

## Transcript

Forum: Corporate Political Spending and Foreign Influence  
Hosted by Commissioner Ellen L. Weintraub  
Federal Election Commission, 999 E St. NW, Washington, DC 20463  
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### Opening Remarks

**COMMISSIONER ELLEN L. WEINTRAUB, FEDERAL ELECTION COMMISSION:** Good morning, welcome, everybody. I am so excited we got a packed house at the FEC and hopefully also even more people listening online. This event has been a long time in the making and it's very exciting for me to be here with all these great guests and with all of you. We are going to have some of the nation's top legal minds here for a few hours of what I expect to be an illuminating and thought-provoking discussion on a very hot topic in the campaign finance world: the risks of foreign influence in a period of lightly regulated corporate political spending.

We're going to hear from leading public policy professionals, academics and attorneys on what the situation is now. And I've been really thrilled with the guests that we've been able to get to come and speak to you today because really, these guys are, every single one of them are, rock stars. They're superstars in their fields. It's going to be really great. And it is all about these great guests and the information they are providing, which is why we have turned the tables on the normal FEC set-up. Normally there's commissioners sitting up there and the witnesses are facing us and everybody in the back is just looking at the back of heads, but not today, because the attention's all on our great panelists. We have turned the table around so they can face you. Everybody got index cards on their seats when they came in and we can get you some more index cards if you have lots and lots of questions, because there will be an opportunity for that later.

I want to thank all of my colleagues who are all going to be with us in person or virtually. And...everyone is really interested in hearing from the panelists. I want to particularly thank the chairman, Matt Petersen, who invited me to organize this form and...probably didn't know just how carried away I was going to get with that invitation. But he has been a very good sport about it.

The topic of foreign money and U.S. elections has been a concern for me for several years and I have attempted to address it through the more traditional, through some more traditional venues like putting notices of proposed rulemakings up for vote, as well as some less traditional venues like working with my colleague Ann Ravel to put a petition before the Commission. The genesis of this event goes back to an op-ed I wrote in *The New York Times* with a provocative thesis that the long-time statutory ban on direct or indirect political contributions from foreign nationals when read in concert with *Citizens United* may actually bar most corporations from making political expenditures and contributions.

The key is in the phrase used throughout *Citizens United* that corporations are associations of citizens. There's nothing magical about corporations themselves; it's the citizens behind them that matter. And the Supreme Court made that very clear not only in *Citizens United* but perhaps even more

clear in the *Hobby Lobby* case, which people don't usually think of in the context of campaign finance. But in the *Hobby Lobby* case, the majority explained that corporations are a legal fiction. And said it's important to keep in mind that the purpose of this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the right and obligations of the people, including shareholders, officers, and employees who are associated with the corporation in one way or another. When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.

And that makes sense. That makes a lot more sense than the common vernacular that kind of exercises people when people talk about this and say corporations are people, because we all know that corporations aren't really people.

But it is all about protecting the rights of people. Now, the question that occurred to me earlier this year is what happens when those people don't actually have the rights to engage in the political activity that the corporations are engaging in? Not all people do. Foreign nationals, notably, do not. Government contractors also, and the court has upheld those restrictions on political activity by foreign nationals and by government contractors.

Now, it doesn't make sense to say that individually, a foreign national cannot engage in direct advocacy in U.S. politics and spend money to do so, but...if they get together with a bunch of other people, then suddenly they can. You don't get more rights by forming a corporation. You don't lose rights by forming a corporation, but you don't gain rights either.

And, based on that analysis, I can and have argued that perhaps we ought to have a zero tolerance for foreign shareholders of corporate spenders because that, they own the resources of the corporation.

Now, that's a, admittedly, an edgy position to take, I'm not locked into it, but...if not that, then what? Another theory that I put forward is maybe there'd be some threshold, like 20%, drawing on analogies to corporate law in Delaware or communications law. And if not that, again, then what? Maybe we should have a negative check-off where corporations who want to engage in this kind of direct political spending need to assure someone, the government, the people, that they are not owned by foreign nationals or controlled by foreign nationals. That kind of a foreign check off, a negative check off idea has recently surfaced again in bi-partisan legislative proposal on the Hill dealing with the IRS. So, you know, slightly different context, but similar concept. So...you know, maybe I set up this entire event just to prove to my colleagues that it's not just me that's talking about this stuff. There's a great op-ed in the *Boston Globe* just this morning by my former law professor, Larry Tribe, and Scott Grayack again on the subject of this hearing and foreign nationals and corporate spending. And I think we have copies both of my op-ed and the Tribe op-ed outside if anybody wants to read them.

So there are lots of ways of looking at it, and one idea I had was to bring in experts, not only the usual suspects from people that we know and love in the election law community, but also corporate experts and tax experts and communications law experts and see what we can learn from them.

Because...I think, no one, really, wants to have foreign money influencing our elections. This should be something we can all agree on. If we can all agree on that basic premise, there ought to be a path forward for us to make sure that that is, in fact, what happens and we can assure the American people that that is what is happening.

So...we've got a great, great day lined up for you today. We've got awesome speakers and there are going to be three different panels. There's a lunch in between the second and third panel that's in the conference room across the hallway. We are video and audio-streaming this event and we are, as I said, the staff is going to be collecting questions from, that you write down on the index cards and giving them to me so I can ask the panelists and people can tweet them, send them via... you can e-mail your questions to [forum@fec.gov](mailto:forum@fec.gov) or send them via Twitter using the #FECforum hashtag. And afterwards we are gonna, we are videotaping this (which is again, another reason why we've got the witnesses facing the audience because the camera's back there) So we're gonna post it on YouTube, hopefully in nice little chunks so you don't have to, if you don't have all day to sit and listen to the program, we'll show you where the best parts are. And we're going to hope to produce a transcript as well, so those that are more visual and like to see the words in front of you can also participate.

So, I hope that both the people in this packed room and the people that are out there in the cyber-world listening to us learn a lot and enjoy and send us questions and participate in this and I'm going to leave it to the first panel, I just want to make very brief introductions because this isn't about me, this is about them, so...let me get off the stage. Our first panel starts with Sheila Krumholz, who has served a decade as Executive Director of the nonpartisan, independent, and totally indispensable Center for Responsive Politics. CRP's Open Secrets projects crunches FEC data and gets it out to the public quickly and effectively. It is a go-to resource for me and, I know, really everybody who cares about this subject. America's journalists and its voters are markedly better-informed because of Sheila's efforts and those of her staff.

We have Norm Ornstein, who may be the most famous political scientist in the country. You know, quoted constantly in the newspapers. Along, of course, with his friend and coauthor, Tom Mann. I should give credit to Tom as well. Don't wanna get Norm in trouble with his friends. Norm is a resident scholar at the American Enterprise Institute and coauthor of *It's Even Worse Than It Looks*, a book that really speaks to me, now out in a new, revised edition with a little scroll on the cover that says "It's Even Worse Than It Was." *The Washington Post* has called Norm one of the "brightest, best-informed, and most scholarly students of our politics."

John Pudner showed that the size of one's checking account is not necessarily one's destiny when he launched the campaign of David Brat against Eric Canter in a race that nobody thought that Eric Canter could lose. Despite that stunning upset, John's concern about the many avenues for foreign or other illicit campaign contributions led him to end his decades of running campaigns to start Take Back Our Republic, a group of conservatives looking for campaign finance solutions.

And last, but not least, on this panel we have Melissa Yeager, a senior writer at the Sunlight Foundation, a non-profit, non-partisan organization, like CRP another really indispensable organization

in this field today. Anybody who cares about money in politics, they advocate for open government with a primary focus on the influence of money in politics. Melissa does great work shining sunlight into the darkest corners of our campaign finance system. Lately she's reported on vulture funds feeding on Argentina's debt crisis. Oh, and on partisan gridlock on some obscure agency (yeah, the FEC). Anyway, I know that I am very jazzed and looking forward to what everybody has to say and looking forward to your questions. So take it away, panelists, we're just gonna go in alphabetical order, so Sheila, you've got the floor.