



Statement of
Bradley A. Smith, Chairman and David Keating, President
Center for Competitive Politics
on the
“Corporate Political Spending and Foreign Influence” Forum
June 23, 2016

Today, Commissioner Ellen Weintraub has taken the unprecedented step of using her office to organize what is in essence a private forum, to be held at the Federal Election Commission (FEC). Titled “Corporate Political Spending and Foreign Influence,” the release announcing the event states that it “brings together some of the nation’s top scholars, public-interest professionals, and attorneys to discuss the issues surrounding corporate political spending and foreign influence.”¹ While many of the speakers are indeed distinguished, however, any objective observer will immediately note the lack of a single prominent individual not in agreement with Commissioner Weintraub’s well-publicized agenda or generally skeptical of expanding the Commission’s regulatory mandate. Consequently, careful observers will necessarily conclude that a fair, thorough, and thoughtful discussion is unlikely, and that constructive dialogue is not the purpose of this event.

The Forum, whose lineup of invited speakers resembles an advocacy organization’s private seminar, has no place at a taxpayer-funded government agency where a balanced, bipartisan effort is crucial to its function. This essentially-private gathering of advocates and scholars in the pro-regulation movement is being hosted using FEC facilities, arranged using Commission staff time and email, and advertised using agency resources. That one Commissioner alone is hosting this event does not mitigate this error given the clear attempt to provide the Forum with the Commission’s imprimatur.

A good faith effort to examine regulations governing corporate and foreign involvement in politics would include the entire Commission and embrace a wide range of perspectives. Commissioner Weintraub has instead used her office and public resources for private purposes, offering a platform for like-minded scholars and organizations to create an echo chamber supporting her own views. It is no wonder that some commentators and even commissioners have labeled the FEC “dysfunctional” when commissioners use public resources to advance personal political agendas in this manner.

¹ “Forum: Corporate Political Spending and Foreign Influence,” Federal Election Commission. Retrieved on June 21, 2016. Available at: <http://www.fec.gov/members/weintraub/CorporatePoliticalSpendingandForeignInfluence.shtml> (2016).

Debates over corporate political activity and foreign involvement in campaigns are rife with myths that could be discussed, debated, and dispelled in an open discussion. Regrettably, this event will deprive its attendees and participants of the opportunity to hear facts, interpretations of evidence, and policy suppositions that might change their views or allow them to strengthen their proposals. In addition, by focusing solely on spending by businesses entities and foreign sources, and ignoring spending by other groups – particularly labor unions, which also pose complex issues concerning political influence, foreign membership, and funding – the Forum further demonstrates its clear partisan tilt. Ultimately, some ideas will go unheard while others will go unchallenged. A one-sided discussion is no discussion at all.

Worse, the event is presented so as to invoke a xenophobic reaction against an ephemeral, and certainly unproven, foreign menace. The event presupposes a problem with “corporate political spending” and “foreign influence” in elections and is intended to create headlines that will mislead the public on an already complex and nuanced issue. This crass political calculus might be standard fare at campaign rallies, party caucuses, and in the halls of Congress, but it has no place at a bipartisan agency tasked with “fairly enforcing and administering Federal campaign finance laws.” More than anything, this “event” should serve as a warning to those who seek to repeal the bipartisan structure of the FEC.

As no one not already in agreement with Commissioner Weintraub’s well-known views was invited to this event, we at CCP felt it valuable to provide an additional perspective. The following are just a few facts about corporate and foreign political activity that should be noted at the Forum but, we fear, will not be because no advocates for First Amendment political speech rights have been invited to participate.

I. Spending by nonprofit groups has never been more than 4.3% of total campaign spending and declined in the last election cycle.

According to the Commission’s own data, approximately \$7.3 billion² was spent on federal races in the 2012 election cycle. Using figures from the Center for Responsive Politics (CRP), approximately \$309 million was spent by organizations that did not provide itemized disclosure of their donors in the 2012 cycle.³ This amounts to just under *4.3 percent* of the total money spent in the 2012 election cycle. On its own, \$309 million sounds like a lot of money. Placed in context, a shade over four percent of total spending on federal races loses its scare factor.

Assessing data from the 2014 cycle paints a similar picture. According to CRP and FEC data, in the 2014 election cycle, roughly \$178 million was spent by non-itemizing groups compared to roughly \$5.3 billion spent on federal races overall, or just *3.4 percent* of total political spending – nearly a full percentage point decrease from the 2012 cycle.⁴

² We derive the \$7.3 billion figure by adding the Federal Election Commission’s 2012 election cycle summary data for “Total Disbursements” (\$6,982.2 billion, <http://www.fec.gov/press/press2013/pdf/20130419release.pdf>) and the Center for Responsive Politics’ “Outside Spending by Nondisclosing Groups, Cycle Totals, Excluding Party Committees” bar graph data for 2012 (approximately \$309 million, <http://www.opensecrets.org/outsidespending/disclosure.php?range=tot>), as the FEC doesn’t report this information.

³ “Outside Spending by Nondisclosing Groups, Cycle Totals, Excluding Party Committees (2012),” Center for Responsive Politics. Retrieved on June 21, 2016. Available at: <http://www.opensecrets.org/outsidespending/disclosure.php?range=tot> (June 21, 2016).

⁴ We derive the \$5.3 billion figure by adding the Federal Election Commission’s 2014 election cycle summary data for “Total Disbursements” by “2014 Congressional Candidates” (\$1.6 billion), “Party Committees” (\$1.2 billion), and “PACs” (\$2.3 billion)

We cannot yet know for certain the amount of spending by nonprofits in 2016, but early indications suggest that it will be even less, as a percentage of total spending, than in previous cycles. According to CRP data, to date, \$36.9 million has been spent by groups that are not required to itemize their contributors' private information.⁵ That figure amounts to just 2.6 percent of the \$1.4 billion spent on federal races so far.⁶

This relatively trivial level of spending by nonprofit groups in the 2012, 2014, and 2016 election cycles shouldn't come as a surprise. Because 501(c) organizations are prohibited by law from having political activity as their primary purpose, they are severely curtailed by both FEC and IRS guidelines, and must limit their candidate advocacy both to maintain their exempt status and to avoid being classified as a PAC under FEC rules. In effect, then, a donor whose main objective is to support candidates faces the equivalent of a 50 percent or higher tax on political donations when giving to a 501(c) organization instead of a super PAC or other primarily political organization like a candidate or political party. As a result, it is unlikely that spending by 501(c) organizations will increase substantially as a percentage of total campaign spending.

II. Likewise, political spending by corporations comprises an insignificant portion of overall spending.

As has been the case for some time, corporations are – and continue to be – prohibited from donating directly to candidates and political parties.⁷ The *Citizens United* decision allowed corporate entities and unions to donate to organizations that make independent expenditures, including super PACs, social welfare nonprofits (like the Sierra Club and NRA), and trade associations (like the U.S. Chamber of Commerce and the National Association of Realtors).⁸ (Additionally, the decision allowed corporations and unions to make direct independent expenditures, though very few corporations have done so.) Super PACs, the most common vehicle for independent expenditures, received \$86 million in corporate donations in 2012, roughly 10 percent of total contributions to these groups.⁹ Though it is impossible to predict the final amount of donations by businesses to super PACs in the 2016 cycle, as of January 31, 2016, corporations have contributed \$68 million to super PACs, amounting to 12 percent of contributions to those groups – a similar percentage to the final total from the 2012 cycle.¹⁰

(\$5.1 billion combined, <http://www.fec.gov/press/press2015/pdf/20150403release.pdf>) and the Center for Responsive Politics' "Outside Spending by Nondisclosing Groups, Cycle Totals, Excluding Party Committees" bar graph data for 2014 (approximately \$178 million, <http://www.opensecrets.org/outsidespending/disclosure.php?range=tot>), as the FEC doesn't report this information.

⁵ "Outside Spending by Nondisclosing Groups, Cycle to Date, Excluding Party Committees (2016)," Center for Responsive Politics. Retrieved on June 21, 2016. Available at: https://www.opensecrets.org/outsidespending/nonprof_summ.php?cycle=2016&type=type&range=ytd (June 21, 2016).

⁶ We derive the \$1.4 billion figure by adding the sum of the "Total Spent" amount by all candidates for President (approximately \$764 million), Senate (approximately \$272 million), and House (approximately \$368 million). Retrieved on June 21, 2016. Available at: <http://www.opensecrets.org/overview/> (June 15, 2016).

⁷ 52 U.S.C. § 30118.

⁸ Corporations may also operate a PAC that solicits voluntary, personal contributions, subject to limits, from a small, select group of managers, shareholders, and their families. These traditional corporate PACs long pre-date *Citizens United*, having been specifically authorized in the 1974 Amendments to the Federal Election Campaign Act.

⁹ Matea Gold and Anu Narayanswamy, "How 'ghost corporations' are funding the 2016 election," *The Washington Post*. Retrieved on June 21, 2016. Available at: https://www.washingtonpost.com/politics/how-ghost-corporations-are-funding-the-2016-election/2016/03/18/2446e526-ed14-11e5-a6f3-21ccdbc5f74e_story.html (March 18, 2016).

¹⁰ *Ibid.*

Even if one assumes – though this is obviously not the case – that all political spending by social welfare organizations consisted of corporate funding, the highest possible proportion of corporate spending in the 2012 election cycle would be 5.4 percent.¹¹ And this figure significantly *overstates* the amount of corporate spending for multiple reasons. First, as a multitude of widely reported media accounts have demonstrated, many nonprofit groups are actually funded by politically engaged individuals and unions, not corporations. Second, data on corporate contributions includes instances of privately-held corporations contributing to super PACs. While such donations are *de jure* “corporate,” they are *de facto* from the individuals who own and control the corporation, and are regularly treated as such by those interested in the accurate reporting of disclosure data. Take, for example, contributions in the 2012 cycle from Melaleuca Corporation, widely attributed to the company’s founder and CEO Frank VanderSloot.¹² As explained in part III below, despite the fear mongering this Forum represents, multiple federal regulations prevent foreign sources from making this type of corporate contribution.

Moreover, the word “corporation,” independent of its legal meaning, evokes in the American mind a particular type of corporation – namely a very large, publicly-traded enterprise with significant brand recognition – Exxon, Starbucks, or Apple being typical examples. Corporations of this type comprise an even smaller subset of political spending. According to the Sunlight Foundation, from 2007-2012, the “[t]he [top] 200 corporate donors gave just \$3 million to super PACs, with the bulk of that amount a single \$2.5 million donation from Chevron to the Congressional Leadership PAC.”¹³

Lastly, the Forum’s single-minded focus on corporate political spending, and on that spending as a vehicle for foreign money to enter U.S. elections, ignores the fact that unions also contribute to super PACs, have foreign members and affiliates, and may transfer funds between them. Prominent labor organizations such as the Service Employees *International* Union and the AFL-CIO include member unions with foreign affiliates. The AFL-CIO alone has at least 28 affiliates containing the word “international” as part of that union name. Even the American Federation of State, County and Municipal Employees (AFSCME) appears to have Canadian members.¹⁴ Calls to regulate only corporate political spending more strictly show the Forum is less about stemming foreign influence and more about writing speech rules to favor certain political views.

III. Foreign money continues to be illegal in campaigns, and there is no evidence that there are any significant efforts by foreigners to circumvent this prohibition.

¹¹ We derive this figure by adding the sum of corporate donations to super PACs (\$86 million) and total non-disclosed spending (\$309 million) and dividing it by total election spending (\$7.3 billion) on federal races in the 2012 cycle. Sourcing for all three figures is available in Footnotes 9, 3, and 2, respectively.

¹² Stephanie Mencimer, “Pyramid-Like Company Ponies Up \$1 Million for Mitt Romney,” *Mother Jones*. Retrieved on June 21, 2016. Available at: <http://www.motherjones.com/politics/2012/02/mitt-romney-melaleuca-frank-vandersloot> (February 6, 2012).

¹³ Bill Allison and Sarah Harkins, “Fixed Fortunes: Biggest corporate political interests spend billions, get trillions,” Sunlight Foundation. Retrieved on June 21, 2016. Available at: <https://sunlightfoundation.com/blog/2014/11/17/fix-ed-fortunes-biggest-corporate-political-interests-spend-billions-get-trillions/> (November 17, 2014).

¹⁴ See “Participating union members from Puerto Rico, Canada, Guam and Virgin Islands and U.S. citizens are eligible.” “Union Plus Scholarship,” AFSCME. Retrieved on June 21, 2016. Available at: <http://www.afscme.org/members/advantage/education/union-plus-scholarship> (2016).

As with the existing ban on direct corporate donations to candidates, the Supreme Court's ruling in *Citizens United* also did not relax the prohibition on political activity by non-resident aliens and foreign corporations. Specifically, according to 52 U.S.C. § 30121, it is illegal for any "partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country" to make a contribution or expenditure in any U.S. election. Indeed, despite the President's expressed fear¹⁵ – regularly repeated since by those favoring greater restrictions on political speech – that the decision would allow "foreign corporations" to make expenditures in Federal elections, not only did *Citizens United* specifically not address that longstanding prohibition, but the Supreme Court has since summarily reaffirmed that ban.¹⁶

As a result of current law, fears of foreign influence through either corporations or tax-exempt groups are simply unfounded, relying on fear and supposition rather than evidence. Any corporation that wishes to spend funds on campaign activity must follow existing rules requiring that (1) U.S. nationals make those decisions instead of foreign nationals, including shareholders, and (2) that any funds must come from the corporation's domestic activities (and, again, not from foreign sources).

Similarly, nonprofit corporations may legally accept foreign contributions, but may not use those donations to influence elections. Corporate PACs, which are already funded solely by U.S. donors, must still have only U.S. citizens in decision-making positions.

Further, the Currency and Foreign Transactions Reporting Act of 1970, more informally known as the "Bank Secrecy Act" (coupled with regulations stemming from that law) already functions as a safeguard against any potential violations, requiring "[e]very bank [to] file with the Treasury Department... a report of any suspicious transaction relevant to a possible violation of law or regulation."¹⁷

* * *

Attempts, by some on the Commission and others, to stoke unfounded fears about foreign contributions are unfortunate and unbecoming. Spending by citizen groups that are not required to report the private information of their supporters to the government comprises a small subset of total campaign spending, well under five percent of the total. Undisclosed corporate contributions are an even smaller subset of that spending, and undisclosed foreign contributions are, at most, *de minimis*. Furthermore, current laws and regulations already provide significant safeguards for preventing such donations. In light of this, attempts to drum up controversy in this area appear intended not as substantive policy arguments but rather as purposely misleading statements intended to provoke an emotional response from the public in order to create pressure for extra-legal, and unfounded, administrative action. Especially in such a context, where the potential threat of foreign influence is slight and the concrete harm to Americans' First Amendment liberties is

¹⁵ President Barack Obama, "Remarks by the President in State of the Union Address," The White House, Office of the Press Secretary. Retrieved on June 21, 2016. Available at: <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address> (January 27, 2010).

¹⁶ See *Bluman v. Federal Election Commission*, 132 S. Ct. 1087 (2012).

¹⁷ 31 C.F.R. 1020.320 (Reports by banks of suspicious transactions).

great, some fair-minded attempt to provide an intellectually-diverse Forum could have been expected.

Options are available to the Commissioners to update and modernize regulations. The Commission's regulations on coordination, for example, were written prior to the existence of super PACs. Bipartisan agreement is possible and constructive solutions can be – and have been – discussed and debated. Certain Commissioners, however, including Commissioner Weintraub, have been instrumental in blocking consideration of such revisions unless their colleagues agree to have the FEC, with no statutory basis for doing so, implement through regulatory fiat the so-called “DISCLOSE Act” and other legislation rejected by Congress.

Using public resources and placing a public imprimatur on show forums such as the one taking place today do nothing to clarify or advance action to address problems with our campaign finance regulatory system. This event will shine no light on the debate surrounding money in politics, but it will certainly turn up the heat on an already disappointing debate.