

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

FIRST PANEL: QUESTIONS AND ANSWERS

Sheila Krumholz, Center for Responsive Politics

Norman J. Ornstein, American Enterprise Institute

John Pudner, Take Back Our Republic

Melissa Yeager, Sunlight Foundation

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.]