

Richard Simpson

10-12-2015

Professor Noor

Environmental Law

Comment Paper

Federal Election Commission Receives Petition

On May 14, 2011, the Federal Election Commission received a petition from “Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. “The petition asks the Commission to modify its regulations requiring disclosure of contributions from corporations and other organizations to political committees” (federalregister.gov). Under the Federal Election Campaign Act, 52 U.S.C. 30101-46, the Federal Election Commission has authority to regulate require all political committees to abide by “organizational, record-keeping, and reporting requirements” (federalregister.gov). The requirement that all political committees keep contribution receipts and records of disbursements, as well as report on independent expenditures is implemented to help maintain a healthy and just election process. Through transparency, the democratic process is upheld and those who hold the power and ability to influence politics through monetary means are exposed as well as the agendas that often accompany contributions from corporations and the lobbyists deployed to achieve congressional support.

The regulation on campaign financing from corporations was overturned through a Supreme Court case in 2010. In the case of Citizens United v. Federal Election Commission, No. 08-205,558 U.S. 310(2010), corporations gained the rights of a “natural person” when it comes to limits on contributing from nonprofit corporations. The problem with this ruling is that

many of the nonprofit corporations are in fact sponsored or created by for profit major corporations such as Koch Industries. By allowing nonprofit corporation's political contributions to go unregulated, major corporations can secretly direct their political money into the pockets of their biggest allies, the congressmen and women who adopt the corporate legislative agenda instead of the agenda pushed forth by the constituents within the congressional districts. The Federal Election Commission does have the power to regulate the disclosure of contributions as it already has in place reporting requirements for what is defined as "natural persons". Natural persons are people. So, one can wonder when did corporations become people? Slowly corporations are gaining the rights of citizenship and man through various court rulings that are viewing corporations as people with rights to religion and political contributions. For example the case *Burwell v. Hobby Lobby* 573 U.S. (2014), granted religious freedom to closely held for profit corporations by allowing them to be exempt from a law its owners object to on religious grounds. The problem with this ruling is that the workers who see to the day to day functions of the corporation may not agree with the owners religious objections and depend upon certain drugs or healthcare such as contraception. Therefore the corporation will be leaving its employees with little to no options for the services they depend on their employer to provide.

The petition asks for the Federal Election Commission to implement an updated rule that will require "any person, other than a natural person, contributing an aggregate of more than \$1,000 in any calendar year to any political committee, whether directly or indirectly" (emphasis omitted), must do so from an account subject to certain reporting requirements" (federalregister.gov). More specifically the request is that the accounts disclose all original sources of election-related contributions and expenditures regardless of the amounts.

Implications for Contribution Transparency

Many in society today keep their political participation to a minimum in large part to what is seen as a system that is nonresponsive to the people and out of touch with the day to day lives of the general population. Those participating in elections in the United States varies by each election but usually sits around 60% for presidential elections and 40% during midterm elections (fairvote.org). This trend has been in place since the 1940s and some argue is only going to decrease as corporations continue to contribute larger and larger amounts to elections. However, the general consensus is that one singular vote does little within our current election process. If the corporate contribution process continues to go unregulated will our voter numbers dwindle even lower? I argue yes. The implications for allowing political contributions will only further societies ability to hold their representatives accountable which is a key factor of a representative democracy as in the case of the United States of America. Responsiveness is key to a democracy and if the branches of government continue to allow corporate influence within the legislative process the citizens will eventually feel left out of the process and seek other ways to govern themselves often through revolts or electing new officials. The costs associated with transparency are little to none for the citizens within a country but weigh heavily against those who are wanting to push secretive agendas through a bought congress. Corporations are aware of consumer buying power and understand that each individual makes a choice every day as to where they want to spend their money. Through backdoor dealings with congress, corporations are allowed to push corporate agendas while “saving face” with the general public. Some corporations may see a drop in numbers if the contributions made to certain nonprofit corporations came to be public knowledge.

How Much Money are We Talking

Every year in the news it is reported that the current election, midterm or presidential, will be the most expensive yet. The numbers are growing. The house midterm election for the year 2013-2014 alone an astounding \$1,036,383,477 was spent by both Democrats and Republicans combined (opensecrets.org). In 2012, a presidential year, the cost of the presidential race topped over \$2 billion alone (openecrets.org). Both these numbers are on the rise as corporate influence continues to make its presence known to elected officials. Candidates on both sides of the political spectrum continue to raise more money and experience rather high reelection rates and become what is known as “career politicians”.

It is important to note that the flow of money from corporations does not necessarily stop once the politician is elected to office. Once in office the corporations will use finances to sway a politician to push for s specific project or issue that will benefit the corporation. Corporate lobbyists crawl around Capitol Hill like rats in the NY subway. Once corporations have the politician in their pockets federal appointments start to take place and regulation form the different committees will either lessen or strengthen depending on what the highest bidder wants to see accomplished. Some examples I can offer would include Scott Walker, the Governor from Wisconsin who was backed by Koch Industries to help combat the presence of Unions in the state. Acting like a true puppet the Governor slashed bargaining rights away from the employees and handed a win to the big corporations. Voters were furious and tried to recall their newly elected Governor but failed to do so thanks to what would go down as one of the most expensive recall elections to date. Another example of corporate influence involves yet another Governor from Arizona named Jan Brewer. While her state was experiencing periods of peace with the

least amount of crime the state has seen in years, the Governor decided to enact stringent immigration and drug crime legislation known as SB 1070. The bill would enact very strict punishment for any illegal immigrant found within state borders. Some may argue that this is the right thing to do if someone is living in the country illegally but nobody can deny the purpose of such strong legislation during times where illegal immigration was at an all-time low. Two of Governor Brewer's top campaign staff members worked for CCA (Corrections Corporation of America), the corrections corporation that just so happens to hold a contract with the federal government as the largest for-profit prison as well as immigration detention. Is it possible that these close connections with a major corporation perpetuated the hype around illegal immigration? Absolutely! It is estimated that CCA has spent an estimated \$21.1 million in lobbying congress and other government officials to push immigration and crime legislation (opensecrets.org). No matter ones stance on illegal immigration, the fact that corporations hold such power over the democratic process should infuriate citizens of the United States of America. Not only is the CCA making profits around \$300 million, 100% of which comes from taxpayers via way of government contracts, as mentioned in the NY Times, but they are causing populations of minority groups to become demonized and punished harshly for non-violent crimes.

The Federal Campaign Act of 1971

The Federal Campaign Act of 1971 was created to increase disclosure of contributions made to federal campaigns. When the act was amended in 1974 the Federal Election Commission was created and charged with enforcing the law, facilitating disclosure and

administering the public funding program. The Federal Election Commission has seen challenges throughout the years with a major challenge being the Citizens United v. FEC case in 2010. This case struck down the ban on corporate and union independent spending which has been in place since the Taft-Harley law implemented in 1947. While the data is still young, the numbers are increasing since the passing of Citizens United. The Federal Campaign Act contains an express preemption clause, which is the law preempts state law when a state's law is in conflict with a federal law. Therefore, the FEC is a fairly strong agency when it comes to enforcement abilities. If properly managed, the FEC can ensure that America's most vulnerable democratic process, elections, are fairly maintained and operated.

Democracy

Responsiveness is a key factor in a democracy and how a government responds can either diminish or restore the public's faith in elected officials. Many argue that democracy in America is a myth or at least has disappeared to find itself replaced by what is known as an oligarchy. An oligarchy is defined rule by few versus democracy which is rule by the people. If corporations are influencing our political arena and the will of the people is being ignored then it is possible that America has moved to an oligarchy and our entire system changed due to campaign finance practices and unregulated flows of money into the government from outside sources.

To combat unregulated financing of elections citizens need to unite and understand that the American dream is becoming the American nightmare. Corporations are profit driven monsters that feed off the exploitation of every member of a capitalist society. Rules proposed through government agencies such as the FEC are implemented to protect the citizens of the U.S. and people should have no problem uniting under a common goal of trying to figure out where,

how, and why the money is flowing from the hands of lobbyists to the pockets of our elected officials.