Answers to Questions for the Record
from Chairman Graham, and Senators Booker, Feinstein, and Klobuchar
Senate Judiciary Committee
Hearing on Combating Kleptocracy:
Beneficial Ownership, Money Laundering, and Other Reforms
Hearing Date: June 19, 2019
Sheila Krumholz
Center for Responsive Politics

Questions From Chairman Graham

1. **Do you have an estimate of how much foreign money may be flowing into U.S. elections?**

Foreign nationals are prohibited from spending in U.S. elections but current laws provide a multitude of avenues through which illicit foreign money can seep into the American political system.

Foreign actors who are prohibited from spending in U.S. elections may create LLCs to function as conduits for secretly influencing the U.S. political system through contributions to outside groups.

Outside groups that disclose donors reported contributions from more than 1,117 LLCs during the last presidential election cycle in 2016, more than twice the number in the prior two election cycles. The amount of money flowing from LLCs to outside groups increased precipitously in recent election cycles. In the 2016 election cycle alone, more than $35 million came from LLCs, an increase from the $20 million from LLCs four years earlier and more than three times the $10 million in the 2014 election cycle. LLCs poured more than $17.3 million into outside groups in the 2018 election cycle.

Direct spending in U.S. federal elections by groups that do not disclose their donors has exceeded $1 billion since CRP began tracking it in 2006. Lax donor disclosure rules allowing "dark money" spending in elections deprives voters of the information they need to make informed choices and provides channels through which foreign money can enter the U.S. political system. Nondisclosing groups funnel money to super PACs and other outside groups, making their sources of funding only partially disclosed. Election-related spending by groups that do not fully disclose their financiers has surpassed $2 billion.

Lax disclosure requirements and enforcement of direct political spending by opaque groups is another channel through which foreign actors may exert influence in American politics. Donors may make direct contributions to groups such as 501(c)(4) nonprofits that spend millions in elections without donor disclosure or funnel money through layers of LLCs and nonprofits, adding extra layers of opacity between themselves and groups spending in elections. The scale and sophistication of these operations presents grave challenges to the integrity of the American political system.

2. **Can you suggest what steps need to be taken to stop foreign nationals from spending or engaging in activity to influence U.S. elections?**

Requiring disclosure of beneficial ownership information for entities that fund or play a significant financial role in operations spending to influence the U.S. political system would help provide the transparency necessary to detect illegal foreign money flowing into U.S. elections.

Examples of opaque structures that would be made more transparent by beneficial ownership disclosure requirements are entities listed as contributors to political groups in campaign finance filings and entities listed as payees or principals in FARA filings.

3. **Can you discuss how foreign interests use shell companies to bypass FARA requirements?**

    a. **Are there specific measures that Congress can take to address FARA that will improve the ability for law enforcement to discover and prosecute illegal foreign actors who are working to get around the lobbying laws?**

FARA provides a wealth of resources that can be used to identify illegal foreign actors working to skirt disclosure laws governing foreign lobbying and foreign influence operations targeting the U.S.

CRP's research has uncovered complex networks of LLCs, offshore accounts, shell corporations, and other veiled entities financing foreign influence operations targeting the U.S. These opaque operations use layers of shell entities to hide the primary beneficiary of their attempts to influence U.S. policy and public opinion.

Some foreign agents have amended filings to reflect the primary beneficiary of their campaigns but this may not happen until years after the spending, if at all. This leaves Americans in the dark about foreign interests behind messaging attempting to shape their views — messaging which may be buried in U.S. newspapers and presented through digital platforms without disclosure of the interests behind it.

Lack of transparency in financial transactions and corporate disclosures behind entities funneling considerable sums into the U.S. political systems poses a significant threat to national security. More rigorous beneficial ownership disclosure requirements would make the ownership of shell companies more transparent and provide a vital tool to expose foreign kleptocrats forming U.S. companies for the purpose of influencing U.S. elections.

Requiring all FARA filers to use web-forms and submit data in structured formats would enable the government to provide this information in an accessible form with little to no additional burden. This enhanced disclosure would increase the transparency of the activities disclosed by those foreign agents and ensure the same level of accountability from lobbyists representing foreign interests as domestic.

The Department of Justice has started the implementation of new processes for filing documents pursuant to FARA allowing registrants to submit data in a standardized format through a web form. However, this new system is not required to be used by registrants across the board and publicly available data is limited. It is important to continue implementation of a modernized FARA collection and disclosure system that collects and releases detailed data in a structured format that can be searched, sorted, and downloaded by the public.

Images and scanned documents converted to PDF format destroy critical aspects of the data included in the original formats and cannot be marked for sensitive information or used for automated calculations. As a result, essential information about their activities remains locked away in hard-to-digest image files that complicate the process of publishing FARA information in a machine-readable format. Even the basic disclosure of how much money they spend and which government officials lobbyists meet with is obscured.

Modernizing FARA's e-filing system would ultimately help ease the administrative burden associated with FARA disclosure. Registrants should be required to submit information in structured data formats unless they substantiate that it would be a hardship. Sample templates and forms wherever possible allow registrants to standardize their responses in formats that could be easily processed in machine-readable formats. The structured format would allow for easier submission by filers, more uniform reporting, and easier review of data, decreasing the burden on the government and filers while increasing transparency.

Structured data would provide the tools necessary for better oversight of compliance issues to ensure information about foreign actors trying to influence U.S. policy or public opinion is provided in an accurate, complete, and timely manner.

CRP has not conducted research on specific measures to improve the ability for law enforcement to prosecute illicit foreign actors.

Questions from Senator Booker

1. **One important part of the discussion surrounding beneficial ownership requirements centers on whether states should have their own individual data registries or whether the federal government should implement a uniform 50-state registry. Some parties have pointed out the issue of discrepancies or incongruent data collection that might arise under a state-led effort. Any legislative solution would only be as effective as its ability to successfully gather beneficial ownership information that is verifiable.**

a. Do you believe that having a uniform 50-state system, as opposed to having 50 different registries, would help prevent discrepancies and loopholes in the information available to law enforcement?

Assessing the appropriate roles of different levels of government in overseeing beneficial ownership disclosure is outside of the scope of CRP's expertise.

Nevertheless, it pays to bear in mind that political actors seeking to funnel money into U.S. federal elections without publicly disclosing their identities often shop around and incorporate entities in states with lenient disclosure requirements. Since an entity may operate in one state but be incorporated in another, weaker disclosure standards in one state can undermine other states' efforts to increase transparency.

b. What specific kinds of information should be collected as part of any beneficial ownership registry to best ensure the efficacy of such a registry?

Foreign actors who are prohibited from spending in U.S. elections may create LLCs and other shell entities to function as conduits to secretly funnel money into U.S. elections. These actors can run opaque operations through multiple layers of shell entities across multiple countries, often making it difficult to trace the ultimate source of funding.

The list of beneficial owners should include, at a minimum, the name of any individuals who meet the definition of beneficial owner and the names of any other legal entities used to control the corporation or LLC.

Additional information beyond the identity of beneficial owners and related legal entities could provide valuable resources for piecing together networks of opaque political operations and uncovering hidden agendas in political messaging. However, determining the best method to address legitimate privacy concerns is outside of the scope of CRP's work.

2. Witnesses who previously testified before this Committee have indicated that, under the proposed TITLE Act, states could still retain the discretion to release beneficial ownership information[1]. Many Americans are concerned about the amount of data available to public and private actors and the security of that information. A beneficial ownership disclosure requirement should account for Americans' legitimate privacy concerns.

[1] *See, e.g., Beneficial Ownership: Fighting Illicit International Financial Networks Through Transparency: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. (Feb. 6, 2018); *see also Outside Perspectives on the Collection of Beneficial Ownership Information: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs*, 116th Cong. (June 20, 2019).

a. What other loopholes or issues might arise that would allow international illicit actors to circumvent or undermine a beneficial ownership information registry?

Opaque political actors deploy a variety of constantly evolving tactics to hide their activities and identities while spending considerable sums to influence U.S. elections.

Foreign actors seeking to quietly influence U.S. elections may purposefully maintain interests below the threshold at which disclosure is required or provide inaccurate information about beneficial ownership.

However, even falsely identified beneficial ownership information may provide investigative links that could be used to piece together networks or trace the ultimate source of funds.

The efficacy of information reported will rest on finding verifiable methods of obtaining this information and workable accountability mechanisms to ensure its continued accuracy.

b. If you identified any other issues, how would a legislative proposal best address those issues?

The government's ability to successfully enforce beneficial ownership disclosure requirements is key to preventing foreign actors from circumventing them. Outlining clear standards and processes through which beneficial ownership information can be accessed by government officials or members of the public can promote transparency while protecting the rights of Americans.

Establishing a consensus on a clear, workable definition of a beneficial owner and other related terms or thresholds is crucial to applying disclosure requirements in a straightforward manner that does not open the door to loopholes. It is incumbent upon lawmakers and other implementing authorities to issue clear guidance defining these terms.

3. Witnesses who previously testified before this Committee have indicated that, under the proposed TITLE Act, states could still retain the discretion to release beneficial ownership information. Many Americans are concerned about the amount of data available to public and private actors and the security of that information. A beneficial ownership disclosure requirement should account for Americans' legitimate privacy concerns.

a. Should federal legislation prohibit states from disclosing beneficial ownership information through public agencies or "sunshine laws"?

b. Do you believe that states could make public the beneficial owner information collected under the True Incorporation Transparency

for Law Enforcement (TITLE) Act?[2] If so, please identify how states could be precluded from making that information public.

c. What other privacy issues do you believe might emerge from collecting beneficial ownership information?

d. What measures should be included in any legislative proposal to ensure that adequate privacy protections exist?

The Center for Responsive Politics conducts research on money in politics at the federal level. Assessing the adequacy of privacy protections in legislative proposals is outside of the scope of CRP's research.

4. In your testimony, you detailed examples of "dark money structures" and "illegal donations" that have "eroded public trust in the system." You also stated that "[m]ore rigorous beneficial ownership disclosure requirements to make the ownership of shell companies more transparent would provide a vital tool to expose foreign kleptocrats forming U.S. companies for the purpose of influencing U.S. elections." After the enormous influx of dark money into American elections in recent years, it has become clear that we must find ways to immediately and effectively combat illegal foreign interference in our elections.

a. Do you believe that the disclosure requirements contained in the proposed TITLE Act provide the type of "tool" you deem necessary to combat foreign kleptocrats' ability to influence U.S. elections?

Under the TITLE Act, if law enforcement had reason to believe a politically active corporation was making illegal straw contributions or hiding the identity of a foreign national, they could confirm the identities of its beneficial owners. Access to this information would greatly help law enforcement fight foreign kleptocrats' ability to influence U.S. elections. The existence of readily available beneficial ownership information could also serve to deter future incidents of unlawful political activity.

The TITLE Act notes that other countries have made beneficial ownership information available to the public. But the bill does not require states to make beneficial ownership information public, or to keep it from being public. By allowing for public disclosure of beneficial ownership, journalists, watchdogs, and concerned citizens could assist in revealing examples of illicit election activity by foreign kleptocrats.

b. What other "tools" could Congress provide to combat this foreign interference?

Congress has not updated the current patchwork of campaign finance regulations left behind by a number of court decisions that eliminated entire sections of the Bipartisan Campaign Reform Act

[2] S. 1889, 116th Cong. (2019), https://www.congress.gov/bill/116th-congress/senate-bill/1889.

of 2002. As such, the rules are outdated and ill-prepared for advances in technology. The Honest Ads Act would help deter foreign actors from influencing U.S. elections by subjecting political ads sold online to the same disclosure rules as those sold on TV or radio.

The Senate could urge President Donald Trump to appoint new members to the Federal Election Commission (FEC), the agency tasked with enforcing campaign finance violations. A fully functioning FEC would give commissioners a chance to tackle loopholes in the campaign finance system, and to enforce penalties upon foreign actors unlawfully interfering in U.S. elections.

Recent FEC guidance requires groups that spend at least $250 explicitly advocating for or against a candidate to report every donor giving at least $200 for "political purposes" in the calendar year. But the narrow focus of the guidance on express advocacy and lack of clarity about key definitions leaves the disclosure rules vulnerable for loopholes to be exploited. Since terms like "political purposes" have not been clearly defined in this context, some groups claim to not have received donations for those purposes or to have adopted policies against accepting funding earmarked for political purposes. The narrowly tailored focus on express advocacy also excludes substantial "dark money" spending on issue ads that clearly benefit a candidate in an election but avoid language explicitly calling for a candidate's election or defeat.

Contribution information reported by politically active nonprofits in tax forms serves a clear and valuable purpose to government entities and outside watchdogs. The amount of contributions reported on Form 990 Schedule B has provided the information necessary from groups like CRP to piece together opaque networks of political spending. The Schedule B is also used to distinguish and disclose the section 527 contributors list of political organizations, which are required to be released to the public. Protecting this disclosure regime is important to identifying otherwise hidden donors and expose potential foreign money flowing into U.S. elections.

More comprehensive and clear rules requiring disclosure of funding sources for all groups making significant campaign-related disbursements would give Americans more information about who is trying to influence their vote and help expose potential foreign money flowing into elections.

Requiring all Foreign Agents Registration Act (FARA) filers to use web-forms and submit data in structured formats would enable the government to provide this information in an accessible form with little to no additional burden. Requiring a structured data format so it can be searched, sorted, and downloaded by the public would ensure the same level of accountability from lobbyists representing foreign interests as domestic. The Department of Justice is implementing a system where registrants can submit data through a web form yielding standardized data. However, this new system is not required to be used by registrants across the board and publicly

available data is limited. It is important to continue implementation of a modernized FARA collection and disclosure system that collects and releases detailed structured data in a way that increases the accessibility of the data. Structured data would provide the tools necessary for better oversight and to ensure information about foreign actors trying to influence U.S. policy or public opinion is provided in an accurate, complete, and timely manner.

The efficacy of disclosure rules rests on uniform or interoperable rules, definitions, thresholds policies, and other factors related to disclosure across relevant offices in the Department of Treasury, Federal Communications Commission, Federal Election Commission, Department of Justice, and other agencies as well as the intelligence community.

Questions From Senator Feinstein

1. **What is the number one thing we can do to stop corrupt foreign actors from laundering money through the United States?**

Implementing clear and effective disclosure regimes such as beneficial ownership rules is crucial to exposing corrupt foreign actors attempting to quietly influence the U.S. political system through opaque entities.

2. **Under current law, is there any way to know for certain whether foreign actors are funneling money into US elections? What is needed to stop those illegal foreign contributions?**

While the prohibitions on foreign nationals spending or engaging in activities connected to influencing U.S. elections may be the letter of the law, there are numerous channels and vehicles through which foreign money can creep into U.S. elections without detection. There are many widely reported examples of foreign money finding its way into U.S. elections. Unfortunately, we cannot be certain whether foreign actors are funneling additional funds into U.S. elections. To stop illegal foreign contributions from being made, we must first be able to see them. To see them, we must have, and strictly enforce, rules that ensure transparency.

3. **How do we best ensure that US politicians are not subject to undue influence from foreign funding of their business interests?**

Limiting the influence from foreign funding of politicians' business interests is addressed by the Foreign Emoluments Clause of the U.S. Constitution (art. I, § 9, cl. 8) which prohibits all U.S. politicians from accepting any profit or gain from a foreign entity without the express consent of Congress.

Any enforcement mechanism that successfully prevents foreign entities from buying influence with a U.S. politician must ensure complete transparency for Congress to begin to do its due diligence in consideration of the facts and to fairly judge the reasonableness of the inquiry.

4. **The United Kingdom recently enacted "perhaps the most robust beneficial ownership legislation to date." [Senate Committee on Banking, Housing, and Urban Affairs, Statement of Steven M. D'Antuono (Acting Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation), May 21, 2019]. As a result, the UK now has public registries of beneficial owners of trusts, real estate, and companies. The legislation was enacted in response to findings by the National Crime Agency and the Parliament that "corrupt Russian funds laundered through the UK including via property, posed a threat to national security." [The Guardian, *Offshore owners of British property to be forced to reveal names*, July 23, 2018]. Similarly, the European Union is in the process of implementing its Fifth Anti-Money Laundering directive.**

    a. **Do you support the UK's anti-money laundering legislation?**

    b. **Do you support the anti-money laundering directives issued by the European Union?**

    c. **If we considered similar legislation, what, if any, modifications would you suggest?**

Supporting or opposing the UK's legislation or European Union's directives to combat money laundering is outside the scope of CRP's work.

Questions From Senator Klobuchar

1. **It is vital that we do everything we can to stop Russia from interfering in our elections again. I introduced the Honest Ads Act with Chairman Graham, legislation that would help prevent foreign actors from influencing our elections by ensuring that political ads sold online are covered by the same rules as ads sold on TV, radio, and satellite.**

    a. **Do you agree that additional transparency measures, like the disclosure requirements in the Honest Ads Act, will help to decrease the influence of foreign actors in our elections?**

The Center for Responsive Politics supports the Honest Ads Act as a bipartisan measure to make political ads more transparent which, in turn, will help prevent foreign individuals and entities from meddling in U.S. political campaigns.

Requiring digital ad platforms to maintain a public file of political ads — ads that contain a message relating to elections and political issues of national importance — would ensure that disclosure of Internet ads better corresponds with that of other ad platforms such as broadcast, cable, and satellite TV and radio. The impact of digital ad disclosure loopholes reaches beyond the campaign finance realm, holding the potential to impact national security, the integrity of U.S. elections and, ultimately, American sovereignty.

The file would contain a digital copy of the advertisement, a description of the audience the advertisement targets, the number of views generated, the dates and times of publication, the rates charged, and the contact information of the purchaser.

Some of the main online ad platforms have implemented voluntary disclosure regimes and released databases of online political ads. While this voluntary effort is a step towards transparency, these databases are not perfect and warrant close scrutiny and ongoing oversight. Some digital ad platforms do not provide any meaningful public disclosure of political ads purchased on their platforms at all.

Systematic disclosure requirements are necessary to ensure consistent standards across the board and to ensure adequate accountability measures are in place to address any inconsistencies or omissions in disclosure from the platforms.

Not to be overlooked is the Act's amendment of the law's definition of "electioneering communications" to include paid Internet and digital advertisements. Currently, only broadcast television, radio, cable and satellite communications are included. This will ensure that digital ads that refer to federal candidates in the immediate pre-election period are subject to campaign finance disclosure requirements.

b. I am concerned about Russia's use of social media to sow division and influence discourse. Are we responding to this propaganda in an effective way, and what more can we do to address foreign election propaganda?

Voters have a right to know who is behind digital ad spending in U.S. elections. Without more robust disclosure and enforcement, voters are more likely to fall prey to misinformation, disinformation, and mal-information campaigns and to share them with their networks.

Implementation of effective disclaimer and disclosure systems that make accessible information about political ads on digital platforms available to the public in a timely manner would provide important information necessary to identify potential foreign interference.

In our view, we must enlist and empower all interested stakeholders—from the government oversight and intelligence agencies to the media, scholars and the public—to help counter foreign propaganda aimed at influencing U.S. elections. We believe that a key aspect of that is ensuring transparency is required of the filers and enforced by government bodies tasked with protecting the integrity of our elections.