Written testimony of Sheila Krumholz
Executive Director of the Center for Responsive Politics
Before the U.S. Senate Committee on the Judiciary,
Subcommittee on Crime & Terrorism
re: Shell Corporations and Challenges to Campaign Finance Disclosure

June 26, 2018

Mr. Chairman and members of the committee, thank you for allowing the Center for Responsive Politics to submit this written testimony to the U.S. Senate Committee on the Judiciary Subcommittee on Crime and Terrorism, regarding shell corporations and the concerns they raise about potential foreign influence in the funding of U.S. elections.

The Center for Responsive Politics is a nonpartisan nonprofit research organization tracking money in U.S. politics and its effect on elections and public policy. Our vision is for Americans across the ideological spectrum to be empowered by access to clear and unbiased information about money's role in politics and policy and to use that knowledge to strengthen our democracy. Our mission is to produce and disseminate peerless data and analysis on money in politics to inform and engage Americans, champion transparency, and expose disproportionate or undue influence on public policy.

The concept of "one person, one vote" is a bedrock principle of our democracy, but most people acknowledge that individuals and entities that contribute large sums of money to candidates, PACs, and parties – and even to nominally independent super PACs and politically active nonprofits – are frequently given priority access to, and earn influence with, elected officials. It was this concern about money's disproportionate influence that spurred Congress to enact the Federal Election Campaign Act and establish the Federal Election Commission more than forty years ago. The law requires contributions limits and disclosure requirements to deter the use of wealth to unduly influence or corrupt government, and to ensure democratic integrity and that the system was worthy of the voters' trust and confidence.

Federal campaign finance law generally prohibits foreign nationals from directly or indirectly engaging in activity to influence U.S. elections. Foreign national is defined to include any foreign government, foreign political party, corporation, association, foreign partnership, or foreign citizen with the exception of foreign citizens holding dual U.S. citizenship and "green card" holders admitted as lawful permanent residents of the United States.

The Federal Election Campaign Act bans foreign nationals from directly or indirectly donating any money, contributing any "other thing of value," or otherwise spending in connection with any U.S. election. Even a communication, such as a political advertisement, made in coordination with a candidate's campaign or political entity may be considered an in-kind contribution under federal campaign finance law. This includes a broad prohibition on foreign nationals making political donations, in-kind contributions, payments, or expenditures, encompassing independent expenditures expressly advocating in coordination with a candidate or party as well as disbursements on electioneering communications.

Federal campaign finance regulations specify that it is unlawful for anyone to knowingly provide "substantial assistance" in the solicitation, acceptance, receipt, or payment of a prohibited contribution expenditure, independent expenditure, or other disbursement from a foreign national that is connected to U.S. elections. The broad prohibition on foreign nationals not only extends to activities leading up to U.S. elections, but also makes it unlawful for a foreign national to make any donations to a presidential inaugural committee.

While the prohibitions on foreign nationals spending or engaging in activities connected to influencing U.S. elections may be the letter of the law, it is become even easier for foreign money to creep into U.S. elections.

The Supreme Court's 2010 *Citizens United v. FEC* decision lifted the prohibition on corporations using their treasury funds to engage in political activities. Since *Citizens United*, a growing number of organizations that often do not disclose their donors have begun spending money on activities ostensibly aimed at influencing the outcome of U.S. elections. Since these groups often do not disclose their election activities and are not otherwise required to disclose their donors, it is virtually impossible to assess how much foreign money is influencing U.S. elections.

Under federal campaign finance law, corporations organized or based in foreign countries fall under the broad ban prohibiting foreign money influencing U.S. elections. The FEC has also specified that the prohibition on foreign nationals spending or engaging in activity to influence U.S. elections also makes it unlawful for partnerships and limited liability companies to attribute any portion of a political contribution to a partner who is a foreign national. However, current law does allow foreign-owned companies incorporated in the United States to make political expenditures so long as they attribute the funding to domestic operations and the spending decision is not under the control of a foreign national. Since the unique structure of limited liability companies often requires the entities to disclose only minimal information necessary for incorporation, LLCs have become attractive vehicles to move funds through different "shell" companies and other groups spending on U.S. elections without ever disclosing the source behind the money.

This leaves open the possibility that foreign interests may secretly funnel political spending using limited liability companies and other non-disclosing entities such as tax-exempt nonprofit groups organized under section 501(c) of the Internal Revenue Code that that can spend on some political activities but are not required to disclose their donors, enabling them to effectively act as proxies for foreign actors whose influence on U.S. elections is, under federal law, prohibited.

History is littered with examples of illegal donations by foreign corporations and national laundering money through those who are legally eligible to contribute, evasions that have diminished public trust in the system. Among the most troubling are campaign finance violations that involved attempts by foreign individuals, corporations and even governments to influence electoral outcomes. Those serving in Congress during the mid-1990s, or studying campaign finance as I was, may well recall the raft of scandals associated with attempts by foreign interests to inject funds into American elections.

Among others, this scandal saw huge donations to the parties by straw donors on behalf of a large Indonesian firm, Lippo Group; donations from foreigners associated with DNC fundraiser John Huang, Charlie Trie, and the Shai Lai Temple; and a $2 million transfer through a Hong Kong shell corporation providing loan collateral for the RNC-linked National Policy Forum. These are just some of the examples of a campaign finance system without sufficiently rigorous oversight that allowed frequent attempts to hack it, leading to a Senate Governmental Affairs committee report that concluded that access was sold at the highest levels of government and violations were committed on both sides of the aisle. Evidence of likely money laundering by individuals, some of whom were linked to foreign governments, was thoroughly researched and ultimately – and justly – condemned.

Today, eight years after the *Citizens United v Federal Election Commission decision* which unleashed a flood of secret money to be raised and spent to influence our national elections, the potential for foreign money filtering into our political system has grown larger and, given other attempts to meddle in elections, more serious. Recent court decisions have meant unlimited contributions from a much larger range of sources (individual and institutions) are much more important. Regulatory inaction has led to much less transparency in terms of the original sources of these funds. Given this, it would be foolish to think that the same types of outside forces that sought to undermine the integrity and independence of our electoral system two decades ago would not be interested and perhaps even more confident in their abilities to manipulate electoral outcomes to favor their own interests.

In 2012, CRP began using form 990 tax returns to track the financial activities and networks that politically active nonprofits operated in. The idea was that, even though a politically active nonprofit didn't have to disclose its donors to the FEC when it engaged in election spending, it's nonprofit donors, if it had any, had to disclose grants to the group on Schedule I of their own 990.

One particular roadblock we ran into in the course of our research came on a set of 990s that showed large grants to an alphabet soup of LLCs with names like POFN LLC and DAS MGR LLC. The employee identification numbers and addresses for these LLCs were not traceable in any public database – until we came across an EIN that had been erroneously entered. It corresponded to a 501(c)(4) social welfare organization that, we later found, listed the LLC as a "disregarded entity" – in layman's terms, a wholly-owned subsidiary of the parent group.

With that knowledge, we were able to piece together the network, and show that these nonprofits, tied closely to a network of wealthy donors, had used the disregarded entities as a further obstacle to transparency. That's to say that not only would we not be able to track any of the money coming into the nonprofits -- which were spending tens of millions of dollars in elections – but we also wouldn't able to track how the nonprofits were doling out money to other nodes in the network.

By forming the subsidiaries in Delaware, they insured that very little information about any of the people running the LLCs would be public. And even though all of the subsidiaries' finances are reported on their parent organizations' form 990s as a part of the larger group's finances, these subsidiaries are legally separate, with different EINs and addresses, meaning that it would have been nearly impossible to figure out their ties to their parent organization without their slip-up on one of the donor groups' filings.

To give a more recent example, it's notable that there is still a $1 million contribution to President Trump's inaugural committee that is essentially anonymous. The LLC that made the contribution, BH Group LLC, was formed just four months before it made the seven-figure donation to the inauguration. The address it listed in its incorporation papers in Virginia is a virtual office, and the only name on the document appears to be a paralegal at a law firm well known for helping political donors cover their tracks.

Our reporting has tied the BH Group to two prominent politically active nonprofits, who paid the firm a total of $1.7 million for "public relations." This is strange given that one of the groups doesn't have any public-facing operations, not so much as a website. Aside from its listing as a contractor on these 990s, it doesn't appear to have held itself out as a firm that can be hired to run public relations campaigns. It has no website or known employees, aside from Leonard Leo, who is not a public relations specialist, but a lawyer who serves as the executive vice president of the Federalist Society.

In some instances where disclosure is supposed to be relatively straightforward, such as with super PACs, we also face challenges. For example, the most active super PAC so far this cycle, Senate Majority PAC, has spent $16.8 million. At least $2 million raised by the group came from a 501(c)(6) trade association that doesn't disclose the dues-paying members that provide the group's funding. It's not just that this isn't public information, but dues-paying members aren't even reported to the IRS when the groups' file their tax returns.

Congressional Leadership Fund, the second most active super PAC this cycle, has received the bulk of its funding, $14.3 million, from a 501(c)(4) social welfare organization that also doesn't disclose its donors.

While these nonprofits help nominally disclosing super PACs obscure the sources of their funding, they do at least file tax returns with the IRS that are public. These tax forms are of limited use, given that they don't have much in the way of itemized financial information, but they are better than nothing.

When super PACs receive contributions from LLCs and other corporations, which in some cases are hard or impossible to trace, we rarely get any sort of documentation as to the donor entity's overall finances. For example, two other super PACs – America First Action and Honors & Principles PAC – have received hundreds of thousands of dollars from LLCs with names like DRT LLC and LZP LLC. The people behind those companies, the kind of business they conduct, and whether they are foreign or domestic is not immediately apparent.

The sources of money in politics and the many paths the money can take are now so numerous and frequently unknown and unknowable short of an inadvertent disclosure, a signed confession or a leaked document. Given that anonymous money now flows through the campaign finance system, there is no way to know how much of this money might be coming from foreign sources, or whether they are foreign individuals, corporations or governments.