



May 13, 2022

**Via Online Portal**

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
6th Floor, 441 G Street, N.W.  
Washington, D.C. 20530

**Freedom of Information Act Request: Potential Executive Branch Involvement and/or Coordination in the Leak of the Supreme Court's Draft Majority Opinion of *Dobbs v. Jackson Women's Health Organization***

Dear Mr. Hibbard:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans. Our mission includes promoting public knowledge and understanding of individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 25,000 unique addresses, our Twitter page has nearly 10,000 followers, the Twitter page of our Founder and President has over 83,800 followers, and we have another 18,000 followers on GETTR.

**I. Introduction**

On Monday, May 2, 2022, a confidential Supreme Court draft majority opinion in the case of *Dobbs v. Jackson Women's Health Organization*, authored by Justice Samuel

A. Alito, Jr., was published in *Politico*.<sup>1</sup> Supreme Court Chief Justice John G. Roberts, Jr., has confirmed the authenticity of the leaked draft, and that the leak is a significant breach of the Court’s integrity and confidentiality. He has since initiated an internal Court investigation.<sup>2</sup>

There is strong reason to believe that the leak of Justice Alito’s draft opinion may have been designed to interfere with the Court’s fair adjudication of the *Dobbs* case by, *inter alia*, manufacturing a pretext for direct acts of intimidation against the Justices. For example, Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, and their families, have been targeted in their homes by dark money groups that pay “stipends” to demonstrators.<sup>3</sup> These “protests,” all apparently in violation of 18 U.S.C. § 1507, are organized and led by an organization described as:

[A]n empty vessel operated by a small clique of well-funded professional activists whose job is to imitate the appearance of an organic political movement by staging high-profile ‘actions’ that they get the media to cover .... The group is like a shell company or holding corporation; it’s made up of at least 24 groups, including stalwarts of the professional activist scene like Black Lives Matter DC, Code Pink, the Climate Action Network Action Fund, and Extinction Rebellion DC. That complicated structure appears to serve the same purpose here that it does in corporations with multiple addresses and offshore bank accounts—it makes it hard to see where the money is coming from and even harder to see who’s in charge.<sup>4</sup>

Additionally, in response to the leaked draft opinion political figures and journalists have called for violence,<sup>5</sup> and those calls have been answered.<sup>6</sup> A group claiming

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<sup>1</sup> Josh Gerstein & Alexander Ward, *Supreme Court Has Voted to Overturn Abortion Rights, Draft Opinion Shows*, POLITICO (May 2, 2022), <https://tinyurl.com/4sx6bkja>.

<sup>2</sup> See generally, Supreme Court of the United States, Press Release (May 3, 2022), <https://tinyurl.com/2bx74p53>.

<sup>3</sup> Andrew Kerr, *Abortion rights group doxes Supreme Court justices, offers stipends for protests*, Washington Examiner (May 5, 2021), <https://washex.am/3Pcpl7G>; Anders Hagstrom, *Liberal Group Calls for Protests at Conservative Supreme Court Justices’ Homes*, FOX NEWS (May 5, 2022), <https://fxn.ws/3FIx7BR>; see also Ryan Lovelace, *‘Ruth Sent Us’ Activists Plan Abortion Protests at Churches, Supreme Court Justices’ Homes*, WASH. TIMES (May 5, 2022), <https://bit.ly/37H4EQu>; “Ruth Sent Us” Home Page, <https://www.ruthsent.us/> (last visited May 5, 2022).

<sup>4</sup> Jacob Siegel and Sean Cooper, *What Happened Today: May 10, 2022*, The Scroll (May 10, 2022), <https://bit.ly/3w3iE0h>.

<sup>5</sup> Jordan Boyd, *‘Let’s Burn This Place Down’: Left Calls For Violence After Treasonous SCOTUS Abortion Leak*, The Federalist (May 3, 2022), <https://bit.ly/3soEWaz>.

<sup>6</sup> See, e.g., *Seattle Abortion Rights Rallies and Protests Planned in Response to Supreme Court Leak – UPDATE: Hundreds March*, CAPITOL HILL SEATTLE BLOG (May 3, 2022), <https://bit.ly/3sqWtyT> (citing @Sadenochill, Twitter (May 3, 2022, 11:27 PM), <https://bit.ly/3yucTdt> (“BURN OUR RIGHTS WE BURN UR STATE”)); Luke Anderson, *Protesters Damage Property in Downtown Portland Following SCOTUS Opinion on Abortion Rights*, KXL (May 4, 2022), <https://bit.ly/37H6zVc>; Emma Colton, *LA*

national reach boasted about firebombing a Wisconsin pro-life group's office, and spray painting a message reading, "if abortions aren't safe then you aren't either."<sup>7</sup> More attacks have been promised. Also, there have been confirmed reports of death threats made against the pro-life Justices.<sup>8</sup>

The Biden Administration and its allies, including the pro-abortion lobby, have been attacking the Supreme Court's institutional legitimacy for many years.<sup>9</sup> The pro-abortion lobby is a critical Biden Administration stakeholder.<sup>10</sup> And, there is ample evidence that the Biden Administration will improperly weaponize the Department of Justice (the Department) and its law enforcement authorities to improperly advance stakeholder interests.<sup>11</sup> Taken together, these facts provide at least reason to question whether Biden political appointees within DOJ may have had advance knowledge of the Court's deliberations, played a role in leaking the opinion, or were involved in the pro-abortion lobby's coordinated response thereto. Therefore, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a), AFL requests the records specified below.

## II. Custodians

All political appointees, and all career employees with a grade equivalent to GS-14 or higher, in the following DOJ components:

- A. Office of the Attorney General.
- B. Office of the Deputy Attorney General.
- C. Office of the Associate Attorney General.

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*Abortion Protest Turns Violent: Protesters Lob 'Rocks and Bottles' at Cops, Smash Cruiser's Window*, FOX NEWS (May 4, 2022), <https://fxn.ws/3PgiuN>.

<sup>7</sup> Danielle Wallace, *Wisconsin Anti-abortion Group Targeted in Molotov Cocktail Arson Attack: Police*, FOX NEWS (May 8, 2022), <https://fxn.ws/3sxzdiB>.

<sup>8</sup> See generally, Pierre Boralevi, *Verified Twitter User Suggests Killing Pro-Life Supreme Court Justices in now-deleted Tweet*, LIFE SITE NEWS (May 6, 2022), <https://tinyurl.com/ynzz7mn3>; and Katie Pavlich, *After Justifying Harassment, White House Finally Condemns Threats Against Supreme Court Justices*, TOWNHALL (May 9, 2022), <https://tinyurl.com/4y9cxprh>.

<sup>9</sup> See Jordan Boyd, *Here are the Democrats Using the Leaked Dobbs Opinion as an Excuse to Demand Court-Packing*, THE FEDERALIST (May 6, 2022), <https://tinyurl.com/tk724e9m>; Peter Hasson, *Democrats attack Supreme Court's legitimacy after leak suggests Roe v. Wade to be overturned*, Fox News (May 3, 2022), <https://bit.ly/39muauQ>; see also Kalhan Rosenblatt, *Protesters pound the doors of the Supreme Court following Kavanaugh confirmation*, NBC News (Oct. 6, 2018), <https://nbcnews.to/37IfwO3>; Matthew Yglesias, *Brett Kavanaugh's confirmation will delegitimize the Supreme Court — and that's good*, Vox (Oct. 5, 2018), <https://bit.ly/3LbUQeW>.

<sup>10</sup> Staff Report, *Biden allows US aid for abortion providers and expands Obamacare*, BBC News (Jan. 28, 2021), <https://bbc.in/3Pd2B7w>; Alexi McCammond, *Planned Parenthood launches digital ad campaign for Biden*, Axios (Jul. 13, 2020), <https://bit.ly/39jsRNg>.

<sup>11</sup> Emily Zantow, *Republicans blast White House collusion with school board group about parental 'domestic terrorism'*, The Washington Times (Nov. 12, 2021), <https://bit.ly/3LdJcJN>.

D. Office of the Solicitor General.

E. Civil Rights Division.

### **III. Records Request**

The timeframe for each item is December 1, 2021, to the date it is processed.

F. All calendar items that reference or include “Dobbs v. Jackson Women’s Health Organization,” “Dobbs v. Jackson Women’s Health,” “Dobbs,” or similar citations for, and references to, that case.

G. All records containing the phrase “anti-abortion.”

H. All records containing or referencing coordination with the Marshal of the Supreme Court or the Supreme Court Police regarding the Supreme Court justices’ safety.

I. All records containing the phrase “March for Life” or referencing the March for Life that occurred on or about January 21, 2022.

J. All records containing the phrase “EMILY’s List” or “We are EMILY” referencing the We are EMILY National Conference and Gala that occurred on May 3, 2022.

K. All communications with Sen. Sheldon Whitehouse (D-R.I.), any of Sen. Whitehouse’s Senate office staff, any of Sen. Whitehouse’s Judiciary Committee office staff, or any other U.S. senators or staff about the planning or occurrence of the Senate Committee on the Judiciary subcommittee hearing entitled “An Ethical Judiciary: Transparency and Accountability for 21<sup>st</sup> Century Courts”, which took place in Room 226 of the Dirksen Senate Office Building on Tuesday, May 3, 2022, at 10:00 a.m. EDT.

L. All records containing the e-mail suffix “demandjustice.org”.

M. All records containing the e-mail suffix “politico.com”.

N. All records containing the e-mail suffix “wsj.com”.

O. All emails containing the words or phrases “Dobbs v. Jackson Women’s Health Organization”, “Dobbs v. Jackson Women’s Health”, “Dobbs”, “abortion” “leak”, “Alito”, “anti-abortion”, or “response” to or from any person with an e-mail address containing “eop.gov”.

P. All records pertaining to the processing of this request.

#### **IV. Processing**

The Department must comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.<sup>12</sup> This means, among other things, the following:

- The Department may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law.
- Information that might technically fall within an exemption should not be withheld from AFL unless you can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail.
- If the Department determines that it cannot make full disclosure of a requested record, then the FOIA requires that it consider whether partial disclosure of information is possible and take reasonable steps necessary to segregate and release nonexempt information.
- The Department must properly apply the foreseeable harm standard. That means it must confirm and demonstrate to AFL that it has considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.
- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then you must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please give full effect to all applicable authorities and broadly construe our request and your obligations to provide responsive records.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such

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<sup>12</sup> U.S. Dep't Just. (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download>.

as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our requests are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please prevent deletion by instituting a litigation hold or other appropriate measures.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the

information requested is not in AFL's financial interest. This has previously been recognized by the Departments of Defense, Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence.

Second, waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."<sup>13</sup>

## **VI. Request for Expedited Processing**

AFL requests expedited processing for all of the above-requested items. In support thereof, AFL certifies its compelling need for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e), which provides in relevant part:

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve... (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information; (iii) . . . or (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

As other federal agencies have acknowledged in granting AFL expedited processing, AFL is primarily engaged in disseminating information. Additionally, there is an urgency to inform the public regarding the circumstances surrounding DOJ's potential involvement in, or awareness of, federal actors' involvement in the leaking of a draft Supreme Court opinion and undermining of the Supreme Court's integrity and independence. This urgency would exist even under circumstances where individuals were not at risk of physical harm, but it is abundantly clear that the leak has created a volatile environment where several Supreme Court justices, their clerks, and other staff may be at risk of harm. Harm to any of these individuals would not only affect them alone, but substantially damage the integrity and independence of the federal judiciary.

Our request also meets the Department's regulatory test for expedited processing. Specifically, the request satisfies § 16.5(e)(1)(iv), providing for expedited processing whenever it is determined that the request involves a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence. As already discussed, both requirements are met here, because there has been extensive public interest in the issue of abortion generally, the leaked draft opinion, the fallout from the leak, and the future of the federal judiciary.

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<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

The Department is required to engage in reasoned decision-making when evaluating requests for expedited processing, and that “mere recitation of the language in your expedited review provision does not suffice as a reasoned explanation.”<sup>14</sup> Instead, you are required to engage with the claims made, and grant them when the relevant tests are satisfied. If you deny them with a “mere recitation of the language in the DOJ provision on expedited review”, that decision can be challenged in federal court, without the need to wait for administrative exhaustion. After all, “to require a requestor who has been denied expedited processing to exhaust administrative remedies before seeking judicial review would defeat the section's aim of accelerating response time.”<sup>15</sup>

AFL is an organization engaged in gathering, analyzing, and disseminating information, and there is great urgency to inform the public concerning events of intense public interest. Moreover, the allegations at hand go directly to public confidence in the government’s ability to remain a sovereign and respect the separation of powers. For these reasons, our expedited processing request should be granted.

## **VII. Production**

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 611 Pennsylvania Avenue, SE, #231, Washington, D.C. 20003.

## **VIII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL’s request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Sincerely,

**/s/ John A. Zadrozny**

John A. Zadrozny

America First Legal Foundation

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<sup>14</sup> *Citizens for Resp. and Ethics in Washington v. U.S. Dept. of J.*, 436 F. Supp. 3d 354, 359 (D.D.C. 2020).

<sup>15</sup> *Id.*