

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL
BRIAN L. SCHWALB**

November 13, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan and Chairman Comer:

I am in receipt of your October 30, 2023 letter seeking confirmation of, and documents relating to, a “reported effort to investigate Leonard Leo and certain nonprofit organizations with which he is affiliated.”¹ Consistent with the policies of law enforcement agencies across the country, it is the policy of the D.C. Office of the Attorney General (OAG) not to confirm, deny, or otherwise comment on potential or pending investigations. That well-established policy preserves the integrity of the investigative function.

I recognize and respect that our constitutional system of government empowers Congress to conduct oversight to assist it in carrying out its legislative duties. I am, therefore, open to further discussion about whether your respective Committees’ requests have a legitimate legislative purpose that OAG can help achieve without compromising the integrity of our work. To that end, I appreciate this opportunity to explain OAG’s policy regarding public comment on investigations, as well as our legal authority on the general subject matter outlined in your letter.

Protecting the Integrity of Our Investigations

OAG is charged, among other things, with enforcing the laws of the District of Columbia. Contrary to your letter’s suggestion, OAG is committed to the impartial pursuit of justice, without regard to political affiliation or motivation and without fear or favor. Maintaining confidentiality in our investigations is essential to ensuring their integrity, impartiality, independence, and effectiveness. Disclosing or otherwise commenting on potential or pending investigations threatens to expose investigative methods, chill the cooperation of witnesses, undermine the privacy rights and interests of people and entities who may be identified in law enforcement files but are not investigative targets, prejudice the public with incomplete information, and damage the

¹ Letter from Chairman Jim Jordan and Chairman James Comer to Attorney General Brian Schwalb (Oct. 30, 2023).

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public's confidence in the fair administration of justice. Moreover, disclosing or discussing a potential or pending investigation that does not ultimately result in an enforcement action can inflict significant, sometimes irreparable, reputational harm on individuals or organizations that are the subjects of that investigation.

OAG's position on protecting the confidentiality of potential or pending investigations is consistent with longstanding law enforcement principles outlined by the U.S. Department of Justice, which has explicitly noted that "Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions."² Like DOJ, OAG is committed to shielding potential and pending investigations from all the adverse consequences that can flow from disclosure.

Your letter incorrectly implies that OAG is unduly influenced by third-party organizations and undertakes investigations for politically motivated reasons. OAG identifies potential illegal activity occurring in the District in myriad ways, including referrals from other government agencies, information from other investigations, public reporting, and tips or complaints from members of the public. No matter the source of information, OAG impartially analyzes the facts, dispassionately applies the law, and reaches its own independent conclusions about whether the law has been violated.

As you have rightfully indicated, law enforcement agencies should carry out their duties free from political influence. Preserving the confidentiality of potential or pending investigations helps to fortify OAG against the risk of such influence from *any* entity. This principled commitment to confidentiality promotes not only the thoroughness, quality, and impartiality of OAG's investigatory work, but the Rule of Law.

The Investigatory Authority of the Office of Attorney General

I am concerned that your letter may misapprehend OAG's jurisdiction over nonprofit organizations operating in the District. I hope that, by clarifying the law in this area, this letter might help educate the public about our office's jurisdiction and provide information that might be helpful to your Committees' oversight needs.

As the chief legal office for the District, OAG has the authority and obligation to ensure that nonprofits doing business in the District comply with applicable District laws. That includes not only nonprofits incorporated in the District, but also nonprofits incorporated in other states that register, maintain an office, or otherwise transact business in the District.³ It is well-established that for-profit companies that are incorporated in one state and maintain a presence or transact business in a second state subject themselves to the jurisdiction and laws of that second state. The same goes for nonprofits that are incorporated in one state yet register, maintain an office, or otherwise transact business in the District. No corporation, whether for-profit or not-for-profit, is exempt from the laws of a jurisdiction in which it chooses to be present and do business.

² See, e.g., Letter from Assistant Attorney General Robert Raben to Chairman John Linder (Jan. 27, 2000).

³ D.C. Code § 29-105.01(c).

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Indeed, out-of-state nonprofits that choose to register and do business in the District enjoy a number of benefits by virtue of that choice, including unparalleled proximity to key players and decision-makers across the federal government, such as members of Congress and their staffs. A natural condition of enjoying these benefits is compliance with District laws, including the District's Nonprofit Corporation Act,⁴ which OAG enforces.⁵ Like its sister statutes throughout the nation, the District's Nonprofit Corporation Act recognizes that, because nonprofits are supported by tax-exempt contributions, they operate as a public trust. For that reason, every nonprofit registered and doing business in the District must use the funds it receives solely for its stated public purpose, and not for the private inurement or benefit of others.⁶ OAG's enforcement of the Nonprofit Corporation Act ensures that nonprofits registered and doing business in the District do not misappropriate charitable funds for non-charitable purposes or otherwise misuse their tax-exempt status.

I also would like to alleviate your concern that OAG's enforcement of the Nonprofit Corporation Act might somehow threaten protected First Amendment rights. In one of the same First Amendment cases your letter cites, the U.S. Supreme Court explicitly acknowledged that the government has an "important interest in preventing wrongdoing by charitable organizations," and that "misuse, misappropriation, and diversion of charitable assets" can "cause serious social harms."⁷ It is thus proper and necessary for OAG to perform principled oversight of the conduct of nonprofit organizations registered and transacting business in the District. And I assure you that we can and will do so without infringing on either the right to free association or the "fundamental right" of privacy, which, incidentally, I am very pleased to know you and your Committees also support.

I hope that this letter, given the circumstances, satisfies the scope of your inquiries, and that a further briefing will not be necessary. Should you have further questions, my team and I are committed to working with you to better understand your legislative purpose and determine whether there is additional information we can provide consistent with our mission and obligation to enforce District law impartially, without fear or favor, and free from political motivation or undue influence.

Sincerely



Brian L. Schwalb
D.C. Attorney General

⁴ D.C. Code §§ 29-401.01 *et seq.*, 29-105.01 *et seq.*

⁵ D.C. Code §§ 29-105.12, 29-412.20.

⁶ Nonprofit organizations operating in the District cannot "exceed or abuse the authority conferred upon [them] by law" or "act contrary to [their] nonprofit purposes," D.C. Code § 29-412.20(a)(1)(B)-(C), including as set out in the Internal Revenue Code regulations.

⁷ *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2385-86 (2021).

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The Honorable James Comer
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cc:

The Honorable Jerrold Nadler
Ranking Member
House Committee on the Judiciary

The Honorable Jamie Raskin
Ranking Member
House Committee on Oversight and Accountability