the Capitol, and if so, in what way(s)?

No.

11. Has CRC's funding from the Bradley Foundation increased, remained constant, or decreased since it acquired the Bradley Foundation's former Vice President of Programs, Michael Hartmann, to be a Senior Fellow and director of its fundraising efforts?

First, allow me to correct a material error. Michael Hartmann has never directed Capital Research Center's fundraising. As his listing on our website clearly indicates,¹⁹ he serves as the director of our Center for Strategic Giving, providing analysis of and commentary on philanthropy. As to the substance of the question, in accordance with *NAACP v. Alabama*, we do not answer questions about our donors' identities or those who opt not to support our research. But I note that the Bradley Foundation discloses all its grants in its annual IRS filings, and Bradley additionally discloses all grants on its website four times a year—far more promptly than federal law requires.

12. Does CRC accept donations from any major private or public for-profit corporations?

First, in line with nearly all nonprofit groups in America, CRC does not have a policy of refusing donations from corporations, public or private. We applaud America's businesses for their role in making possible our country's prosperity, which in turn makes possible the vast nonprofit sector of charities, including CRC. Second, in accordance with *NAACP v. Alabama*, we do not answer questions about our donors' identities or those who opt not to support our research. But knowing that you were likely to inquire in this way, I had our development staff analyze our donations in

¹³ <https://www.nytimes.com/2020/09/25/us/politics/elections-private-grants-zuckerberg.html>.

¹⁴ <https://apnews.com/article/technology-elections-denver-mark-zuckerberg-election-2020-92257bbc1fef9ed0e18861e5b5913f6>.

¹⁵ https://www.npr.org/2020/12/08/943242106/how-private-money-from-facebooks-ceo-saved-the-2020-election?utm_source=Iterable&utm_medium=email&utm_campaign=campaign_1795371_nl_Philanthropy-Today_date_20201208&cid=pt&source=ams&sourceId=132961.

¹⁶ <https://www.apmreports.org/story/2020/12/07/private-grant-money-chan-zuckerburg-election>.

¹⁷ <https://www.newyorker.com/news/daily-comment/battling-anxiety-over-making-sure-your-vote-gets-counted>.

¹⁸ The Center appears to be delaying its 2020 IRS filing until the latest legal limits of 2021.

¹⁹ <https://capitalresearch.org/person/michael-e-hartmann/>.

recent years. They found donations from corporations made up only a few percent of our revenues, and the corporations represented were small- to medium-sized.

Senator Kennedy's Question

13. *Mr. Walter, you argued in your testimony that the Left is far wealthier in "dark money," than the Right. How do you respond to Ms. Graves' assertion that -- assuming your testimony is correct -- that is beside the point because the proposed legislation would apply equally to all sides?*

As I stated during my testimony and in my April 1, 2021, response to Sen. Whitehouse's personal request on March 17 for our top donors: "Mr. Chairman, I stand with the NAACP of Bull Connor's Alabama, and with the NAACP of today, and with the ACLU and the Human Rights Campaign, in opposition to government schemes to force private citizens to disclose their donations."²⁰ In other words, it is immoral for government to force citizens' support of public causes to be made known to persons—in government and outside it—who would use the information to harass those citizens.

As I wrote in the same letter, in addition to the traditional moral reasons for avoiding disclosure of donations, "The practical reason for opposing disclosure arises from the very real threats, felt across the political spectrum, of mob harassment and worse. And Mr. Chairman, just as your side has more groups, active for more years, and possessed of far more 'dark money,' so does your side have more mobs."

This question cites Ms. Graves' assertion that conservatives should support forced donor disclosure, because conservatives have less "dark money." At the hearing, Mr. Jealous made the same argument.²¹ The only possible logical inference is that forced donor disclosure harms the citizens and groups forced to disclose; therefore, conservatives should support laws that will harm their opponents more than themselves.

This question reveals the central disagreement between the party of forced government disclosure, including Sen. Whitehouse, Ms. Graves, and Mr. Jealous, and the party of citizens' privacy, which I support: ***I do not wish to harm donors and groups I disagree with, and I respectfully urge you to end your campaign to harm donors and groups you disagree with.***

²⁰ We have made the letter available at <https://capitalresearch.org/article/an-exchange-with-sen-sheldon-whitehouse-over-forced-donor-disclosure/>. The exchange of letters produced a news story on the controversy: Joe Schoffstall, "Conservative Group Defends Donor Privacy as Sheldon Whitehouse Demands Disclosures," Free Beacon, April 1, 2021; <https://freebeacon.com/democrats/conservative-group-defends-donor-privacy-as-sheldon-whitehouse-demands-disclosures/>. The opposition to forced donor disclosure advocated by today's NAACP, ACLU, and Human Rights Campaign is described in Kevin Daley, "Liberal Groups Break With Whitehouse Over Controversial Donor Disclosure Rule: ACLU and NAACP have joined a Supreme Court challenge to the California rule," Free Beacon, March 5, 2021; <https://freebeacon.com/courts/liberal-groups-break-with-whitehouse-over-controversial-donor-disclosure-rule>.

²¹ The hearing video is available at <https://www.c-span.org/video/?509728-1/senate-hearing-federal-courts-special-interest-group-money>. At approximately 1:41:30, in response to a question from Chairman Whitehouse, Mr. Jealous says, "it's time for there to be bilateral disarmament. The hypocrisy that you see from the right is, they claim that there's more dark money on the left, and yet they refuse to be transparent. Well, it would seem that if the first were true, then the second would be a no-brainer."