

## Transcript

### Forum: Corporate Political Spending and Foreign Influence

*Hosted by Commissioner Ellen L. Weintraub*

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#### **Statement of Jared DeMarinis, Director, Candidacy and Campaign Finance Division, Maryland State Board of Elections**

**JARED DEMARINIS, DIRECTOR, CANDIDACY AND CAMPAIGN FINANCE DIVISION, MARYLAND STATE**

**BOARD OF ELECTIONS:** Well, I just wanted to say thank you, Commissioner, for inviting me to this esteemed panel, and this has been very informative throughout the entire day here. I'm going to be addressing the impact of corporate contributions on the state and local level and I'm going to just first address that Maryland has always allowed corporate contributions, we just don't allow corporations to run for political office because they are not a person for that purpose.

And when *Citizens United* came out, I remember all the press calls that were coming in, because now there was such a heightened awareness among the press corps and it had really no impact on the state of Maryland's giving process because we've always allowed corporations to give and to make independent expenditures. But since then, it definitely changed. And I'm going to give you a little case study about how difficult it is, and kind of a, what the other panel and everyone here being such professors in law schools, it reminds me of my, one professor's quote about the, if you don't let the nose of the camel inside the tent, type of deal. Once it's in there, it's very difficult to get out.

And corporations and corporate contributions is definitely that type of being here. So... like I said, Maryland has always allowed corporate contributions and we had an attribution rule in place that said that wholly owned subsidiaries of a corporation and if the corporation had identical shareholders,

they would be considered as one contributor. Now this makes sense and everything. And this is since the dawn of the time. In the 90s, LLCs came into existence and into corporate law in Maryland, the powers that be and everyone asked, "Well, are LLCs part of this attribution rule?" And the office of the Attorney General at the time said "no." LLCs have to be considered separate entities and they're not a part of the attribution rule because when the law was written, it was written saying corporations and LLCs are not corporations.

This became the LLC loophole in the state of Maryland here. And basically, everyone who was the most popular form of corporate structure, especially for small business owners, developed many LLCs. And they were able to give to politicians over their contribution limits. And this is, it existed for years. Out there. And it had such a significant impact on local and state elections, which was making it virtually impossible for it to ever get changed. And there was years of it, constantly in front of the General Assembly, to close this loophole. And I was going through some of the comments online too, that I, with the FEC, #FECforum. And one of the things was about how corporate contributions are insignificant. If that's the case then they wouldn't make it. Of course corporate contributions are significant and they have an impact here. Large developers in the state of Maryland used to typically set up many LLCs for legitimate reasons to control their various interests.

And they then contributed money that they controlled to their candidates. They formed basically, clusters of giving power to increase their political clout. And this ranged into the hundreds of thousands of dollars to specific entities and to specific candidates. I mean, the corporations, corporate contributions, you know, targeted the correct elections to maximize their effect at the state and local level.

So, I think that it would be, while you may, while it may be insignificant as a figure compared to say, overall giving to a candidate by individuals, its impact is probably greater than that. Because one

person given \$25 versus a person giving \$100,000, they controlled all those interests there. And I think corporate money was kind of like the original dark money in a sense here. Because you don't necessarily know how they were, how this decision was made, who really speaks for the corporation, and the public just kind of looks at it and goes, it's just a name and most of these LLCs or corporations have names that no one even knows about and then they go in and they get a registered agent there.

So... it was really the first form even though it was disclosed and you could try to find it, it takes a long time there.

So flash forward now from the 90s all the way to 2013 which we basically, when the LLC loophole was finally closed. And the law was only effective after the 2014 general election. So they wanted to make sure that they got one last election with the LLC loophole.

And this law that we passed in Maryland was passed with bipartisan support. So, this is not something, now, that was a Republican or Democratic issue. I think that the states now have taken the mantle of this for disclosure and reform, in a bipartisan effort here.

And the close, now, is that we then changed it to all business entities, so that we don't care what structure they are, LLC, LLP, corporations, anything, that if they're owned or controlled by 80% of the same individuals, they're considered one contributor now.

Along the lines here, the idea, then, there was a ban on casino interests as well. I received many, I guess, concerns about well, if the, if one corporation in this person's control is a casino, will it affect, say, their dry cleaning business if they want to give to me on an unrelated matter? And the answer is yes -- I said, once the, you know, once the ban was attached to all the contributors then it affects all of them.

That wasn't the most popular response because they still wanted a lot of the money there. So... but, once you have big money entering into the political process, it is nearly impossible to get it out, or its corrupting influences on it, because campaigns constantly get more expensive.

The last cycle is the floor. It's not the ceiling anymore. Because then they look around, they go, well, if I took \$100,000 to win, my opponent's going to raise \$150,000 so therefore, I have to now look at it and raise \$200,000. So, it's always kind of, like, an increasing arms race there. So, once they know that they have an access to money from one contributor that can give tens of thousands of dollars, then of course they can easily raise that in their mind. And if you cut off those sources for that, it has an impact on their ability to raise money and they have to say, "Well, now I have to go out and get, you know, the legal limit from 20 people" or "I have to go out a little bit harder."

The other thing, too, is that I wanted to say about how the states are taking this responsibility, I think, about corporations and shareholders in a new light. I think that they are, they used to look at the federal side and say, that used to be the shining model of disclosure and activity for, you know, compliance and the states were always the, let almost anything go.

Now I think the roles have kind of flipped here. For example, with independent expenditures in the state of Maryland, if you're an entity that makes an independent expenditure in our state for a state or local election and you have shareholders, you have to submit your activity to the shareholders on their regular shareholder report.

So the shareholders will have some knowledge about that. I think I wanted to talk about, a little bit, one of the questions here is, "What can the FEC do? You know, how can they build a record about this?" And... I can say that how this change came about, I can talk about the fact that we had two commissions, to study campaign finance law, one by the Attorney General, another one by the General Assembly or that outside groups did reports about how much money was passed through the loophole,

which in one four-year cycle was \$5 million in the very small state of Maryland, which, as you can see, had a very significant impact there or the press was very knowledgeable about this loophole. But in the end, it was really the *Citizens United* case.

I think that the *Citizens United* case, even in the state, where it had no effect, prior, I mean, after its ruling, made legislators rethink and take a look about corporate influence. And I think that in their mind, because we, everyone looked at the federal model, you had a lot of people go, "Oh, of course corporations can never give because the federal law prohibits corporations from giving." Once *Citizens United*, it opened up and it was in the press that corporations can give, corporate owners felt a little bit more secure about giving in state and local elections, and that they weren't going to run afoul of everything. And the other thing, too, is that I'm an eternal... I'm an optimist in these situations here.

We've, campaign finance has gone through a, depending on how you feel about it, major changes in the last seven, you know, in the last decade or so. I think that one of the things about it is that on the state and local levels, the, it is more of a bipartisan issue than on the federal level. And the reason for it is because of the impacts that they have been doing to themselves as legislators with redistricting. Redistricting has made every district now a safe district. Before, you used to have to worry about what the Democrat or Republican is doing in your own district. Now you are more worried about your challenges from your own party, whether it from left or right, and that, the general election, is almost predetermined at that point there, for the outcome.

So... legislators are now looking at it and saying, "Well, I want to know what activity this, what my opponent is doing." And their opponent is more in their party than ever before, so, which is why I think we were able to pass such a comprehensive campaign finance reform with greater disclosure on dark money with (c)(4) activities, with 527 activities, with rapid disclosure on super PAC activities within 48 hours. All these reforms and greater disclosure and enforcement laws was because they were looking

at it in their own light and saying, “Well, I want to know what's going on in my election, that matters to me the most.”

And before I leave, I just wanted to talk a little about foreign influence here. Now, foreign influence is a, we can all agree that, I think, that we never want a foreign government to influence our elections. Or have the ability to change our political discourse. Maryland is unique in one scenario here. We have a town that actually allows noncitizens to vote and participate in municipal elections. They have, they can go out and vote for mayor, but it's against federal law right now for a person in that town, that's living there, to give a \$5 donation to the candidate that they choose.

Also... nationally, we've been passing a lot of Dream Acts. There's the dreamers out there. Now, maybe they have a right, maybe they don't have a right to participate in the electoral process, but they're here, they want to participate in this process here. This is not a national government trying to push their own agenda in our political process here. These are people that, in the Dream Act, you know, pay taxes. So they are actually, you know, should they be able to give money to a ballot initiative? These are some questions now, I think, that as we go forward, I think we need to address and that foreign nationals is a different subject from when it was first, I guess, thought of in the 1930s or in the 40s when there was a war and we wanted to make sure about that.

So... with that, I just wanted to show that how it took forever, but it did take, we did get it done, to limit or corporate influences on the electoral process here, which is why I'm an optimist in these situations here. I think that as the people from the states move up through the ranks, the rules that they play with on the state level, they'll want to bring to the next election. Because then they're going to say, “Well, this worked and this is not something that I couldn't win or it wouldn't have a negative impact on it,” and they're going to take that, I hope, bipartisanship and disclosure and reform attitude up to the next levels, to the federal side and that is all.