

Transcript

Forum: Corporate Political Spending and Foreign Influence

Hosted by Commissioner Ellen L. Weintraub

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FIRST PANEL:

Sheila Krumholz, Center for Responsive Politics

Norman J. Ornstein, American Enterprise Institute

John Pudner, Take Back Our Republic

Melissa Yeager, Sunlight Foundation

SHEILA KRUMHOLZ, CENTER FOR RESPONSIVE POLITICS: Thank you. Thanks to the FEC and Commissioner Weintraub and all of you for your interest.

I am flying without PowerPoint so there will be no death by PowerPoint but there might be death by data, so we'll try to keep it lively and I'm sure the speakers who follow me will give us a reason for hope and a rousing sendoff.

I am going to provide some context for the rest of the day's discussion with an overview of the money in 2016 along with some comparative figures from the previous presidential election cycle and an update on who the top players are now.

First at the macro level. The Center for Responsive Politics tallied \$6.32 billion spent on the 2012 election cycle at the federal level, based on reported spending. So, again, \$6.3 billion. That doesn't include at least \$100 million or so spent on federal electioneering that didn't fall within the reporting windows. So we might want to round that to \$6.4 billion. By comparison, the total raised thus far in the current cycle is only \$3.35 billion, including some data only through March and other data for outside

spending that is based on spending as of yesterday. So it's not uniform. Of the \$3.35 billion, \$1.8 billion has been spent on the presidential races and about 1.34 has been raised for congressional.

Outside money makes up 1/5 of the money raised for presidential races and a majority of presidential money goes to Republican and conservative organizations. 56% on the congressional side, that's similar, about 53% conservative or Republican.

So, what will the 2016 elections cost? Some are already calling this a \$10 billion election, which would be quite a leap from 6.3, 6.4 billion in 2012. Even if we went with the higher amount of what was reported having been raised in 2012, that would only be \$6.7 billion.

Another way to compare it is to take all the money raised so far this year, \$3.35 billion and compare it to a relatively comparable period in 2012. So the money raised through September 2012 totals only \$4.7 billion compared, again, to 3.35. This isn't, there isn't enough data yet to extrapolate, so it's really pure conjecture at this point, but if I had to guess, I'd say we're more likely to see a grand total of 7 or 8 billion rather than 10.

That said, all it takes is one or two billionaires to upset the apple cart and these comparisons go out the window. Since the *Citizens United* decision, outside money has grown and become increasingly important in funding elections. It now exceeds \$400 million in this cycle and is close to three times as high in the current cycle as it was at this point in 2012. 16%, it is 16% of the grand total raised, higher than all previous cycles. Not surprisingly, super PACs are what's driving this spending with about \$341 million in independent expenditures so far, accounting for 84% of all outside spending, roughly the same share as at this point as in the last presidential cycle.

Dark money refers to money from undisclosed donors spent by either political, nonprofit, that does not disclose its donors or a super PAC taking contributions from a political nonprofit or a shell

corporation. The biggest dark money spender this cycle is the U.S. Chamber of Commerce; the biggest liberal dark money spender is votevets.org. There's been about \$37 million in reported dark money spending, over 15 million in dark money spending in the 2016 presidential race so far. As with outside spending, it makes up a larger percent now than in previous cycles: it's running nearly 3 times as high as in 2012, so 13.8%, sorry, 13.8 million versus 37 million in this current cycle.

So given that dark money spending exceeded \$300 million in 2012, 500 or \$600 million is definitely within the realm of possibility this cycle. In fact, speculating, we could see GOP donors dump a lot of outside and possibly dark money in to help Trump make up for his shortfall if he can't raise money conventionally, so it could go much higher. On the other hand, relatively few people spend the money, leading to more randomness and less ability to predict with any precision.

Also, there are dark money groups that aren't even captured in the data like One Nation, which at this point has spent at least \$15 million in Senate races without reporting anything to the FEC. These groups are most active in Senate races and other races at the state level.

It's also important to note that single candidate non-profits have been growing in popularity in the last few cycles. They don't generally start spending until mid- to late summer. Their money is more effective in House and Senate races where they'll probably spend most this cycle.

Turning now to corporate and LLC donors. If you go to the opensecrets.org home page and select "Top Corporate and LLC Donors This Cycle" under the "Megadonors" banner, you'll see that corporations and LLCs have delivered just shy of \$200 million to super PACs going back to 2011. Today, however, they're giving at a faster clip. While most outside money comes from individuals, the \$22 million given so far by LLCs at this point in 2012 is less than 1/3 of what's already been given so far this cycle. Stay tuned for an update to this downloadable data possibly in the next day or two. Contact CRP

researcher Alex Baumgart, who created and maintains this data for an update. Again, this data's downloadable and maintained.

Top corporate and LLC donors are heavily conservative, with the number one corporate donor so far this cycle is a subsidiary of Star Companies, backed by Hank Greenberg, giving more than \$12.5 million to conservative presidential super PACs, though Greenberg gave at least 15 million in total through his companies. The top LLC donor so far this cycle is Bessie Lou Stables with a \$3.5 million gift to Conservative Solutions PAC. I don't think corporate PACs are a focus really for this discussion but I'll point out that senior researcher Douglas Webber has quite a bit of research on corporate PACs that he can share if you contact him.

I'll just give you a couple highlights. The corporate PACs have been a steady source of contributions over time and have increased their contributions substantially in the 21st century. Adjusting for inflation, corporate PAC contributions increased by 80% between 2000 and 2014. Corporate PACs prefer Republicans and whoever controls Congress. In cycles where Democrats control Congress, contributions are relatively even between the parties; when Republicans control Congress, the corporate PACs heavily favor Republicans. Through March 31st, corporate PACs were running ahead of previous cycles and they still exceed corporate contributions to outside money groups.

In terms of tracking foreign money, the center doesn't have much analysis to offer because at this point it takes investigative reporting by journalists working their sources and FEC enforcement. We can easily identify the American divisions of foreign companies that form PACs and collect contributions from their American employees. We have an indication of the foreign connected interest behind these PACs on our site based on the headquarters of their parent company. So far this cycle, foreign-sponsored corporate PACs have contributed nearly \$10 million, 2/3 of that to Republican candidates. The much greater concern, of course, is money given through organizations by organizations directly and allowed to keep

their donors hidden. Undisclosed donors means we can't know if the donors to a politically active nonprofit are foreign unless the IRS retains the ability and then actually does look into the group. This is particularly true in the case of a 501(c)(6) which has dues-paying members abroad which are never reported to the IRS or anywhere else. So corporate donors giving secretly through non-disclosing groups, straw donors giving secretly and improperly if not illegally through LLCs, and foreign donors giving secretly and illegally, all are issues of enormous importance for the integrity of the democratic process generally and public confidence, specifically.

In terms of the foreign money, we know, of course, based on scandals of the past, of the wherewithal and willingness of foreign donors to contribute in shaping U.S. elections. Is it logical to believe that interest is any less now that they can do so in complete anonymity?

Thank you.

COMMISSIONER ELLEN L. WEINTRAUB: Let me just interject before Norm starts, that if at any time you guys think of questions, feel free to write them down and flag down a staff person. They'd be happy to take them and will funnel them to the panelists after all four of them have a chance to speak. And there is Wi-Fi in the room. If you haven't seen, there are signs on either side of the room that give you the password, so if anybody needs that. Please, Norm.

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.

COMMISSIONER WEINTRAUB: Thank you, Norm. John?

JOHN PUDNER, TAKE BACK OUR REPUBLIC: I realize some of you think it's an oxymoron to say there's a conservative campaign finance advocate in front of you. But that's really the position I'm coming from. When I started Take Back our Republic after running conservative campaigns for 20 years, I was told, you know, I would have one friend and that would be Walter Jones, a congressman from North Carolina, and that was it. My first meeting with Walter – not that I usually talk after a meeting – but was, “please find me some friends.” And I knew we had at least one, because I knew Dave Brat was like-minded, having just come off his campaign the previous year.

But I want to thank Commissioner Weintraub for focusing on the two issues in this hearing that really do unify conservatives and that is foreign money and, then to a lesser degree, corporate. And I'll touch on that a little bit. But, we went to Walter Jones and Dave Brat and started talking to people. And I'm happy to announce that today, we have 46 Republican cosponsors on a bill that came out of a white paper we posted last year on closing the credit-card loophole. That bill is H.R.4177, the Stop Foreign Donations Affecting our Elections Act. That bill is now being backed by everyone on the [House Administration] Committee; it has to go through the House. I mean, this is a piece of legislation that, you know, could at least make it through the House, potentially even this year, to the degree that anything could make it through the House right now. And this was partly by getting on some of these unifying themes: the common agreement that no one wants foreign money taking over any part of the government decision-making process. And so, let me, I'm going to focus more on foreign money today, then touch on corporate a little bit at the end. Unfortunately, we heard a little bit from Sheila on how much we don't know on foreign money. You know, they do a great job of chronicling anything that you can find. And unfortunately, because foreign money is illegal, the ways that it gets into the system are very hard to quantify.

But let me say that, if we can all agree that foreign money is unconstitutional, if anyone needs to go back through the wording on that happy to do it with you offline and that, and undesirable, let's talk about what, from a former political consultant's background, we do know. We do know that people right now, all over, foreign and domestic, know that political investment is a very good investment. That, you know, the chance to put millions of dollars into political contributions with the possible net result of billions of dollars in taxpayer money, coming back to you through either policy changes or actual special interest money, is a tremendous investment. So let's start, that's point one, we know.

Point two, we know is that there are, believe it or not, unscrupulous political consultants, who, if you find them a way to get money into a system, will do it to make money. The math is very simple here. If you can find a way to get a million dollars from somewhere and can do a media buy with it, you get \$150,000. If you start taking tens of millions, you're pretty well-off pretty quickly.

And, certainly, I love most of my former colleagues in the political consulting realm, but I promise you people jump on that, and that's even before you get things like scam PACs, where basically you just put money into a PAC and keep it all for yourself. So, you know, there's the temptation here to bring money in and some who will readily jump on it.

Third thing we know is there are foreign interests who are willing to hack into government servers, into political party servers, even worse things, they'll carry on deadly acts. I mean, this kind of concept: "Would you *really* think anyone would channel money in from abroad to affect U.S. policy?" is almost incomprehensible when I hear that from people. I mean, there are very unscrupulous players who benefit greatly from changes in U.S. policy.

Now, this isn't always, you know, someone trying to cause harm to the U.S., it could just be trying to have competitive advantage over U.S. companies, *et cetera*. But the third item is that's there.

Fourth item, I'd say, is there are clearly avenues to connect the first three. There are ways to have an unscrupulous political consultant realize there's someone overseas who wants to get money through the system that will benefit them.

So while we don't know, we can't put dollar figures on what's in, I would say look at the country and our government as a house and look at where the doors and windows are unlocked and opened for this kind of activity and start trying to shut them.

First of all, the thing we're addressing with our current bill, you can move enormous amounts of money, completely undetected through unverified credit-card contributions. Now, I'm asked, "How much is coming in?" I have no idea. I know hundreds of millions of dollars are coming through on unverified credit-card contributions. And I think it's naive to say, "Well, I'm sure no one would take advantage of the system." I want everyone to grasp this for a minute. When you go online to purchase something, if you don't know the ZIP code of the credit card you're using, you can't purchase it. That's a very simple bank check that we're all thrilled is in place, anyone who's ever lost a credit card. And if you make a mistake, you can quickly correct it. "Oh, I typed a digit wrong in the zip code, let me fix that, it's a 2, not a zero." So, in essence, what campaigns started doing in '08 was turning the system off. You can opt-out with your banks. At which point, as long as a gift card number works, the contribution goes through.

Try to think of this, if someone has millions of dollars overseas and wants to get it through. If I were an unscrupulous political consultant who only cared about making money, didn't care about U.S. law, was even foreign-based, I would say set up a room full of people, retype over and over the same credit card number \$200 at a pop so it's never reportable, it's never detectable, and flood it in to an empty bid and often won't be noticed. You obviously don't do this in a \$50,000 state legislative race where someone wonders why money is flooding in, but that avenue is there and it's so easy.

Secondly, you can buy a channel in, as the Saudis just did with Uber. You know, buy a big chunk of a U.S. company and start to flood money in. And there are all kinds of other reasons the Saudis or any overseas interest might have interest in the U.S., but you know, and I'll refer you to longer articles in that process, but if you're going to put a few billion dollars into a U.S. company to get a seed from when you funnel money into U.S. campaigns, that's another door that's open now that has to be addressed. Open Secrets, last year, put out a report just on (c)(4)s that are breaking the 50% limit on giving.

Well, obviously, if you have a (c)(4) that doesn't have to disclose its owners, that's one of many dark money avenues that can be used. That if you are overseas and want to get money in and knew that a (c)(4) could do it without you being reported, and, by the way, they're spending well over half of their money on political activity. That's an inviting avenue as well.

So, we want to look at how we can close some of these doors and make it difficult. Now some tell me, "Look, there's no way to stop the flow of foreign money, there's so much of it, it'll get through one way or the other." Well, I tell them the same thing I've told all nine of my children. I can't stop you from doing bad things, I can only make it as inconvenient as possible and hope that in the end you don't do it.

So, we can close some of these doors. 4177 simply requires that candidates and groups have to use the normal bank procedure for verifying credit cards. And let me say too, some conservatives like this bill because it played into their narrative on concerns that President Obama's campaign was funneling money through foreign entities. So let me just put that on the table, that's some motivation. However, I actually went to one of the people who developed this system for President Obama, sat down with her in New York to say, "I understand why you did this, this was to prevent if you have mistakes on hand-written sheets, people filling out, trying to contribute, an event, you can't track down...." There's no accusation of this being set up for this reason. The problem is, once a system is in

place like this and people have seven years to figure it out, it invites corruption. So, I want to be clear, this isn't an attack on why the system was set up. And she was actually very comfortable and understanding, she's actually going to do a joint event with me, most likely next month, to say, "Hey, here's why this creates a problem. Here's why we set it up. Here's the problem." So I just don't want to sound partisan on that, but it's a real problem.

That's certainly one door we can close very easily and I hope we will. And as I said, each member of the House Administration Committee is supporting this now, has signed on as sponsors, cosponsors, bi-partisan.

And so, that's one we can fix. And that eliminates one avenue. Certainly, I whole-heartedly support the H.R.5515 just put out by Kilmer and Hanna which would require someone running a (c)(4)/(c)(3) to verify that no foreign money is being used on election year activity. That just seems very basic. Now, can that person lie? Yes, but let's at least tell them, you know, you're signing off on something, and I guarantee you as someone who never realized how much money you have to spend on legal fees to run a (c)(3) and (c)(4) until this year, lawyers will be very scared to let them sign if there's chance of foreign money going through the system. So again, that's another door to close.

Let's keep closing off these doors. I think that's a great bill. We just had a case in San Diego where a political consultant figured out a way to have a Mexican businessman get \$500,000 into a San Diego local race. Clearly they're going to look for these avenues and let's not make the (c)(4) an easy one or any other dark money sources.

Think about these two proposals. They both talk about either using a procedure that's already in place or self-policing. These are the kind of first steps I hope we can agree on before we get into some tougher disclosure issues admittedly.

Now let me touch just a little more briefly on corporate giving in general because, you know, you heard some of the numbers and certainly corporate giving, you know, tends Republican. It doesn't necessarily tend conservative though. And that's why I would like to say, so many of the conservatives who've worked with me on primaries and all are very concerned about the Chamber's involvement in primaries. This isn't a strict partisan effort.

You know, when I first sat down with Dave Brat, he said he wanted to base his campaign on crony capitalism, and I said, "Eh, sounds a little bit inside to me, I don't know if it'll work." Well, for all of you who hate political consultants, the candidate was absolutely right, the consultant was absolutely wrong. Everyone got crony capitalism, even before it was being used as much. And it played off this idea that Republicans, in Republican primaries, conservatives, had seen the Chamber and other groups come in and just overwhelm their candidates and defeat them. So, this is actually the idea of small business being a better alternative and truer conservative if you're a conservative than the Chamber who, as we heard, trends Republican but gives to the winners. That's the bottom line – that is actually a motivator for a lot of conservatives too.

The other thing to think about with corporate giving is just the selection of candidates, the idea that, kind of, deals are being cut in this town and we're being left out here. I mean, I think some of the absurdity on the corporate giving is, you know, the Chamber in Arizona, Ohio, New Hampshire, Pennsylvania, and Wisconsin, has given six figures to the U.S. Senate candidate to both sides. It's just, okay, so whoever wins, you know, they've got... And that's the angst you see from a lot of conservatives. Gosh, it's... they're all the same. They've already kind of paid everyone and they're going to do whatever the corporate interest is. Don't – I know it's tempting to think, "Well, conservative versus environmental, conservatives versus union,... the other conservatives," but there's real grounds for agreement there and certainly on some of the government contractors.

So, in closing, you know, I'd like to ask a couple things of the commissioners and you hate to do that to your host, to make requests as a guest, but on a couple items, I would say for the Republican members, please try to look at cases like the one Chair Ravel put out last year that I wrote about on Breitbart on the \$300,000 given by the porn company that was formed by a German who was under indictment for tax evasion. I don't think they should be giving \$300,000 to affect U.S. elections. I'm not sure which of those boxes a conservative would say, "Yeah, that's a good influence on our election."

I thought that was a brilliant case by Ann Ravel to lay out something that maybe could be a starting agreement point just like 4177 was for us when they said no Republicans would back us. And I realize there are legal arguments and "candidate versus issue" et cetera, I understand that issue, but at least to investigate these and send a message that, you know, we're not just going to have 3-3 ties on everything. We really want, you know, we want the FEC to be an effective enforcement tool.

Now, I'll make the request from, maybe some from, the other political end though. There are legitimate concerns that we have to overcome as conservatives on disclosure. I think things in a Wisconsin investigation – I think some people are targeted unfairly in that. Every time there are cases like that, it makes it harder and harder for us to push the case of disclosure. So, you know, or, yeah, there's a case out in California from years back on, you know, individual no longer being CEO who, you know, because of \$1,000 contribution on the marriage amendment.

I would implore the other side to realize, these are the issues that conservatives who want campaign finance reform have to fight through. And to whatever degree we can lessen the look that there's going to be targeting or retribution against people for speaking, the quicker we can get to broader and more complete disclosure.

COMMISSIONER WEINTRAUB: Thank you. Melissa?

MELISSA YEAGER, SUNLIGHT FOUNDATION: Thank you. Good morning, and thank you to members of the Federal Election Commission and particularly to Commissioner Weintraub for inviting me to speak here today on behalf of the Sunlight Foundation. My name is Melissa Yeager and I'm pleased that the Commission has allowed me this opportunity to share some of the knowledge and talk about an area of campaign finance that not only concerns us but I think it concerns the American people as a whole.

First off, I'd like to talk a little bit about the organization that I represent, the Sunlight Foundation. Sunlight is a nonpartisan, non-profit organization. We focus on transparency and accountability in government, one area of which is the influence of money and politics. As journalists, we have covered campaign finance, lobbying, and various forms of influence. The technologists we work with have experimented with tools to help the public access data and information so they can better understand their government. And we are certainly strong believers in the First Amendment, but we also believe that disclosure and transparency lead to a stronger democracy.

And in this election cycle, Americans will be exposed to billions of dollars' worth of advertising and messages meant to influence their votes and we believe Americans should have access to information that will allow them to consider the source of that messaging.

It's clear this election cycle, on both the Democratic and Republican sides of this issue, that the American public is clearly exhausted by the influence of money in our political process. They are frustrated that a disproportionate number of people have a louder voice in democracy simply because they have more money. And additionally, they're weary about outside groups playing an increasingly large role in elections, particularly those, as we've spoken about, that are funded by anonymous donors.

Voters want to know who is influencing their elected officials so they can hold them accountable for their decisions and more disclosure could help mitigate this frustration in our opinion.

We believe it empowers voters to make informed decisions, allows them to understand the political process, and sheds light on potential areas of corruption. This sort of sunlight ensures the integrity of our political system and it seems that the American public agrees with us.

According to a poll by the Associated Press and NORC at the University of Chicago, 78% of both Democrats and Republicans alike favor a requirement that the names of political donors be made public. And, as Sheila mentioned, the 2016 election cycle is on track to exceed 7 billion in spending, including 500 million in dark money from groups that aren't required to disclose their donors.

And that means that people don't have information about these organizations to evaluate the often complex and controversial messages that they receive. We're seeing more and more dark money coming from 501(c)(4) nonprofit social welfare groups and limited liability companies that we kinda refer to as "shell LCs," set up for the sole purpose of influencing campaigns and elections.

If we've learned anything from the recent reporting, including stories concerning the Panama Papers, it's that LLCs are internationally used as a vehicle for people to move money in secret. And there are many examples of LLCs already in this cycle but we know of at least one example where the owner admitted he was using it to distance himself from a campaign. For example, an analysis by the Sunlight Foundation showed that a super PAC supporting Marco Rubio had several untraceable LLC donors. The biggest was a \$500,000 donation from IGX LLC, with an address in Delaware. The only information on the LLC filing is that of the corporate that registered them, Corporation Service Company, and that's where the paper trail ends.

Andrew Duncan, the owner of IGX, told the AP that he had used IGX to max the donation because he was worried about reprisals, which is refreshingly honest, but also troublesome. While there are many agencies that should be concerned about the lack of information about LLCs, the FEC has a duty to ensure the integrity of our elections and know the source of their funding. The Supreme Court has repeatedly ruled that the First Amendment supports disclosure of campaign contributions; under some circumstances, people do have the right to anonymous speech, but there is no explicit right to make anonymous contributions. Nor do the people who are not U.S. citizens or permanent residents have any right to participate in American elections.

With that in mind, these anonymous groups represent a significant area of concern when it comes to ensuring the integrity of our elections. It's easy to set up an LLC, particularly in Delaware, and use that LLC as a vehicle to give to a campaign. So, as it stands, a foreign donor could potentially set up an LLC to give to a political campaign. Even a foreign government could take this route, considering there are places like China where corporations are partially owned and controlled by their government.

The law is pretty clear when it comes to the influence of foreign money on our political process, what Congress intended. Congress clearly stated without ambiguity: It can't happen. Congress entrusted the FEC to devise methods to make sure the intent of this law was enforced. The FEC, to our knowledge, has not devised or implemented any mechanism in response to *Citizens United* to hold up one of the basic and upheld parts of campaign finance law, ensuring foreign money does not find its way into U.S. elections.

The *Citizens United* decision established that corporations have rights comparable to individuals when it comes to outside spending in election, allowing companies to exercise free speech through uncapped independent expenditures.

We live in very polarizing times in politics, but as the Pew Research Center pointed out, Americans on both sides of the issue agree that they are very concerned with the influence of money on our political system. We're glad the FEC is holding this forum to look at the flow of money into the system and examine ways to make sure it adheres to current U.S. law.

As our name suggests, we believe sunlight to be the best of disinfectants and we feel more disclosure would make a difference in restoring integrity to our politics and the public's faith in our government. Thank you.

COMMISSIONER WEINTRAUB: Well thank you, that was fabulous. And we have some great questions.

I'm going to start with one that comes from the audience. And I don't know who came up with this, but it's a great question.

“There is a perspective in the money and politics scholarship that under certain conditions, corporate money can have a moderating effect on the parties and politicians, for example, because large companies want a functioning government, investment in infrastructure, education, *et cetera*. To what extent will limiting donations from very large multinational corporations potentially increase or exacerbate polarization and more ideological politics? To the extent, of course, that our politics could

become more ideological or polarized.” And I throw that open to anyone on the panel who wants to take a stab at it.

NORMAN J. ORNSTEIN: I would just say I'm, to put it mildly, skeptical of that perspective. First, I think we don't have a whole lot of evidence, given the way money has flowed into politics and what's happened in our politics that large multinational corporations are interested, primarily, in having government function well. And I would start by referring you to the Chamber of Commerce but we could go in a lot of other places. Putting in large amounts of money to move to elect people who have no particular interest in seeing policies enacted and that includes things that are very much in their direct self-interest, like trade bills, like infrastructure, and beyond.

And what we've also seen, what I've seen, talking to large numbers of members of Congress is that right now, for large multinational corporations, the CEOs are more interested in keeping their marginal tax rates low than they are in anything that has to do with a larger fiduciary responsibility of their companies. So I don't have a lot of faith that having corporate money flow in, especially if it flows in as dark money and we don't know where it's going or what it's being used for, would have a moderating or ameliorating effect.

JOHN PUDNER: It's a great question, I hate to maybe lose one friend in the room of whoever asked it, but I almost have the opposite view on this. I'd rather have parties be stronger than corporations, as opposed to choosing elected officials. And I understand the question and perspective but to pick up and go from what Norm said, the concept that the corporations in and of themselves want good U.S. policy for everyone, I think is a far overstatement, certainly in some cases [they] want stability. The beauty of having parties be a little stronger is that you can hold parties accountable. I think first and foremost, the best giving is small-dollar donations to candidates, you know, who you can hold accountable and vote out of office if they don't agree.

But almost the second best is parties, and I'm thinking more here of state and local parties, I think. The national parties do a pretty good job of taking care of themselves in negotiations, but, you know, part of the problem here is parties not having any power and, you know, it was interesting to hear you know, people jumping on Republicans for not controlling their nominating process. Well I don't advocate that, but at least if the party's putting forth ideas they can be held accountable. I mean, for people who loved Obamacare, you know, the Democrats could benefit from that. The places where they didn't, Republicans benefitted. You could hold a party accountable for putting together a party vision and voting up or down members of the party.

So I really think, if you look at how the Founders wanted influence balanced, right now, it's out of whack the other way, the corporate is too big. In addition to wanting more disclosure to counter that, I mean, we're all for positive things, like we want to bring back the old tax credit for \$200 donors, we would like a lot of people in power to offset the corporate influence. And let me say, for us, it's corporate, union, and special interest; for conservatives, you put all three of those together. They all do have some common characteristics in that they theoretically are representing employees and members but I would argue there's often a detachment and distortion between, you know, what the actual lobbyists are for those groups. I just, I know it's tempting when things aren't going well to say, "Oh, the party's the problem," but I think really the party's a mitigating and accountable force behind the candidates. And I'd rather see the balance go back that way.

SHEILA KRUMHOLZ: I would just add or, agree, that I think the positive is that business wants stability and certainty and to the degree they are giving money and that is given not just to grease the skids of legislative agenda, but to grease the skids on any movement on legislation to further that agenda. That could be good, but I can't see how unlimited secret contributions, which are also, I believe, too often or

largely, transactional in nature, could ever be good in the sense that we wouldn't have the mitigating effects of public ability to view those contributions and hold the members and the party leaders accountable. So I think there's, maybe, a kernel of truth, but it's not significant.

COMMISSIONER WEINTRAUB: Okay, I've got a couple questions for you from commissioners. The first one's from me. And this one is actually for you, John, because I hear what you say about disclosure, that you know, it's, we shouldn't be pie in the sky about you know, the unalloyed good that always comes from every form of disclosure. But I wonder if your concerns would be allayed by reconsideration of thresholds, disclosure thresholds. And this is not something that we could do here at the FEC, but, you know, let's think big. Is there some level at which you would agree, well, yeah, the public really has a right to know if somebody is giving \$10,000, \$100,000, a million dollars. Is there some level at which we say, well, whatever the countervailing concerns are on the other side, the public really needs to know that?

JOHN PUDNER: Oh, absolutely. I want to be clear. I am basically for full disclosure across the board. I'm just talking about, it's harder to make the case when there's an example of targeting. You know, certainly the communities I'm used to dealing with. And that was my request: anything to be done to temper that. And so, for example, when we first rolled out, we actually said we'd like to up the limit from \$200 for first disclosure. I mean, I think the idea that someone's buying any member of Congress for \$500 is little ludicrous. You know, I don't really care to know if someone gives \$500, you know. But no, my threshold's very low – maybe go to 1,000, but 1,001, I think reveal it. And I think the important thing is, I think you've got to put 527, (c)(4)s are going to play in this game, on the same rules at the candidate.

The big problem here is the candidates can't raise any money, relatively, so... you know, they're up and Norm's cited the case, if someone comes in with \$10 million and says we need this thing changed

in the budget and, by the way, we spent \$10 million killing people, don't vote to change it. And your candidate's thinking, "Gosh, I have to raise \$2,700 at a time. I inflict this wound on myself..."

So I think part of the reason I want disclosure across the board is I don't want there to be an advantage to give elsewhere. Now I don't know if we offer a package that says you can give more than \$2,700. I don't know what that number is. If a candidate could ask for \$10,000 at a time or something in exchange for disclosure, so, I just want to be very clear, I am for complete disclosure. I can't think of cases I don't want it and that will put me at odds with some conservatives, but at least as we try to figure this out there are fewer examples.

And I brought this book. I talked to a bunch of people yesterday that disagree with me on disclosure things and, you know, the less chapters there are in a book like this intimidation one that came out of people being targeted, the easier the disclosure case is made to be. So, please, just anything you can do to help us with that would help us make our case, but I'm for complete disclosure.

COMMISSIONER WEINTRAUB: Any other comments from any of the other panelists? Okay, here's a question from Commissioner Ravel. And this one is for Norm. You've written quite a bit about growing polarization and asymmetric polarization in particular. How does undisclosed spending, including some of which may come from corporations, affect those trends?

NORMAN J. ORNSTEIN: Well, first let me give a shout-out to Commissioner Ravel as well, who's done some great work to help us along. You know, I would say, I want to applaud John because one of the things that has happened is that all of these issues have gotten caught up in the tribal battle between the parties and what's happening now, I think, is that we're seeing at least one salutary effect of the populism that's out there. And I've actually urged many of my friends in the reform community for a long time to reach out more to Tea Party members who are not all that happy about having billionaires

dominate this process and aren't all that happy with their own party's establishment. And that's happening slowly. And even John is finding some substantial resistance among a lot of his members.

But I think what's also happened is, if you look at the way all this is played out, where the vast bulk of the push to get 501(c)(4) designation is coming from. Now, I have a, I wrote a piece this week in *The Atlantic* about the attempt to impeach, starting with a censure of John Koskinen, the Commissioner of the IRS, who by almost every standard is one of the greatest public servants that we've had in the last 50 years who came out of retirement to take a thankless job. And a good part of it is an attempt to intimidate the IRS, and they've had success at doing this and it's coming from some of the forces who ideologically agree with John but, you know, with the IRS now under siege, has basically said that Karl Rove's Crossroads GPS, which no one in his or her right mind could possibly see as a social-welfare organization, can qualify under its standards. And it has kept the IRS from doing what the wonderful Bright Lines Project has tried to do, which is to really set some standards for what qualifies as political activity and reduce that. And it's gotten caught in the polarized atmosphere. Things that we all ought to agree on, that even a polarized Supreme Court agreed, by 8 to 1 should be done, are now down through a prism of tribal polarization. And that's too bad because I think what John represents here is an understanding that whether you are at the right end or the left end of the spectrum, a campaign funding system that builds into it corruption, and you know, we have a lot of the diversionary tactics by those who are opposed to reform, who say, "Well, look at what happened in the presidential campaign, don't tell me big money affects politics. Jeb Bush had this super PAC and \$120 million and nothing happened."

This isn't simply about election outcomes. It's about a more deep-seeded corruption of a political system that is tilting towards a small group of people, many of whom we do not know. And that's happening at the state level, where you're seeing outside groups buy state legislatures for relatively small sums of money. And it's also happening, I will add on to one thing that John said about

strengthening the parties, including the state and local parties. When you have outside corporate interests creating parallel party organizations, the most sophisticated voter identification operation, more people on the ground than the party committee, and going into primaries to influence things, I just don't see how anybody could see that as a healthy kind of thing. It's happening more on the right than it is on the left, but this is not something that is one-sided, it's just that the focus on change has become more one-sided and thank you, John, for trying to alter that.

SHEILA KRUMHOLZ: Yeah, I'd just like to say again, thank you, John, your presence on this issue is so welcome and so long-needed. I agree whole-heartedly. I used to get calls from folks on the Tea Party and folks in the Occupy Movement. Remember that? Saying, "We're outraged! This is insane. We're so glad you're with us." And I would say, "Well, you know, we're not really Tea Party, we're not really Occupiers, but so good you're with this issue." Those died off precipitously after the IRS debacle. But I think the resonance is still there and it's witnessed in the campaigns of Sanders and Trump. So there is something, I think, profound to build on and I'm glad that John Pudner's on the case.

COMMISSIONER WEINTRAUB: Here is a question that we got by e-mail that talks about the definition of foreign money and how, you know.... Can we define it? If we can define it, how to separate it out from the donations of what is essentially a global company with a U.S. address? Anybody?

MELISSA YEAGER: Well, I think that's the challenge here and why we would be hopeful that there would be a discussion about that. It's a, much like disclosure, there's an opportunity here to have a discussion on what that means and we'd be hopeful that the FEC would start that discussion.

NORMAN J. ORNSTEIN: You know, there are two elements of this. One is a global company with a U.S. address, which is like the General Motors example I used. The other is a foreign company with a U.S. subsidiary. And anybody who believes that a giant foreign company, where the U.S. subsidiary is contributing money as a corporate entity isn't listening to what its overseers are saying and what they

want is far too naive for me. So you've got both challenges and certainly, in both instances, if you don't start with disclosure, so you know where the company is putting its money and we can then judge whether what they're doing fits within America's national interest or is actually done because they can make more money if it suits another country's foreign policy, say, at least you've got some way to get that into the dialogue.

And if you have some of the legislation that John has talked about, and that includes putting legal liability on people to certify that there's no foreign money going in, you're not stopping the problem. And the only way to stop the problem, to me, is to go back to where we were before *Citizens United* and say, "Oops, we were wrong, corporations are not people, they are distinct entities with different motives and their corporate money should not be involved." PACs? Fine. Those are individuals, acting in their own interest, which may suit the interest of a company, but a very different phenomenon.

COMMISSONER WEINTRAUB: And just a point of clarification, when you talk about disclosure in this context, Norm, are you talking about disclosure on the contributing side or on the spending side?

NORMAN J. ORNSTEIN: Both.

MELISSA YEAGER: I think the FCC has also visited the issue of foreign ownership and maybe, perhaps, that's it...

COMMISSONER WEINTRAUB: ...Next panel! Stay tuned! We've got an expert on that exact subject. And I'll also add, because we've been talking a lot about big corporations, multinational corporations, but going back to what several of you pointed out about LLCs, another scenario that I personally worry about is you know, three guys from Canada or Mexico or, wherever, China, who decide that they're going to set up an LLC. They call up a lawyer in Delaware and say, "Let's set up an LLC." And they, you

know, because it's an LLC formed in Delaware, is that now foreign money? Is it purged of foreign status? You know, I think that's another issue we need to think....

NORMAN J. ORNSTEIN: You know, one other point here, in the *Hobby Lobby* decision, Justice Alito started out talking about all corporations, but then moved to talk about the privately held ones and sort of waxed on about these mom and pop operations. One might point out that among the mom and pop operations is Cargill, which has 133,000 employees, and Koch Industries, which has well over 60,000, and they're all over the world. And there's a danger here, you need to strike, perhaps, a different balance. And we have to start with the publicly held ones. But the private ones and individuals, who may well have a very important interest in that fashion, are also a part of this issue and this problem.

COMMISSONER WEINTRAUB: I see my colleague, Commissioner Hunter, waving her hand in the back row.

FEC COMMISSIONER CAROLINE C. HUNTER: [Speaker off mic] Thank you for hosting, it's great turnout. A comment to John: I'm Caroline Hunter, I'm one of the Republican commissioners, and you asked us to take a look at one of the cases, you said you're looking at one where, you said there's \$300,000 by a German company. I think you're referring to MUR 6678, which is....

JOHN PUDNER: Yeah, it was founded by a German who's under tax-evasion indictment there. The company was not still owned by him but he set up the porn company that put in the Los Angeles referenda.

COMMISSIONER HUNTER: [Speaker off mic] Yeah, so we have taken a look at that, thank you, we studied that case and we wrote a statement of reasons about it which you can find on... written by the three of us, Commissioner Goodman and Chair Petersen, it's on all three of our websites, where the

public can review, again, MUR 6678... and the reason why we didn't go forward on that case is pretty simple, that FECA does not cover ballot initiatives and that's clear in the statute and in all the Commission precedents and so that was actually a very easy decision for us because we don't have jurisdiction over that matter. Actually, California.... has a state law concerning ballot initiatives, I'm not really sure what happened....

JOHN PUDNER: They fined them pretty heavily about six months later. I did do a follow-up Breitbart story on that too, but yes, it was more recently, right. That's correct. Yes.

COMMISSIONER HUNTER: [Speaker off mic] My other comment I had is for Norm Ornstein....

NORMAN J. ORNSTEIN: Hello, Caroline.

COMMISSIONER HUNTER: [Speaker off mic] ...you mentioned Stephen Schwarzman's comment from Blackstone Group, and I'm curious why you bring that up. I mean, honestly, his statement, and I certainly don't agree with any of it... it's over the top, and he apologized for saying that, and I'm curious why you would bring up a statement that a private citizen made... it seems to me that you're suggesting that comments that we don't like signal that these corporations are just against American interests.

NORMAN J. ORNSTEIN: So, the reason I brought it up, Caroline, is that, in the broader question of the crisis of legitimacy that I think we could well face, it is not about corporations in this case, but it is, if we have a world where corporations are heavily involved in our politics, but they are no longer necessarily promoting American interests and we have a growing inequality in the country and an elite of which Schwarzman is a representative who I think are saying things that are just out of touch. Then you're going to get a larger mass of people growing even more distrustful of the capacity of government to act in its interests. And that, I think, is a part of why we've had this dramatic explosion of populism on both sides that has been a challenge, actually, to both parties and is a challenge to the fundamentals here. So

that's why I brought it up. It's not that there's a direct connection between corporations and Schwarzman, *per se*.

I could give you a string of other comments made by other people in the hedge fund or investment world that are equally as offensive, but... it's part of, I think, a broader challenge that we face. And I think, that all of our institutions now face. If we don't build a stronger level of legitimacy and, you know, maybe John McCain is right that we're get some huge scandal and that will bring about some change, I'm not sure that's a great way to operate. And I'm not sure anymore that a scandal is going to do it. We're getting a growing detachment between the broader mass of citizens in a sense that government is working in their interests. So that's why I brought it up.

COMMISSIONER HUNTER: [Speaker off mic] Thank you, I appreciate it. I think it's just a little bit disconcerting to hear anybody try to decide who is properly promoting American interests.

COMMISSIONER WEINTRAUB: Thank you, Commissioner Hunter. And you raise a good point that I was actually going to ask the panel about, both the MindGeek case, what we call the MindGeek case, the one involving the foreign pornographer, very colorful facts in that but it was fundamentally a case about foreigners supporting a ballot, in that case opposing a ballot initiative. And then, in the op-ed that Professor Tribe and Mr. Greytak wrote, they bring up the case of Uber, which is now owned by Saudi Arabia and has been active in ballot initiatives so far. You know, we don't know what they're going to be doing going forward. Do any of the panelists want to comment on the distinction between ballot initiatives and candidate elections, and whether there should be such a distinction or is this out of our control? Just... anybody wants to comment?

JOHN PUDNER: I would say, I would rather not be a distinction and just to address Commissioner Hunter's comment. Yes, I realize there was a... I'm not trying to pick apart the legal argument on either side of that. I'm not, you know, going through line-by-line. My real point in focusing on that case for our Breitbart readership which some of you know is a little right of center, is to say this had all the components of bad political giving. So, I'm not trying to pick it apart and say, you know, you and Commissioner Goodman had the wrong legal argument. Just saying, I thought that was a great effort by Commissioner Ravel to bring up something that had unifying aspects to it. And in that same vein, can we find some cases that, you know, don't have to result in a 3-3. I like the spirit of it. As a matter of fact, at a previous event, I actually made the comment, it was so appreciated, Chair Ravel, doing that, she was the actually first Obama appointee that I'd ever complimented on anything. And the room kind of laughed but.... So not to pick apart the legal argument but to say, you know, can we find some of those? My concern over Wisconsin is, and listen, I've got lots of Republican friends in Wisconsin. I think there are lots of problems with some of the people that we're going after in that case. I mean really, as a conservative, I was concerned there. I'm just concerned that the result was legislation of basically create what I think is going to be a gridlock group in Wisconsin, it never enforces anything. It's just always the pendulum swing. Can we get to something where obviously we don't want witch hunts, we don't want people using political attacks to target people because their paperwork was wrong on a filing, but I feel like the pendulum's really at the other end right now where there's so little fear of anyone having any repercussions for deliberately going out and, you know, working bad money into the system and can we find ways to address that.

COMMISSIONER WEINTRAUB: I'll just give you one more opportunity. We're about the close of our time for this panel. If anybody wants to have any closing thoughts on this. Okay, then, really, I hope you will all join me in thanking this terrific panel.

[Applause.]

We will be starting up again at 11:30. There is definitely water across the hallway and hopefully there's still some coffee left. But in any event, stand up, stretch, get the blood flowing, talk amongst yourselves.

[Break.]