

Transcript

Forum: Corporate Political Spending and Foreign Influence

Hosted by Commissioner Ellen L. Weintraub

Federal Election Commission, 999 E St. NW, Washington, DC 20463

June 23, 2016

Statement of Norman J. Ornstein, American Enterprise Institute

NORMAN J. ORNSTEIN, AMERICAN ENTERPRISE INSTITUTE: Thanks. I want to start with a shout-out to Ellen, who to me is a model public servant who really has worked for years to try and make this agency function. You know, many years ago there was a *New Yorker* cartoon about the doorway to the Ways and Means Committee and it said “The Ways and Means Committee” and somebody had written above it “powerful” because nobody ever referred to the Ways and Means Committee without saying it was “The powerful Ways and Means Committee.” And we could put a sign out in front of this building that says “feckless,” the “Feckless FEC.” But we have some commissioners who have tried to make it feckful, at least, and that's Ellen. [Laughter]

So, if we start with Commissioner Weintraub's analysis, which is accepting, in some respects, the way that, first of all, Justice Kennedy defined corporations, and then in the *Hobby Lobby* decision, the way that Justice Alito expanded that definition – and you could add to it, the rather exuberant way in which Justice Scalia, in a partial dissent in the *Citizens United* case, talked about how the framers loved corporations – then, logic would suggest, exactly what she said, which is that any corporation that has foreign ownership shouldn't be allowed to participate in politics in the same way.

Now, I don't start with that premise, though. The textbook definition of a corporation is an association of individuals created by law or under authority of law, having a continuous existence

independent of the existences of its members and powers and liabilities distinct from those of its members.

So, that logic says to me that corporations, which are set up under charters directly with the goal of maximizing shareholder return, maximizing profits, are very different from individuals, they are not people, they have different motives, and people have many motives.

But, I would also say that corporations are different now than they used to be. In 1953, Charles Wilson, then the CEO of General Motors, made a statement in testimony to Congress that became very famous: What's good for General Motors is good for America and vice versa. That was then. This is now. Now we have corporate inversions, where companies that used to say we're proud to be part of America are sending their ownership and charters abroad to save on taxes.

We have a vast expansion of foreign companies buying, foreign countries and entities buying American companies and creating American subsidiaries. And we have a global economy. So General Motors, which has not done an inversion, which is proudly still based in Detroit, is a global company where the vast majority of its manufacturing elements and its business are done abroad.

Now, what that means is that they have a variety of interests in their goal of making money. And those interests do not necessarily coincide with American national interest.

We start with citizens and those who are legal residents participating in our politics with an assumption, at least, the reason that we separate out foreign money is an assumption that American citizens may have many motives, but they are loyal to the United States. And they primarily want to advance American interests. What happens when you have a company, maybe one that, for example, has substantial gambling interests in Macau, that decides that American foreign policy should be altered in a way that may not fit America's national interests, but that would enhance, because of the

relationship with China, their own business interest in Macau? Now to me if you put all that together with dark money and the reality that we know, that it is possible and indeed it has happened, that money gets laundered through a whole variety of entities, probably including 501(c)(3)s as well as 501(c)(4)s and other institutions, so it's impossible to tell where it's coming from. And you put that together with an agency that has assiduously avoided enforcement of these things. And that leads us, I think, to me at least, to an inexorable conclusion, that we are going to have very substantial scandals and a serious clash over the question of what in fact fits America's national interest.

Now, one way to deal with it is to accept what the Court has done and then take that logic where it should go, which is exactly what Ellen is saying. But it could be, if you took some of the suggestions that are on the table for the FEC that require entities contributing to politics, to basically certify that there is no foreign money or foreign influence involved, and if you combine that with real disclosure, then at least you would have a better enforcement mechanism. That's not going to do away with the problem.

And I believe it's a problem that, combined with many other elements in our politics, is going to create a real crisis for legitimacy in the system. If there is no longer a sense that people involved in our politics are interested in the nation as a whole, but have a set of other interests, and you put that together with a group of individuals at the 1/10th of 1% level, who are increasingly removed from the society, who say things like, as Steven Schwartzman of Blackstone did when President Obama suggested that maybe it was time to look at the carried interest tax rate, this is like Hitler invading Poland. When you have, I kid you not, when you have that, you're setting up a formula for something that's really troubling for the system.

Now, we could presumably deal with disclosure at some point by passing the DISCLOSE Act or doing something more. It would also be helpful if an agency – and I remember at a time when I criticized

a previous chairman of the agency for not following the law and he wrote, "I don't just follow the law, I also have to follow what the courts say." Well, the Court ruled 8-1 in a robust fashion that we should have disclosure and I haven't seen that play out so far in what the agency has done. If we could get some measure of disclosure along with some of the elements that Commissioner Weintraub and others are proposing, maybe we could at least put broad boundaries around this area.

But in the absence of that, brace yourselves for something that could be far worse than what we're seeing right now. Thank you.