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POLICY MEMO

Capitol, Inc. Project

ICAR International Corporate Accountability Roundtable

ABOUT THE AUTHORS

INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE

The International Corporate Accountability Roundtable (ICAR) is a civil society organization that believes in the need for an economy that respects the rights of all people, not just powerful corporations. We harness the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.

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THE PROBLEM: SOURCES OF CORPORATE INFLUENCE

Corporate capture of our public institutions is a significant threat to democracy and to the protection of human rights. When corporations have outsized influence over legislative and regulatory bodies, courts, and elections, they can successfully evade accountability and manipulate the State into putting corporate profits ahead of the public interest.

Corporate capture creates widespread harm—from rolling back environmental protection to benefit the fossil fuel industry and reversing key labor protections in service of special interest profits, to using taxpayer money to subsidize corporate abuse. While there are many ways that corporations gain influence over government bodies, most of their efforts employ political spending, lobbying, and "the revolving door"— which is when individuals move back and forth between industry and government.

Election Spending

Corporations secure influence over the government by spending money to influence the outcome of elections. Although corporations (and labor unions) are prohibited from contributing directly to federal candidates, political parties, and traditional political action committees (PACs), there are many ways that corporations and their allies can boost the campaigns of candidates aligned with corporate interests.

For example, corporations can create and operate traditional PACs, funded by certain company employees and shareholders, that can donate directly to candidates to advance the corporation's interests. Labor unions and other groups can also do this, but business PACs have historically dominated the space, accounting for the majority (73%) of total PAC giving.

Business PAC giving has been eclipsed by new vehicles for corporate political spending made possible in the last decade by a Supreme Court Ruling, *Citizens United v. Federal Election Commission*. Now, corporations and the wealthy individuals connected to them have a constitutional right to spend an *unlimited* amount of money influencing elections through so-called "independent" expenditures (or outside spending).

Thanks to Citizens United, corporations and the wealthy individuals connected to them can not only cut massive checks to Super PACs, they can also fully conceal their political spending from the public and their own shareholders by funneling it through "dark money" groups like trade associations, other 501(c) nonprofits, and Limited Liability Corporations.

The fact that Congress and the states are constitutionally prohibited from placing any limits on outside spending by corporations and wealthy individuals is a fundamental problem within our campaign finance system, but it is not the only one. **Other significant problems include:**

- **Outside groups like Super PACs are not permitted to coordinate with candidates, but the rules governing coordination are insufficient, rendering them largely ineffective.**
- **The Federal Election Commission does not adequately oversee or enforce federal campaign finance laws.**
- **Existing disclosure requirements can be gamed to avoid disclosing donors until after an election takes place through the use of "pop-up" Super PACs and other tactics.**
- **Corporations and other entities can donate an unlimited amount of money to Presidential Inaugural Committees.**

- **501(c) non-profit organizations are allowed to raise an unlimited amount of money from corporations and other sources but are not required to disclose their donors. These "dark money" groups are increasingly used to hide the true source of Super PAC funds.**
- **Disclaimer requirements for political advertisements do not provide enough information about who is behind the ad, and most online political advertisements are not covered by current disclosure and disclaimer laws.**

Lobbying

Corporations and industry groups can also exert significant influence over the federal government by lobbying congress and the executive branch and have put substantial resources towards doing so. For example, from 1998 through 2020 businesses spent $54.5 billion on lobbying the federal government and had 415,628 lobbyists. According to the Center for American Progress (CAP), "*business and industry far outstrip any other source of lobbying at a ratio of 34 to 1.*"

While transparency is the main way to address corporate lobbying (banning corporate lobbying would likely run afoul of the Right to Petition), there are weaknesses in the main law governing the practice of lobbying (the Lobbying Disclosure Act of 1995) "that allow much lobbying activity to go unreported." Tellingly, although spending on lobbying is growing, the number of registered lobbyists required to report in their activities has dropped. These weaknesses include, for example:

- **Lobbying disclosure laws do not adequately cover the behind-the-scenes work in support of lobbying campaigns (including strategic advising). As such, the current definition of lobbyists is easily evaded.**
- **Thresholds for registration are far too high, which contributes to the narrow scope of individuals and firms that are required to register and disclose under the LDA.**
- **The LDA does not require registrants to provide sufficient information about what specific laws and policies they lobby on or the positions taken on behalf of a particular client.**
- **Indirect lobbying through trade associations, business chambers, and other groups that do not have to disclose their donors allows corporations to further hide their lobbying efforts.**
- **Lobbyists can obtain significant leverage by participating in campaign fundraising (e.g., through bundling, hosting fundraisers) for the members of Congress that they also lobby.**
- **Enforcement of the LDA is insufficient and lobbying information is currently housed in two different places and is not easy for the public to access and use.**

The Revolving Door

The revolving door is a key mechanism through which corporate interests influence government decision-making. When government officials accept lucrative private sector positions in industry or as lobbyists (known as the traditional revolving door), their insider knowledge and connections can be harnessed to advance the interests of corporate clients and unfairly benefit their new employer in federal procurement processes, legislative and regulatory policy development, and enforcement. The other side of the revolving door is when corporate executives and business lobbyists secure key posts in government, which is known as the reverse revolving door.

Existing rules do not go far enough to rein in the revolving door. There are significant gaps and weaknesses that enable corporate interests to make use of the revolving door as a tool to influence and capture government bodies, for example:

- **Corporate incentive payments to encourage employees to enter government service are not currently prohibited.**
- **Current laws related to the revolving door focus on addressing post-employment restrictions and largely ignore individuals entering government.**
- **Executive Branch conflicts of interest requirements do not currently cover the financial interests of former employers or clients.**
- **Post-employment cooling-off periods are far too short and only prohibit a very narrow category of activity ("lobbying contacts"), leaving former federal officials free to engage in a wide-range of "behind-the-scenes" lobbying work and strategic consulting.**
- **Former executive-branch officials can lobby congress immediately after leaving government, and vice versa.**
- **Congressmembers are currently exempt from many ethics rules, including financial conflicts of interest rules.**

THE SOLUTION

Countering corporate capture of the federal government will require significant reform covering a variety of issues ranging from campaign finance, government ethics rules, and lobbying disclosure, among others. As a starting place, the following legislation and policy solutions would help to combat, reduce, lessen and/or add /or address the three sources of influence identified above.

- ***Pass the Freedom to Vote Act to ensure that our government works for us by ending the use of dark money and reducing the influence of big money in politics.***

  The Freedom to Vote Act is a bold and transformative legislative package that would create national standards to protect our freedom to vote, get big money out of politics, combat partisan election subversion, and guarantee that congressional districts are drawn to give fair representation for all. The Freedom to Vote Act would help address the issue of corporate political spending to influence the outcome of elections in a number of ways, including by:

  (1) Shining a light on corporate political spending and dark money, for example, by closing loopholes that have allowed industry associations, LLCs, and other "dark money" groups to keep their donors secret and to cloak the true source of funds spent by other groups like Super PACs.

  (2) Strengthening disclosure and disclaimer requirements for political advertisements to ensure the public knows who is behind the ads they see.

  (3) Tightening restrictions on Super PAC – Candidate coordination, including by creating a new category of coordinated spenders.

  (4) Enhancing the administration of campaign finance laws by strengthening the Federal Election Commission's enforcement process.

  (5) Empowering small donors to help counter the influence of corporate dollars in our elections by establishing a voluntary small-donor financing program for House candidates.

- ***Pass the Democracy for All Amendment to overturn Citizens United v. FEC and give the power in elections back to people, not big business.***

  Getting at the root of the outsized influence corporate interests have over our elections will require amending the Constitution. Proposals for such an amendment have already been put forward, including The Democracy for All Amendment (H.J.Res. 1). This is a bipartisan Constitutional amendment that affirms the right of states and the federal government to pass laws that regulate spending in elections and specifies that in doing so they may "distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections."

- ***Ban contributions to lawmakers from entities under their committees' jurisdiction to minimize perverse incentives in legislation by preventing conflicts of interest.***

  Some groups have advocated for legislation "to make it unlawful for members of Congress to accept campaign contributions from entities that fall within the jurisdiction of their committees." For example, under a ban like this, members of the armed services committees would generally not be allowed to raise money for reelection from the defense industry.

- ***Ban lobbyists from fundraising for federal candidates to reduce the leverage that lobbyists have over our elected officials.***

  Lobbyists should be prohibited from fundraising for candidates or members of congress that they lobby, and conversely, individuals engaged in fundraising for candidates or members of Congress should be

prohibited from lobbying them. The type of fundraising that should be covered includes "bundling," hosting or underwriting fundraising events, or soliciting donations, among other activities.

- ***Strengthen federal lobbying disclosure requirements to unveil the corporate interests influencing legislators behind closed doors.***

  The Lobbying Disclosure Reform Act (LDRA) of 2020 incorporates several recommendations put forward in 2011 by an expert task force of the American Bar Association's Section on Administrative Law and Regulatory Practice. The Task Force on Federal Lobbying Law's proposals laid out in the report Lobbying Law in the Spotlight: Challenges and Proposed Improvements, were the result of extensive deliberations and reflect broad consensus on needed reforms. The LDRA would:

  (1) Amend reporting thresholds to broaden the scope of who is required to register;

  (2) Require lobbyists to report more specific information about what they lobby on;

  (3) Increase transparency of strategic lobbying services;

  (4) Improve useability of Lobbying Information through unique identification numbers; and

  (4) Move enforcement from U.S. attorney for DC to attorney general.

- ***Increase transparency around industry association & business chamber membership to prevent corporations from hiding their efforts to influence government decision-makers.***

  Requiring industry associations and business chambers to disclose a list of their members, as well as to disclose information about the association or chamber's political spending and lobbying activities would help shine a light on the misalignment between corporate positions and the activities of the industry associations or chambers they support through their dues.

- ***Ban corporate PACs to protect elections from excessive corporate influence.***

  The Ban Corporate PACs Act would prohibit for-profit corporations from establishing or operating political action committees (PACs).

- ***Expand and strengthen revolving door provisions to prevent conflicts of interest and restrain former government officials from exploiting their influence for corporate gain.***

  Additional statutory cooling-off periods and related requirements should be incorporated into law to further protect against the harmful impacts of the traditional revolving door. In particular, federal revolving door restrictions should be strengthened in the following ways:

  (1) Ensure that all post-employment cooling-off periods last for a minimum of two years, but ideally longer;

  (2) Ensure that all congressional staff and executive employees are banned from lobbying their former office or agency during the cooling-off period;

  (3) Expand cooling-off periods for elected officials and very senior executive branch officials to prohibit them from lobbying any part of the federal government for a set period of time after they leave office; and

  (4) Require officials leaving government service to enter into a binding revolving door exit plan and to report periodically on compliance.

- ***Appoint a single, senior White House official to oversee, enforce, and communicate about the administration's ethics program.***

  Under current rules, the Office of Government Ethics does not have the authority to investigate or enforce ethics requirements within the White House. Instead, the primary responsibility for ensuring compliance falling to the Counsel to the President, who "has an expansive slate of responsibilities and traditionally does not have a "public diplomacy" role to communicate on

day-to-day ethics matters." This is not ideal and results in open questions about ethics issues involving senior members of the Administration. Appointing a single, senior official as the ethics point person within the White House would help to address this accountability gap.

- ***Establish an annual cabinet-level meeting on government ethics to facilitate peer-learning and accountability.***

  In order to elevate the topic of ethics within the Executive Branch and promote accountability across federal agencies, an annual and public cabinet-level meeting on ethics and ethics reform should be established. In addition to facilitating peer learning and cross-pollination of ideas across agencies, a public meeting like this could also serve as a key issue forcing event.