

## 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*

#### THIRD PANEL:

**Richard Briffault, Columbia Law School**

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

**Ciara Torres-Spelliscy, Stetson University College of Law**

**COMMISSIONER ELLEN L. WEINTRAUB:** Okay, welcome back to the people in the room and everybody to out there who's listening in. I can see that my plot worked: by giving you food right here in the building, most of you came back after lunch, after such a long and hard-working, mentally working morning. So we're really glad to see so many of you still here in the room and I promise you'll get an equally illuminating panel here for our last panel of the day. We have here Richard Briffault, somebody that I have known and admired for many years now. He is the Joseph P. Chamberlain professor of legislation at Columbia Law School. He is really one of the top scholars on the intersection of corporations and politics. Chair of the Conflicts of Interest Board of the City of New York, which I can only imagine keeps him a little bit busy. And was also a member of New York State's Moreland Commission to investigate public corruption. So, someone who perhaps understands like me what it's like to know what the right thing to do is and have people fail to do it for you in the government context.

Jared DeMarinis is the director of the Candidacy and Campaign Finance Division of the Maryland State Board of Elections and is somebody who's really taken a prominent role amongst state election officials. One of the first in the nation to draft and pass regulations regarding the use of social media,

internet advertisements by campaign accounts, and political contributions by text message, so very forward thinking. Somebody who's really looked at how campaigns are changing and most to the point today, he helped draft the Maryland law that closed the controversial contribution LLC loophole and political activity, 501(c) and 527 organizations.

And last but not least, Ciara Torres-Spelliscy is an associate professor of law at Stetson Law, a Brennan Center fellow, and the author of the new book Corporate Citizen: An Argument for the Separation of Corporation and State. Her book explores how over the course of American history, corporations have aggressively sought to expand their constitutional rights and American courts, especially the U.S. Supreme Court, often have obliged. And, notably for this crowd, Ciara was named as a top wonk by the website topwonks.org.

So this is a very wonky group! We have all of these great top wonks here to help illuminate us, so [I'm] excited to hear what you guys have to say. Richard, lead us off.

**RICHARD BRIFFAULT, COLUMBIA LAW SCHOOL:** Thank you, Commissioner, for inviting me here and actually for inviting everybody who's been here. I have learned so much from the prior two panels. I hope we're able to sustain the energy and engagement level of our predecessors because I think they've been great so far. I want to talk about three things. First, I actually sort of want to do a little bit of back to basics, which is why does campaign finance law restrict corporate and foreign political activity.

Second, talk about *Citizens United* and its impact on both the justifications and on the rules that it doesn't directly affect, but how it, nonetheless, and some of this picks up on themes we heard in the prior panel, particularly from Don Tobin, how it affects things it doesn't directly regulate.

And finally, you put me down as Administrative Law and I've been trying to put my administrative hat on, what kind of actions the FEC itself can take in terms of rulemaking to address

some of these issues of corporate political spending and foreign influence that have been triggered after *Citizens United*.

So first, what are the traditional justifications for restricting corporate participation in elections? Traditionally, there were two. First, really dates back to the 19th century. There were speeches that Andrew Jackson gave denouncing the role of the second bank of the United States in the 1832 election. There were speeches of Lincoln and Hayes and Cleveland which is the concept later picked up famously in a phrase by Justice Frankfurter, that corporations are aggregations of wealth. That corporations, because of their wealth and power, were seen as a special threat to democracy and similarly, when, when unions became more powerful during the New Deal, they were also added into the mix of entities that were by their very nature singled out for special treatment. So federal, state laws began to treat corporations as special in the 1890s. Federal law, in 1907, our oldest continuing federal election law, is the Tillman Act, which banned corporate contributions in federal elections. And then on the Taft-Hartley legislation in the 1940s, extending that to expenditures and to unions.

So, number one has always been this concept of corporations as because of the corporate form, being able to amass distinctive wealth. Second, and I think my colleague Rob Jackson alluded to this this morning, is the concept of minority shareholder protection, what Justice Brandeis referred to as "other people's money," that you had corporations and various investigations that go back to 1905. The Armstrong Commission of New York State, of corporate managers using corporate funds in ways that were actually adverse to the interests of certain corporate shareholders.

So the two dominant justifications going down to the year 2010 were that the aggregations of wealth and the protection of minority shareholders.

Well, *Citizens United*, I think, effectively eliminates the first. I think that's the gist of the court statement, that I won't say corporations are people too, but corporations are not distinctively bad

actors. That the fact that they have wealth and power, does not make them different from private citizens who have wealth and power as well. You can't single out corporations because of their status as devices for accumulating wealth.

And the court was also pretty dismissive, some would read it as totally dismissive, I think there might be a tiny bit of wiggle room, but not much on the argument of that there's a, that their restricting corporations was justified in the interest of protecting minority shareholders. I do think you see that concern animating a lot of the effort to get the SEC to take action for greater disclosure and greater corporate management accountability to corporate shareholders.

But there is one other justification which did not get a lot of play really until the current century, but emerges, particularly in the *FEC v. Beaumont* decision. And that, I think, is the dominant one for addressing corporations and that I think Don Tobin alluded to this in the first panel, which is the ease of creating corporations and their ability to use them to circumvent otherwise legitimate restrictions and requirements that would be imposed on individuals.

So the corporate form, it's... a form, it's not just that it's a source of power, it's easy to generate and under American law has long been a distinct and separate actor. This justification, the anti-circumvention restriction really was not at issue for *Citizens United*. It has been invoked by many courts of appeals in the last six years which have considered and rejected challenges to the bans on the corporate contributions and, as I mentioned, the *Beaumont* case which predates *Citizens United* also used it.

It's particularly relevant to the remaining areas, the areas in which we deal with individuals, which is contribution restrictions and especially disclosure. Because of the, both the potential and the actual use of not-for-profit corporations and other entities, such as LLCs, to avoid disclosure and perhaps, to participate in campaigns where they shouldn't be allowed to.

A final factor, which I think is not given a lot of weight, but is relevant to some recent actions or non-actions of the FEC and is picked up actually in the 1971 federal, the FECA, the Federal Election Campaign Act and the '74 amendments which authorized corporate and union solicitation on behalf of PACs is the protection of employees from coercion. Corporations have firms in general, unions as well, corporations are not only collections of shareholders but they're also obviously collections of employees.

And I think one of the strands, one of the powerful strands in the statute, authorizing corporations to participate through PACs was the protection of employees from coercion and threats of reprisal.

So I think if we look at justifications for regulating corporations today, it's primarily about the prevention of circumvention of otherwise legitimate rules dealing with individuals and I think also protecting some corporate and union affiliates, their employees, from undue pressure to participate in the corporate project.

Turning to restrictions on foreign money: interestingly, although you might think of this as very basic, it's far more recent. If federal restrictions on corporations date back to 1907, the actual addressing of foreign money in elections really only goes back to 1966, although where it first shows up tells us more about where it came from, which was, it first began as an amendment to the Foreign Agents Registration Act of 1938. That gives us a sense of why this is there. The 1938 FARA Foreign Agents Registration Act was in part a concern... 1938 tells you that the time of a possibility of foreign, particularly Nazi and potentially Communist, diversion of the legislative process through lobbying. And so there was an effort to get greater disclosure of the identities of people recruited to act on behalf of foreigners, initially foreign governments, but also expanded to include foreign individuals. And it reminds me, actually, I was struck by Mace's presentation in the first panel, how much this is connected

to issues of national security. The Radio Act of 1912, the telecom regulations and defense. I think in the first panel there, was some reference to this, so this is kind of reflexive. Only American citizens should be participating in the American political process. I think that's maybe part of it and that is certainly the language that the D.C. circuit used in the *Bluman* case upholding the ban on foreign nationals' contributing money in American elections. But I think there's another strand, which is a quasi-national security/foreign interest, and especially a concern about foreign governments participating in our elections, often through nominally private entities because I think it was also alluded to in the last panel. In many, in other countries, it is far more common for business enterprises to be controlled by foreign, by the governments themselves, whether it's in China or Russia or the use of sovereign wealth funds through many of the oil countries.

So I think you see both the concerns about foreign governments, especially the arms of foreign agencies, and the sense of "foreigners are not members of our polity."

What does *Citizens United* do? As we all know, it struck down restrictions on corporate expenditures in our elections and eliminating the two principal justifications of the problems posed by corporate wealth and the protection of minority shareholders.

It left in place everything else. In particular, the ban on corporate contributions in American elections and it left in place the anti-circumvention function.

I don't want to talk today, because it's not our focus, but the ban on corporate contributions of course requires some sharp distinction between contributions and expenditures. And as we all know that has been pushed very hard through the emergence of coordinated expenditures which are not nominally coordinated and it seems to me that although the existing coordination rules are ripe for reconsideration in light of the experience that we gained from super PACs over the last six years, that coordination has to be redefined in a more realistic way. This goes beyond the specific issue of

corporate campaign participation, but it is one important way of addressing the possibility of corporations participating through donations because donations entities like super PACs and other entities, when those entities act in close corporation with elected official campaigns, that's *de facto* a contribution. So, I think it's not our major focus today, but I think an agency would be well-advised to think about new rules dealing, redefining what coordination is.

The bigger issue for me is disclosure. Although popular concern, with *Citizens United* focused on the potential for misuse of... the potential power of large businesses and corporations entering our elections, I think the real issues have been the explosion of campaign activity by nonprofits, by 501(c)(4)s and (c)(6)s, which can pool funds from donors and engage in campaign activity, but because their major purpose is technically not electoral, they don't have to register as political committees and by closely held corporations, LLCs and dummy or shell corporations, entities which are really there to disguise the presence of one or a very, very small number of people.

It's interesting if you look at the history of litigation over the corporate participation in our elections. Almost all the cases have actually involved ideological corporations, nonprofits, not business corporations. The only departure of that is *Bellotti vs. First National Bank of Boston* but if you look at the major federal cases, *National Right to Work Committee*, *Wisconsin Right to Life Committee*, *Michigan Chamber of Commerce*, *Citizens United* itself, *Western Tradition Partnership*, all of the path-breakers in either failing to or succeeding in extending corporate participation have been ideological entities. That's really where the action is.

Now, as we know, (c)(4)s and (c)(6)s do have to disclose their electioneering and communication expenditures, but due to FEC regulations adopted before *Citizens United* and interpreted narrowly since then, these entities, even if in the corporate form, only have to disclose those donors who earmark their

funds for specific expenditures which, in practice, means no one. So, I think one appropriate response, and because you put me in Administrative Law, I'm thinking administrative actions.

One appropriate response here would begin to do a new rulemaking, to think through what does it mean to be a corporate, a donor to electioneering communications? Here's, I think, until now, the issues have come up and a lot of, let's say, the inactions that divided non-actions of the FEC, have come up in enforcement actions. And there is – I may not agree with it – but there are plausible arguments in some of those cases that you're making law through enforcement in gray areas. This is not unique to this agency. Most federal administrative, many federal administrative agencies, prefer to act through enforcement actions rather than through rulemaking. But an appropriate response would be to actually sit down to do some rulemaking and try to figure out, and this, I think, picks up on Don Tobin's distinction, tripartite distinction, but really it's two and one, between, on one hand, nonprofits and closely held corporations and large publicly held corporations. I don't think it makes sense to treat every shareholder as somebody who has donated money to the corporation's political activity but for nonprofits, which exist solely to collect contributions to engage in political activity, or for narrowly defined privately held corporations. Those contributions are supporting the political activity.

Now it may be that someone for the (c)(4)s and (c)(6)s, you do have entities which are not totally electoral. They may not even be primarily electoral. But I think the functional way to address this is not to say it's gotta be earmarked, but to do it in reverse, to basically say something along the lines of, we're going to treat contributions above a threshold (the current law is \$1,000; I'm not wedded to that, it may be that a higher threshold makes sense), to treat them as donations supporting the electioneering communication unless they're earmarked for a non-electoral fund. And you could encourage corporations that are both electoral and non-electoral to set up electoral and non-electoral accounts. And if you want to give your money to the non-electoral version of a Sierra Club's activity-

well, they're a (c)(3), so... the non-electoral portion of Crossroads, if that such exists [laughter], you give it to that, and if you don't, you're treated as supporting its electoral activity.

So I think that, I don't know that you're going to get this, but I think the current phrase of for the purpose of furthering electioneering communication has been used to hide donors supporting electioneering communications, including, obviously, corporations.

Now, although the D.C. Circuit recently upheld the current rule as consistent with the discretionary authority, the FEC, the language clearly indicates they would support the opposite rule or at least a strong showing in that language. That given the arguments for this and the nature of the FEC's rulemaking authority that *Van Hollen* would support the opposite result.

So, I think this would be something to do. Included in that is I would have a kind of peel back the onion rule, which is, as we've already discussed, in I think Don's comments earlier and as it came out in public news accounts the last couple election cycles, of the so-called daisy chain. Corporation, A giving to corporation, B giving to corporation, C giving to the super PAC. And I would push for some rule, and I don't have legislative language in front of me, that says that any entity that engages in electioneering communication has to be able to disclose either the humans behind, maybe call it the human participation rule, or at least the publicly held corporation. I'm not so concerned about publicly held corporations, they exist on record. We know something about them or a union. They exist on record. It's the Americans for A Better Tomorrow, it's the People for Good Government, the meaningless titles which you can peel back and peel back and peel back. That's the problem. I think it would be within the authority of this Commission to basically say disclosure has to mean disclosure and disclosure has to be the real interests. Is there a term for the inside of an onion? Once you peel back all the layers... the inside of the onion rule, the pith rule. So I think that would be relevant and I think this takes on something similar with the LLCs.

I know the Commission was recently unable to take action with respect to treating certain LLC donations as if they were straw donors. I would reframe that to say simply not that the LLC's donation is a straw donation, but when an LLC makes a donation, we should know who is behind them and that, I think, could be addressed through rulemaking. Now, I may be optimistic as to what kind of rulemaking will actually occur, but I think it's a good strategy to at least, for one thing, if a rulemaking is launched, it'll get comments from people in this room and all around the country which can come up with, I think, an informed approach to this and to see whether there is something, except where we are supporting disclosure that would be more effective.

That gets, I have actually less to say, unfortunately, about the ban on foreign money. I think a lot of that was addressed very effectively in the prior panel. I think, though, one way to begin is to figure out what's there. And I think, enhanced disclosure, particularly on, by the, on the spending of the money behind the non-profits, the money behind the (c)(4)s and (c)(6)s and behind the entities that are giving to the super PACs, when it's a (c)(4) that's giving to a super PAC. At least they begin to give us a better sense of the scope of the problem and the modes of participation of foreign entities. So, that's one thought. The second thought is to think about to what extent it makes sense to pick up the model of PAC regulation, because, although corporate spending in elections is a new thing, as of 2010, PAC, corporate PAC spending in elections is not new. That's been legitimated since 1972 and probably predates that a little bit.

And there, of course, the law takes a fairly hard line, treating any involvement of an individual foreign national in the operation of the PAC, serving as an officer of the PAC, participating in the selection of the persons who operate the PAC, making decisions regarding the PAC's contributions and expenditures, as making it foreign. So, I'm not sure you want to take as hard a line as that, but you could begin with the PACs.

And finally, in connection with this, and part of what I'm doing here, I think, is picking up on FEC decisions or non-decisions that I don't agree with and try to see if they can be redone, is actually maybe to develop a rule that thinks about, that addresses the relationship between corporations and their subsidiaries more effectively. Here, of course, I'm thinking of the *Chevron* decision and the idea that Chevron and Chevron USA are two unrelated entities and, therefore, one of them is a government contractor and the other one is not when the one that is not a government contractor is wholly owned by the one that is. And this again was the result of an enforcement action. And this, I think, as the... the rule of corporate participation didn't matter so much when corporations were completely banned. Now that corporations are in the game, we have to think about who they are, who's behind them, and what are their relationships to each other? And so, I'm not sure if this is my third rulemaking or my fourth, and this is going to keep you through your next couple decades of not being replaced, I think another area for appropriate rulemaking is figuring out what's the, and there are obviously models of this from many other... corporations come up in almost every regulated sphere, labor, everywhere else... is to figure out what's nature of the relationship between the subsidiary and a parent between affiliates. And it's relevant for the government contractor ban, it's relevant for the foreign corporation ban, and it's relevant generally even for the corporate contributions. I'll stop there.

**COMMISSIONER WEINTRAUB:** Thank you. Jared?

**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.

**COMMISSIONER WEINTRAUB:** Before you start, Ciara, I just want to remind anybody that joined us late and is listening in online that you can e-mail questions for the panel to [forum@fec.gov](mailto:forum@fec.gov) or send them via Twitter using the #FECforum hashtag.

**CIARA TORRES-SPELLISCY, STETSON UNIVERSITY COLLEGE OF LAW:** Okay. Good afternoon. Thank you to the Commission for hosting us today and thank you to Commissioner Weintraub for inviting me to speak here today. My name is Ciara Torres-Spelliscy. I teach election law and business law at Stetson University College of Law which is in Florida, so very far out of the Beltway. I'm also a fellow at the Brennan Center for Justice and I'm the author of [Corporate Citizen](#) and one of the things I deal with in my book is dark money. Another topic that I deal with in my book is foreign influence on American elections. And I've been working on the issue of corporate political spending since 2007 and what got

me into this was a Supreme Court case called *Wisconsin Right to Life 2*. And I think a lot of people in this room will realize that case laid the groundwork for *Citizens United* three years later.

I think the crux of the matter at hand is that over \$600 million of dark money has been spent in the federal elections since *Citizens United* was decided and I think that raises at least two big questions for Americans to consider. Number one, who is considered part of “we the people” and two, who is footing the bills for American political ads?

So firstly, who is considered part of “we the people”? Do we want that “we” to include foreign spenders? And this has been an issue since 2010. And it was raised by the president of the United States. President Obama, in his first State of the Union address, chastising justices who were actually sitting a few feet from him, said, “With all due respect to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the flood gates for special interests, including foreign corporations, to spend without limit in our elections. I don't think elections should be bankrolled by America's most powerful interests or worse, by foreign entities.” End quote. Sitting in the audience, Justice Alito was caught on camera mouthing the words, “Not true.” I think ever since then, there's been this lingering question about whether foreign corporate money will get into U.S. elections post-*Citizens United* or not.

Now, I'm not sure that the average American voter would feel comfortable with foreign sources spending in our elections, especially foreign sovereigns. I doubt that the average American voter would want Citgo, for example, which is an oil company that is owned by the government of Venezuela, having any say over American energy policy or who is elected to any American office.

Now, as far as we know, Citgo has not spent money in American elections, but that \$600 million of dark money means that that type of spending could be hiding in plain sight. We simply do not know the sources.

Now we do know through certain leaks that have happened over the past six years that some of that dark money is corporate money and some of that dark money is publicly traded corporate money. And so while Citgo may be the clearest example of the type of foreign spending that would be objectionable, I think we should also worry about foreign private interests that own any number of American-sounding brands.

And I think the problem with the foreign ownership of those companies is that when they spend in American elections, they may not have U.S. interests at heart. And there is a very long list which I won't go into but I'll give you a sampling, of foreign owned "American" brands.

Think of Burger King, which merged with Tim Horton's and is now Canadian. Think of Budweiser, which is owned by InBev, which is Belgian and Brazilian. Nestle USA is owned by Nestle SA, which is headquartered in Switzerland. 7-Eleven is owned by a Japanese company. Firestone is owned by Bridgestone, which is also Japanese. The Pierre Hotel in New York City is owned by an Indian conglomerate called the Tata Group. Even the Sunglass Hut, which is a mainstay in most American malls, is owned by an Italian eyewear company.

And I think Americans might be shocked that Church's Chicken – let me say that again: *Church's* Chicken – is owned by the First Islamic Investment Bank which recently changed its name to Arcapita. You might think about why that is, that name change.

And it's not just consumer brands. Foreign banks have been on a buying spree of American banks. To wit, Compass Bank is owned by a Spanish bank. Sovereign Bank is owned by a Spanish bank. Union Bank is owned by Japanese financial group. Bank of the West is owned by a French bank.

And here's where I think it's really troubling: even parts of American infrastructure have been bought or leased by foreign interests, including the Indiana Toll Road, has been leased by an Australian

and Spanish consortium; so, too, has the Chicago Skyway, which has been leased for 99 years starting in 2005. I think all of this foreign ownership raises questions about whether it is appropriate for these foreign-owned entities to spend in American elections. And the law is not clear, the rules are not clear, and I think the FEC should clarify them.

So that was all issue one. Number two, who is footing the bill for American political ads? I think the answer to the question of where does dark money come from is an especially poignant one if the answer includes publicly traded companies. Because if the answer includes publicly traded companies, then ordinary people with their 401Ks may not like to learn that the answer to who is paying for that awful political ad that's airing on a, you know, continual loop on my TV, the answer could well be you and your retirement investments.

So while very few corporations have spent on the record, some have, including CV Star, which was mentioned in an earlier panel. They spent at least \$10 million in this presidential race. In the last presidential election, Chevron spent \$2.5 million. But we have this \$600 million dark money knowledge gap which grows every day. And we do know a little bit about where some of that money is coming from. In, since 2010, the U.S. Chamber of Commerce has been a source of dark money. And according to OpenSecrets, they have raised over \$100 million in dark money. Now, I think because the Chamber is a business association, that it is reasonable to assume that most of that hundred million dollars is from a corporate source, but no one outside of the chamber knows for sure and that's the problem.

Meanwhile, the Supreme Court has held in *Buckley*, in *McConnell*, in *Citizens United* itself, that there is a voter informational interest which justifies campaign finance disclosure as a matter of constitutional law. The basic idea that the Supreme Court has endorsed is about heuristics for voters. Basically, if I know as a voter that an ad is paid for by the American Lung Association, I will treat it differently than if it is paid for by a tobacco company. The funding is a cue to the voter.

But there's another aspect of accountability that is also served by transparency of money in politics which Justice Kennedy himself alluded to in *Citizens United*. Justice Kennedy, writing for the majority in *Citizens United*, said the following: "Shareholder objections raised through the procedures of corporate democracy can be more effective today because modern technology makes disclosures rapid and informative. With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters." End quote.

If investors are to hold their companies accountable, then we need more transparency than we have today. Including, which corporation is funding which political ad.

So in conclusion, dark money is a problem for voters who may not want to vote for a candidate that is backed by industry. Dark money is a problem for investors who may not want to foot the bill for corporate political spending. Dark money is a problem for customers who may not want to support a firm that supports their political opponents. But without greater transparency, voters, investors, and customers can be duped. Thank you.

**COMMISSIONER WEINTRAUB:** Thank you. That was, for the third time, really terrific and illuminating. So we have a couple questions from the audience. First one is for Jared. Some Maryland jurisdictions are considering implementing public financing of elections. Do you think those programs will work in an era of large independent expenditures?

**JARED DEMARINIS:** Yes. Well... yes. I think one of... well, we, in 2014, we actually elected a Republican governor using a publicly financed program. The first time ever in the history of the entire program, which was over 40 years old. So... with a lot of outside spending, against that governor.

**COMMISSIONER WEINTRAUB:** And when you say it's the first time ever, first time ever... what was the first time ever?

**JARED DEMARINIS:** The first time ever that a candidate won using public financing in the state and it was only the second time ever that it was actually used by a general election candidate in its 40-year history, because of the limits in place on it, there was such a low expenditure limit. But with the right messaging or the right campaign, anything can happen. Money that is, people are the greater equalizers against money in that situation here. And I think...

**COMMISSIONER WEINTRAUB:** John Pudner, who was on one of our earlier panels, would undoubtedly agree with you.

**JARED DEMARINIS:** Exactly! I think that these public financing programs that are out there are in response to all the moneyed interests that are coming into the process. And... they, I think, help restore the trust that people will have in the system because they would feel as though, that they're not answering questions to big business or something, that they would be responsive to their individual concerns and that that \$5 contribution can get magnified into something that is much greater than what their voice would normally be.

And, I think that it's, these local jurisdictions, Montgomery County has passed it, another one is going to think about it. You have successful programs in cities like New York City and other places that have used this successfully. And I think that yes, I think that is very important and just also, to go back to one of my points about corporate influence and how significant it is. I just wanted to say, this is why you also have all the pay-to-play laws in the states as well.

Because, if it wasn't so significant, and it didn't have such a, I guess, a corrosive effect on individual participation in it, you wouldn't necessarily see the, the disclosure, public you know, pay-to-play laws that are constantly out there. So... as you can see, it does have its effect.

**COMMISSIONER WEINTRAUB:** Anybody else want to comment on that?

**RICHARD BRIFFAULT:** Just on the public funding, yes. I mean, we've had it in New York City since 1989, it's been... I mean, what do we mean by successful? We've had mayors who have been elected on it. We had a mayor who was independently financed but his opponents, I think, were able to get their message out. They didn't win but they had enough public money that it was contested elections.

And actually, I'm pretty sure I mentioned I was on the Moreland Commission, which was a New York State commission to investigate public, to look into public integrity. We had an interesting hearing on public financing in which a City Council member, a Republican City Council member – we don't have very many of them – testified about the, how, the benefits of having public financing in his City Council race and the negative consequences of not having it when he ran for the state legislature. I mean, we have the city and state legislature, of course, occupies the same ground as the City Council and we have public funding in the Council races but not for the assembly and Senate races which, in New York City, the levels of participation, the levels of competitiveness are totally different. And he was, again, very complimentary about public financing allowed him to mount a successful race as a Republican for the City Council but how he was swamped when he tried to run for the state Senate, where it wasn't available.

**COMMISSIONER WEINTRAUB:** This is kind of a related question. It's directed at Jared, but I think really, from your standpoint of people who know what's going on more broadly, I think any of the panelists could answer it. From your experience, does regulation of corporate campaign finance work? If rules are passed, are they followed?

**JARED DEMARINIS:** Yes, I think that, well, I think one, it works because it gets greater disclosure for the people to know who's giving to their candidates and that they can make decisions at that point there. I can think of, you know, when a corporation, I'm thinking of, I guess, the Target situation when they gave to an issue there and that the outcry, once people knew about it, actually started boycotting the business and they then reversed their corporate giving policy on that front there.

I think that corporations, too, I think that they will, they want to follow rules. I think people want to follow rules. You're always going to have some outliers that will always try to break the rules or go as close to the edge as possible there but I think that a majority of the corporations and the giving out there want to follow the rules and if you create the bright-line standards for them and [tell] them what the regulations are, they will follow them in that sense.

**COMMISSIONER WEINTRAUB:** Either of you want to comment on that?... I mean, that's my experience as well. Most people do want to follow the rules and where you run into problems are when there's a vacuum in the rules and then people say, " Well, if there *aren't* any rules..." that, then, who knows?

**JARED DeMARINIS:** They'll fill the vacuum right there and it's very difficult to take it out.

**COMMISSIONER WEINTRAUB:** Indeed. So, here's a question for Richard. What is the agency's role in creating a record for Congress and other agencies such as the SEC?

**RICHARD BRIFFAULT:** I could send that one back to you, but I think it could be whatever it wants to be. I mean, I think the agency has the power to undertake rulemaking. I mean, a lot of this, I think, for itself, but I think its investigations could surely inform congressional action. I'm thinking of another one of the many recently contested actions here within the agency is, I think, I don't know if we alluded to here or a prior conversation about the Murray Energy case which was efforts on the part of... allegations that a

corporation was putting major pressure on its employees to participate in support of an election candidate, Governor Romney in the 2012 election. And in the end, the Commission declined to bring an enforcement action on the feeling that the, whatever activities the corporation did, it fell within the statutory, it didn't violate the statutory language. Well, this could be a nice example of fact-finding in the ways in which corporations try and persuade, pressure, pick your verb, their employees to participate in the elections. It could be that you need a set of regs that reflects a richer understanding of how the internal dynamics of a workplace. But it also could be that you could need an investigation that would lead to congressional action, either to amend the statute, to make it more protective, or to pick up things that are not just involving, not just campaign finance participation, but other forms of coercion participation, such as showing up at rallies, which is not clearly picked up by the statute as it's written.

So I do think that one of the... I think it's fair to say, the agency's had trouble making decisions in the last period. Maybe the agency should rejigger itself and focus more on fact-finding and building a record, including participation from all sides and actually getting it out there.

I mean, the *McConnell* case was a great example of a court's relying heavily on a record, but the record was largely compiled in litigation. But people, this is a domain of a huge amount of anecdote and not a lot of record facts. And it could be, I don't know how the commission as a whole would feel about this, but maybe some of the work of the Commission could be focused on fact finding. And maybe, maybe, maybe, don't know if this is ever done, a collaborative work as Rob Jackson suggested with the SEC to figure out, because obviously these issues of corporate participation in elections is the domain of both agencies, or could be, but right now we're in a stage where it's falling between two stools. And whether it's joint fact finding or developing some facts and shipping them over. I think it would be a very, it's a potentially productive use of the agency's time, like the hearing like this suggests, too.

**COMMISSIONER WEINTRAUB:** And that was one of the goals of this hearing, was to bring more information to us and potentially that we could share with other entities.

**CIARA TORRES-SPELLISCY:** Can I add on that point?

**COMMISSIONER WEINTRAUB:** Yes, please.

**CIARA TORRES-SPELLISCY:** So, a couple of months ago, the entity in Mexico that regulates their elections invited me and other academics down to talk about how U.S. elections are administered. And I felt really proud as an ex-New Yorker and really mortified as an American to give my presentation. And the reason is, I did a compare and contrast between the New York City Campaign Finance Board which has a stellar reputation for enforcing the laws and rules that they, you know, require all these candidates who are getting this public money to abide by, and then I contrasted that with the FEC and I think the FEC actually has, is bordering on a rule of law problem here. One of the tenets of the rule of law that would I would teach to my constitutional law students is that no one is above the law. Well, you are regulating sitting members of Congress and often sitting presidents. And so, I think it is very important that the FEC take its role as a regulator of such powerful people seriously. And if there are rules on the books, for the love of Pete, enforce them!

**COMMISSIONER WEINTRAUB:** Well, I agree with that. [Laughter] I was going to say....

**CIARA TORRES-SPELLISCY:** Yes, I'm lecturing the wrong commissioner.

**COMMISSIONER WEINTRAUB:** ... I was going to say, when you first started to describe that conference like "Oh, wow, I wish I'd been there! I wish they'd have invited me," and then when you told me what you said, I thought, maybe it's just as well I wasn't there. And let me just say that as, I think, a lot of people know in the Murray Energy case as in many others, we did not carry that case forward or do an investigation because of a 3-3 split. That was not a consensus decision.

**RICHARD BRIFFAULT:** In context with the comment I made earlier, and maybe this is totally naive and you're totally on my part, and almost surely it is and I'm not that much of an optimist but, it did strike me that having sort of looked at a lot of these 3-3 divides that have come up in the enforcement, do you think that...? I shouldn't be asking you the questions – we've reversed the roles again. Do you think there's any prospect for more collaborative action if these things are taken up, not as enforcement actions but as rulemakings? In other words, not targeting a specific company or LLC or participant and saying, in effect, I'm thinking, like, the Truth and Reconciliation Commissions, forgive everything... don't go into anything that's happened so far... going forward, we need rules on LLCs. Going forward, we need rules on, more informed rules in light of the post-*Citizens United* world on corporation participation. Does that have a prospect or am I just being ridiculous?

**COMMISSIONER WEINTRAUB:** Well, I hope you're not being ridiculous! I didn't invite all of you really smart people in here because I thought that, you know, you would be just sort of entertaining us all for the day and that it would all go into the circular file. I'm hoping that we are working on a process of perhaps moving forward and doing something productive. I think a lot of people agree that rule-making is a better venue than enforcement. When you said earlier, many agencies prefer to act through enforcement, I don't know that I would say *prefer* to act through enforcement but we can't avoid acting through enforcement because the complaints are presented to us and we have to have a decision in that, whereas we can avoid starting a rulemaking. I wish we wouldn't avoid starting a rulemaking and as I said at the very outset, I think that it really shouldn't be controversial to say, "We don't want to have foreign money in our elections." I don't know. One of my colleagues asked me, when I was walking around with the agenda, saying, "So, did you invite any pro-foreign money speakers?" And I said, "Are there any? I don't know anybody that advocates that, 'Yeah, [what] we really need in our elections is more foreign money!'" So it seems to me that if ever there was an issue where maybe there could be some common ground, I would hope this would be that. And that was part of the motivation in bringing

in all sorts of smart people who are not the usual folks who come and talk to us but, you know, try to bring in some new ideas, some ideas from scholars, from people who are not partisans, but are just deep thinkers on this subject. So I'd like to think there's a prospect for, for action. You know... we'll see.

I have another question here, which, actually, this is a good segue to Ciara. As a historian of campaign finance, how were corporate and foreign contributions involved in the Watergate scandal which led to the creation of the FEC?

**CIARA TORRES-SPELLISCY:** All right, how much time do you have?

**COMMISSIONER WEINTRAUB:** Give us the succinct version.

**CIARA TORRES-SPELLISCY:** Okay, the short version is: so, part of the money that went into the reelection of President Nixon in 1972 went to his committee which had the awesome acronym CREEP and CREEP gathered in lots of money from corporate donors and the problem with that is that's perfectly illegal, both then and now, under the Tillman Act. And part of that corporate money actually went to fund the Watergate burglary. So when the Watergate burglary happened, which is a burglary at the DNC, some enterprising reporters from *The Washington Post* start following the money and some of the money that they find is being routed through Mexico and Bahamian banks and Swiss bank accounts. And one of the things that comes out in the Watergate hearings was, there was these cash payments from Gulf Oil to the Nixon reelection campaign. And this sparked the interest of the Securities and Exchange Commission at the time because they sort of asked the question, wait a minute, Gulf Oil is a publically-traded company, how is it giving these \$50,000 cash payments to the Nixon campaign?

And they start their own parallel investigation, along with Congress was investigating Watergate and so were federal prosecutors. What the Securities and Exchange Commission finds is that I think it's 500 different publicly traded companies had what they called, what the SEC called political slush funds.

And the money wasn't just going to the Nixon campaign, it was also going to fund Democratic candidates, and it was going abroad to fund political campaigns in other countries.

And other heads of state were impacted by this and some of them resigned after the SEC's investigation was made public.

That led to the creation of a law called the Foreign Corrupt Practices Act which means that an American business cannot use contributions abroad to get or keep business and one of the things you could think about, domestically, is why is it okay for an American company to make contributions when they are trying to keep or get business in the United States domestically? I'll end it there.

**COMMISSIONER WEINTRAUB:** So, the, the follow-up that was just transmitted to me is, does this history indicate to us that it's important to keep an eye on corporate and foreign money?

**CIARA TORRES-SPELLISY:** Yes. [Laughter]

**COMMISSIONER WEINTRAUB:** A very succinct answer. Okay, I've got a couple of more questions. This came in from the public via e-mail. Has Maryland considered a *Bluman*-inspired law, *Bluman* being the case on foreign nationals, that would exclude any funds from outside the state from being spent in connection with a Maryland election? And I will just broaden that again for the academics on the panel, you know, are you aware of that being considered in other places and do any of you think that would be a good idea?

**JARED DEMARINIS:** I mean, to restrict it from anybody outside the state, I guess, when you start running a campaign, especially these local campaigns in the state, and at the county and city, those levels, I mean, you always, you go to the people that you know to first raise your money, to get your seed money in these campaigns here. Families, friends, colleagues. So... I would probably not restrict it to

anybody, you know, a person from Alabama or from Maine or from Michigan wants to give to a Maryland candidate, I don't think that that would have any sort of impact, especially if it's within the limits and I think where it would have impact would be on, like, say, public financing. You'd want to say the moneys that they're raising should be from constituents that would be paying into the public financing program or have a direct impact into the public financing program, so you would, I would say yes, you could restrict it for a candidate that those matching funds or anything with that, if you want to participate in those programs, yes, you can make more restrictions because the public is going to get money there. But as for a candidate, at that level, I just think that it would be difficult to start those campaigns if you wanted to start your grass roots, because the first people you hit up are, you know, your family and friends and they may not live in the state. So I'd say, you know, no to that.

**RICHARD BRIFFAULT:** I actually have a law review article on this.

**COMMISSIONER WEINTRAUB:** Convenient!

**RICHARD BRIFFAULT:** How convenient! The 2015 University of Chicago Legal Forum, with the title of -- and I always forget the title even though I wrote it -- was "Of Constituents and Contributors," but it might be "Of Contributors and Constituents." And it takes off on some language that Chief Justice Roberts in the *McCutcheon* case, which referred to McCutcheon's efforts as a constituent to... the interest of constituents in influencing officials through their contributions. And it pointed out that McCutcheon was giving in 15 different congressional districts and 10 different states when he was only a constituent in one of them. So obviously, we have a disconnect between who our constituents are and who our contributors are. This has come up in literally a handful of states. I think four have had rules on this that have been contested. Two Courts of Appeals have struck them down. The Second Circuit struck down a rule in Vermont and the Ninth Circuit in Washington State. Oddly, the Alaska Supreme Court upheld a similar Alaska rule that was never contested in the federal courts and I think it's actually on the

books in Hawaii. Even though it hasn't been challenged, it gives you a sense of which sort of states are doing this, smaller states that are more sort of isolated.

I think it's unlikely, although the language in *Bluman* suggests a little bit that you can connect campaign participation to eligibility to vote. That's obviously not true: minors can make, can contribute in campaigns, incarcerated people can contribute in campaigns. The two don't go together perfectly. And the language in *Bluman* talked about being part of the American political community as opposed to the community of any one state or city. Majority is right about one thing, though: States and cities that have public funding, to the extent that they are of a matching form (if you raise, you need to raise a certain amount of money to qualify and/or what you get matches what you raise, small donations), I think all or virtually all of them either require that the threshold monies and the matchable monies be from within the jurisdiction or they require that a significant, a very high fraction of the money be raised within the jurisdiction. And sometime's your restriction's fairly narrowly defined, like, in Connecticut, if you're running for the state Senate, you've got to raise X percentage of your qualified funds within that Senate district, which can be tricky when there's redistricting, but yeah. So I think there's no Supreme Court case that puts it to bed, but I think it's likely that you couldn't restrict outside donations despite the idea that donations should be tied to membership in the political community like voting, but you can certainly treat them differentially in a public funding system.

**COMMISSIONER WEINTRAUB:** So this question apparently comes from someone who is a little more pessimistic about whether the FEC is going to do anything: Do you think state and local government should try and regulate foreign- influence corporations that spend on their elections and how could they do this?

**CIARA TORRES-SPELLISCY:** So earlier, there was the reference to the foreign pornographer who spent in the 2012 election in Los Angeles which is a violation both of federal law (which would have given -- I think that you had jurisdiction, the FEC, jurisdiction over that case)....

**COMMISSIONER WEINTRAUB:** I thought so, too.

**CIARA TORRES-SPELLISCY:** ... There was also a parallel state law in California which had almost the mirror prohibitions. And the regulator in California actually went after the foreign pornographer for spending in the L.A. election and they levied a fine over \$60,000 for that violation of California law. So I definitely think that states can play a role in being a front-line defense against corporate money being spent in these elections and foreign corporate money in particular.

**JARED DeMARINIS:** Well, I just, I think right now with that decision, it opens up the idea on ballot issues because you still cannot give to a candidate because federal law still prohibits it at federal, state, and local elections. So it's now opened, kind of, this loophole for ballot issue committees. Whether foreign corporations can give, I think that you're looking at something that would decide in the political process there. And it has major impact with also probably the least scrutiny from the citizens' participation on that. Because as it goes down the ballot, we always go, "Oh, President, everyone has an opinion about." But as you get lower and lower and lower down, especially into questions, people don't necessarily follow those issues. They're coupled with the fact that you can make unlimited contributions to ballot issue committees that, yes, I think that states need to, with this decision here, have to revisit those rules about foreign corporations and foreign nationals participating in ballot issue committees.

**COMMISSIONER WEINTRAUB:** And another question that was just handed to me for the entire panel What do you make of Norm Ornstein's example from earlier today of GM as a corporate contributor,

with much of its business outside the U.S. and, you know, I think a majority of its ownership by a foreign entity, is what's good for GM still good for America?

**JARED DeMARINIS:** I guess I'll start this one here. I did like the quote, that was still relevant, probably, but... no, I mean, I guess, corporations act in their own corporate interests and they are made by, you know, the boards or anything. So I don't think that they're looking at it and saying what's good for GM is good for America. You know, it might have an impact on America and it might be able to benefit America, just like any time when they open up a, you know, when they always talk about building new baseball stadiums or football stadiums. They go, "Oh, well, you're going to put a stadium here, it's going to be good for the surrounding area because you're going to bring in people, there's going to be businesses, everything's going to grow the economy around there."

I mean, GM is looking at it to grow their business, whether... through whatever legislation that they want to pass. They want to find people that will help GM's corporate interests. And I don't think those are necessarily in line with the idea of the citizenry at times. So I don't think that, you know, they might be bigger than U.S. Steel to quote a different movie there, but...

**RICHARD BRIFFAULT:** I'm not sure it was true in 1954 when Charlie Wilson said it. [Laughter] I mean, the reigning theory of corporate decision-making is corporations are supposed to do what's in the best interest of the shareholders. That's the set of incentives that they're given, is shareholder interests. That's... we don't have community members sitting on corporate boards. We don't have politicians sitting on corporate boards. We don't have labor unions sitting on corporate boards as they do in, say, European countries. We have shareholder representatives sitting on [boards], shareholder welfare. If the shareholders are all American, the odds are, it'll help Americans, although, not necessarily all Americans. It'll help the Americans who are on, who hold shares. If a significant fraction of their shareholders are not Americans, and/or they're making a significant fraction of their income outside the

United States, they have a different set of incentives. There's no reason to assume... it may be that the individuals are good citizens, but there's no reason to assume the entity thinks it's a citizen.

And I think that even though it's paradigmatic that a corporation is acting in its shareholder's best interest, I think it's important to remember what Professor Coates and Professor Jackson talked about earlier, that there can be a lot of tension between what a board wants and what a CEO wants from a political expenditure and what a shareholder might want from a political expenditure. The CEO may just want a ticket to the Inaugural; the shareholder wants a return on investment. Those are two different things.

**COMMISSIONER WEINTRAUB:** So here's an interesting question from the audience. I'll be interested to hear what the answer to this is. So, obviously, everyone in this room is interested in these issues and not everyone in this room is a commissioner. So the question from the audience is, what can we do when we walk out of here today if we care about these issues?

**CIARA TORRES-SPELLISY:** Vote in November.

**JARED DeMARINIS:** Exactly. I mean, that's the, that's your voice out there. And as an election official, I always want people to vote. I don't care, you know... 100%, let's go out there. I think that you can't, what is the quote? Our system, and I've done a couple of international elections as well, it has its flaws. It has, I mean, it's not perfect by any stretch of the means here. But the one thing that... you know, we are the shining light for the rest of the world as an example here. I think that...don't get like a, I guess, with all the headlines, check out of the system and just go "ah" throw your hands up and say "ah, you know, a pox on both their houses," but to get engaged. I think that, especially at the local and state level, you can see change, you can see the impact that you want to make and electing people, the right people, whatever your political persuasions are, to those offices does have an impact. You know, you

get the potholes fixed. You can see, you know, changes made, especially at the state and local levels.

So... don't check out. Vote, participate, and, you know, help try to bring about the change that you want.

**RICHARD BRIFFAULT:** I think also, needing to get involved and organized with groups that focus on these issues. I do think that, I mean, people in this room are obviously unique in the sense that you're in this room.

**COMMISSIONER WEINTRAUB:** This is not a typical cross section of the American public?

**RICHARD BRIFFAULT:** You look at the issues that Americans... because it tends to come up 24th out of 24. And there's a reason for that. There's a reason we're more concerned about climate change and terrorism and the economy. And there's all sorts of important things that hit people on a daily basis. And I think that, for those of us with arms in this, it's because we see the connections, and that we see that some of these issues that may be more front-burner issues -- climate change, the economy, Social Security, you know, inequity -- are connected to these structural issues about how we run democracy. Whether it's voting rules, voter ID, redistricting, campaign finance, and I do think although it's worthwhile as individuals, it's important to find groups that engage with this. Some of them were here this morning, although they were more focused on the informational side. Even then, getting information is actually pretty powerful and disseminating information is, I think, a pretty powerful tool in this area.

But to remind elected and appointed officials that these issues matter, and that they're not out of the spotlight, that... Elected officials are pretty attentive when they're in the spotlight, as the debate about gun regulation that's currently going on indicates. You may not be happy or we may be happy with how it's going, but at least it's become a front-burner issue. These issues here are very rarely front-burner issues, at least at the level of concrete action. And it may be that it's important to get

involved in organizations or groups that treat these issues as important issues to make sure that elected and appointed officials know that they're being watched on this.

**COMMISSIONER WEINTRAUB:** You know, I'm not sure I agree with you that this is such a low-profile issue. It seems to me that I've seen an awful lot, there are candidates out there on both sides of the aisle who are talking about this issue. I see a lot written about it. I give a lot of credit to some really great reporting on this issue; Matea Gold of *The Washington Post* and Nick Confessore at *The New York Times* jump out as people who are really doing a great job of shining a light on this issue. I think people do care about this. And I would echo the comments of all the panelists that really what you can do is, obviously, vote and get all your friends to vote and... because it's always better for democracy if more people are voting, but to get involved at the state and local and federal level, to hold everyone who is out there, making decisions that affect your life, including me, accountable, write us letters, tell us, write letters to the editor, tell us what we're doing right, tell us what we're doing wrong. When we put things out for comment and government agencies are always putting things out for comment, comment! You know, pay attention. Stay engaged. I think there actually is a lot that citizens can do to stay more involved in their government and, you know, if you want to have a government that responds to the issues that you care about, you have to A, vote for the people who are going to represent your interest, and B, you know, hold their feet to the fire and make sure they continue to pay attention to the issues that you care about.

So, whatever they are, and whatever side of the issue you're on.

**CIARA TORRES-SPELLISCY:** Could I add two concrete things to that? Bug President Obama about issuing an executive order for federal contractors and that part of dark money. And write to Mary Jo White,

who is the chair of the Securities and Exchange Commission, and ask her to promulgate a rule on corporate dark money.

**JARED DEMARINIS:** What is this? Writing and, write letters to the editor, and write – we tweet and we post now, c'mon. [Laughter]

**COMMISSIONER WEINTRAUB:** Okay, that works too!

**JARED DEMARINIS:** You tweet, you do a hashtag, this is....

**COMMISSIONER WEINTRAUB:** Tweet at me, I'll retweet it. Absolutely.

**RICHARD BRIFFAULT:** We want to see campaign finance reform trending on Twitter.

**COMMISSIONER WEINTRAUB:** That would be very cool!

So, this is probably a follow-up to Ciara's comment about the conference you went to, but someone in the audience wants to know, are there other countries we can learn from who's doing this particularly well?

**CIARA TORRES-SPELLISCY:** I'm a big fan of Elections Canada. One of the reasons I like....

**COMMISSIONER WEINTRAUB:** Who doesn't love Canada?

**CIARA TORRES-SPELLISCY:** Yeah! One of the things that I think is really so Canadian about Elections Canada is the only Canadian citizen who is not allowed to vote is whoever is the head of ElectionsCanada. Because they don't want the tarnish of partisanship to impact how people think about that professional agency.

And what was interesting in going to Mexico and talking to them is, the way that they run their elections would be totally unconstitutional under the American Constitution. The way we run our

elections would be unconstitutional under the Mexican Constitution. They are much more worried about what they call propaganda and they find the way that we run our elections totally abhorrent. On the other hand, they are much more restrictive than we would be under the First Amendment. So, the two systems are, like, you couldn't run them at the same time. There's a total different approach to how elections are run in the two countries.

**COMMISSIONER WEINTRAUB:** Yeah, I'm always struck by the fact that if you compare *Citizens United* with an analogous decision from the Canadian Supreme Court, *Harper v Canada*. Where the U.S. Supreme Court takes – and really, you could go back to *Buckley* on this – where the U.S. Supreme Court has taken the position that any kind of restriction on spending is going to limit the amount of debate and limit the way the issues get aired and interfere with the robust discussion of issues that we all want to promote, the Canadians take the exact opposite perspective, with the same goal, though: In order to promote the most robust discussion of all the issues and get all the information out there, they don't want one side to be drowning out the other side just because they have more money. So they actually have expenditure limits. And I have always found it completely fascinating that you have these two countries that come from fairly similar histories, both, you know, former British colonies and, you know, lived through a lot of the same experiences and have similar kinds of laws, and they just come to exactly opposite conclusions about what is the best way to promote a goal that we all want, which is to make sure that everybody's voice gets heard and that we have the best and best-informed debates going on on all the public issues of the day. So I just think that's always been interesting to me.

We are just about at 3:30 when we said we were going to end this, so I want to first of all, thank this panel, please join me in thanking this great panel.

[Applause]

**COMMISSIONER WEINTRAUB:** I want to also thank all of my colleagues who all participated either in person or online and virtually and have been listening to all the great panelists. I really, for me, this has been an incredible day and has been so, so informative, you know, hearing from people that we don't normally hear from. We're going to take all this, we're going to post videos on YouTube, we're going to make a transcript. We're going to think hard about this. I hope that we will get to a rulemaking someday where all these ideas might be reflected. I know our policy folks are going to be paying a lot of attention.

I also want to send another big thank you to every single person who works in this building. Because I want to tell you that everything that everyone in this country knows and writes about, campaign finance at the federal level, certainly, and who is funding who and where the money comes from and where the money goes, everything we know is due to the hard work and good efforts of all the people who work in this building and make sure that information gets here and gets online and gets reviewed and that complaints are analyzed and information is shared. So, I want you to join me in giving a big round of applause to the great people who work at the FEC.

[Applause]

**COMMISSIONER WEINTRAUB:** They don't get a lot of applause in their lives. And finally, I want to thank all of you who showed up in person and who listened in online and who will perhaps, some day, continue to see what we post online on this issue and just encourage you to keep paying attention. This has been a fabulous day and I thank every single one of you for your attention. Thanks again.

[Applause]

**COMMISSIONER WEINTRAUB:** Thank *you*!

[Presentation concluded at 3:30 p.m. ET].