

Transcript

Forum: Corporate Political Spending and Foreign Influence

Hosted by Commissioner Ellen L. Weintraub

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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 view 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.