

**Questions for the Record from Chairman Lindsey Graham  
To Clay Fuller  
U.S. Senate Committee on the Judiciary  
“Combating Kleptocracy: Beneficial Ownership, Money Laundering, and Other Reforms”  
Submitted on June 26, 2019**

1. *What has your research shown with regard to beneficial ownership issues and any link to kleptocrats’ ability to hold onto power?*

In my research I have found that one of the best predictors of how long a modern authoritarian ruler, of any type, will stay in power is the extent to which he embezzles sovereign wealth and invests it abroad, typically in Western rule of law democracies. In this same line of research others have found that modern dictators are most vulnerable, and therefore most likely to pretend to be liberal democrats, during their first two years in power as they seek to “find all the money.” After that they do not typically become vulnerable again until their physical health begins to decline.

Connecting this to beneficial ownership, it is commonly known that anonymous shell companies are a prolific vehicle for money laundering (i.e. transforming the profits of illegal activity into less traceable currency or value). This would include the laundering of foreign stolen sovereign wealth by kleptocrats.

2. *Can you describe situations where there would be legitimate business reasons for obscuring the beneficial owners of a company?*

There are no legitimate business reasons that I am aware of for obscuring the beneficial owner(s) of a company. However, there are any number of legitimate reasons to keep beneficial ownership information private. For example, business entities that cater to specific religious or ethnic minority communities, famous people, very wealthy people, or political refugees all may legitimately wish to maintain their ownership of companies private. Conversely, they may also legitimately wish to disclose that information to the public by choice. If ownership information is mandated to be made public in a central registry (as it is in the UK), it becomes available to people in any other country, including adversarial ones, because whatever is made public in the United States is almost instantly available anywhere in the world now. In the event that a registry of beneficial ownership is made public, there could be legitimate *security* reasons for obscuring the beneficial owners of a company. In the case of a public registry, this dynamic defeats the purpose of beneficial ownership transparency in the first place. This is why in my testimony I emphasized the need to treat ownership data with a similar level of privacy and protections that banking data enjoy.

3. *Would requiring the disclosure of beneficial owners violate states' rights or impede on an individual's right to privacy?*

I cannot make a determination on this question in a legal sense, however, as a social scientist I would assume that it does not. The reasoning for this assumption is that most businesses already give up this simple information (name, ID#, and address) for many things local, state, federal, and private. Further, I would note that businesses and individuals freely give up far more information than this about themselves to now global social media and other business entities. Further, I would assume that if one did not want to disclose this information they would have to right to choose to not register such a legal entity.

4. *Can you briefly discuss the approaches other countries are taking to beneficial ownership disclosure?*

There are a wide variety of approaches, and that is why I think this is a unique opportunity for the US to lead the way. It appears to me that most countries understand the need for some level of greater beneficial ownership transparency, but there are two core issues that are most often debated: 1) whether or not the disclosures should be made public and 2) whether and how to verify disclosures.

a. *Where does the United States stand in the international community when it comes to incorporation transparency?*

Among other developed democracies, the United States is seen as being slow, conservative, and deliberate in its approach to the issue. As is often the case, the US has been very incremental in its approach. It is my sense that most other countries around the world are studying the issue closely, but due to the size and strength of the US economy, they are waiting to act until they see where the United States eventually comes down on the issue of beneficial ownership.

5. *In the month that followed September 11th, 2001, the U.S. Treasury began fighting al-Qaeda on the financial front, freezing assets and taking down its funding networks.*

a. *What would it look like for Treasury and its international counterparts to similarly crack down on kleptocracies and their asymmetric tools?*

In my opinion, it would look like a principled, rule of law, approach to dealing with a wide variety of foreign policy and domestic issues. I believe that the infrastructure needed for such a task is largely already in place.

b. *What new authorities, resources, and guidance are needed?*

I would assume that to properly mount a challenge to authoritarian corruption, FinCEN would need a larger budget, more staff, and a directive from Congress.

6. *How do Chinese companies use anonymous shell companies to hide the influence of the Chinese government and to evade sanctions on rogue regimes like North Korea and Iran?*

Wherever there are low levels of transparency and a near or total monopoly on political power by one person or group, such as in China, the state can create chains of ownership that make it extremely difficult to find out who owns what. Crucially, the “private sector” can never truly be “private” in a country with a non-democratic government, without an independent judiciary, and lacking in the rule of law or individual rights.

7. *What is the role of public diplomacy in combating kleptocracy?*

Public diplomacy plays a variety of important roles in all issues.

a. *Would an annual kleptocracy report issued by the State or Treasury Department be helpful?*

More information is always useful on some level. Lists and government reports have proven to be very useful in other areas for governments, non-governmental organizations, and businesses. The core challenge to developing such a report would be to clearly define kleptocrat and kleptocracy. The National Endowment for Democracy published a special report on the issue last year that would be very helpful in this endeavor, but I would forewarn that without a transparent methodology for identifying kleptocracies (that can be replicated by academics and the NGO world), State or Treasury would run the risk of being credibly accused by those included in the report of it being a political tool.

8. *How can multilateral structures be equipped for the fight against kleptocracy? Should an International Anti-Corruption Court be established either similarly to or as a subsidiary of the International Criminal Court?*

I do not see any harm in an International Anti-Corruption Court. However, I would warn against any such a court including deeply authoritarian member states. In the post-Cold War era, authoritarian states have become highly adept at using the transparent structures of international institutions, such as the WTO and the UN, to render them ineffective. I have suggested in a recent report that the G7 should be formalized and made to be exclusively for only the most powerful and developed capitalist democracies. I have also suggested that the Financial Action Task Force (FATF) begin focusing on issues surrounding trade-based money laundering (TBML) and foreign trade zones (FTZs).

**Questions for the Record from Senator Charles E. Grassley**  
**U.S. Senate Committee on the Judiciary**  
**“Combating Kleptocracy: Beneficial Ownership, Money Laundering, and Other Reforms.”**  
**Submitted on June 26, 2019**

**Dr. Clay Fuller**

1. If beneficial ownership information were collected in a more systematic and uniform way, would that assist in criminal investigations? How?

Yes. It would not stop bad actors from lying or continuing to try to hide the profits of corruption and criminality, but it would create a better trail for law enforcement to detect trends and connect dots. In law enforcement, business, finance, and politics, the power of computers and software can be better leveraged for good with more credible data and information.

2. Are our current laws on money laundering and corporate transparency effective in destabilizing transnational criminal organizations? If not, please explain why we must update our laws on investigating and prosecuting money laundering, and increasing corporate transparency.

Yes our laws are effective, but they could be better. US laws are typically considered to be the “gold-standard” worldwide. But with beneficial ownership the US is seen to be lagging behind, and this is handicapping our capabilities. The ease of creating anonymous shell companies in the US has become a loophole that hamstring our capacity to disrupt transnational criminal networks and tips the balance of compliance burdens more heavily on businesses and financial institutions. It also creates a damaging image worldwide that while the US works to disrupt criminal networks it allows them the abuse the US economy in laundering the profits of criminal activity.

3. At a Senate Judiciary Committee hearing I held on money laundering in 2017, a witness testified that “trade based money laundering is the largest money laundering methodology in the world. It’s also the least known, least understood, and least enforced.”
  - a. Do you agree with that assessment of trade-based money laundering? If so, why is it particularly difficult to identify and enforce?

Yes, I agree with this assessment. Trade-based money laundering (TBML) is complex. Some have referred to it as an art form. It appears to me that financial institutions, industries, NGOs, governments, and law enforcement agencies are very well aware of the problems with TBML. It appears that one of the biggest problems is that the general public is unaware, and I believe that this is where Congress can play an important role. Because TBML schemes are so complex, combatting them will require making larger numbers of people aware of how they operate in order to better identify and then mitigate the problems created by TBML. I am currently helping organize a conference on the issue and researching the connection between TBML issues (impacts and solutions) and Foreign Trade Zones (FTZs).

- b. What steps can be taken to better identify and seize the proceeds of trade-based money laundering crimes?

Diverse groups have been studying this problem for some time now. One step that could be taken would be to order an official report, completed jointly between Commerce, Treasury, and Justice, that provides an official definition of what TBML is, and provide guidance on how to identify and report cases for investigation. Another important step would be to better identify and define what Foreign Trade Zones (FTZs) are, the important role they play in a global economy, and the unique risks and opportunities contained within them.

**Hearing on  
“Combating Kleptocracy: Beneficial Ownership,  
Money Laundering, and Other Reforms”**

**Questions for the Record for Dr. Clay R. Fuller  
Submitted June 26, 2019**

**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?**

While I do not think we can ever completely stop this behavior, the best first step the US could take in mitigating the risks of money-laundering by corrupt foreign actors is to create a national, private beneficial ownership registry in which the information is maintained and protected by FinCEN.

**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?**

Campaign finance is not my area of expertise. However, as outlined in my recent report, “Dismantling the Authoritarian-Corruption Nexus” (published by the American Enterprise Institute), I outline how shell companies have played a role in election interference, which is a different dynamic than contributions.

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

I’m unaware of anything outside of existing US law that would effectively address this issue.

**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?**

In my opinion, the UK approach is praiseworthy in its aims. In objectively looking at it, it appears to me that the public nature of its “Persons with Significant Control” (PSC) beneficial ownership registry is not a workable approach in achieving those laudable aims. In my personal capacity, I believe that a private beneficial ownership registry—meaning available

only to law enforcement agencies with proper oversight and compliance officials that can be held accountable for any misuse or mishandling of the registry—would be the most effective way to handle problems with money-laundering.

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

I will refer you to my answer to question 4a above. While I do applaud the efforts of the European Union, I also believe that the United States has an opportunity to lead the world on this issue.

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

I will refer you to my answer to question 4a above. While there is no proposed legislation in the United States that I am aware of that calls for a public beneficial ownership registry, I would like to emphasize the importance of privacy rights as it pertains to a well-functioning market economy. If anything, I would suggest strengthening privacy rights while increasing transparency (transparency objectively defined as “government disseminated credible aggregate economic data,” meaning that in the aggregate, and accessible only to law enforcement or qualified agents, individual privacy rights are maintained through the rule of law and independent judiciaries).

**5. Given the international character of Russia’s illicit financial network, and its threat to all rule of law nations, what is being done at NATO to develop a joint response to this threat? What ought to be done?**

According to an August 2018 report by the Department of the Treasury:

“Treasury and the Department of Defense partnered to establish a new Treasury Liaison Officer position at U.S. European Command (EUCOM) in Stuttgart, Germany. This new Treasury liaison role will facilitate existing and establish new finance-related cooperation and information sharing among the Department of Defense, Treasury, and NATO allies.”<sup>i</sup>

Beyond this development, I am unaware of any additional efforts by NATO to pursue Russian illicit finance. Greater cooperation among NATO allies is a crucial component in any effort to dismantle to authoritarian-corruption nexus. I have outlined what the authoritarian corruption nexus is in my recent report on the issue.<sup>1</sup>

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<sup>i</sup> US Department of Treasury, “Report to Congress Pursuant to Section 243 of the Countering America’s Adversaries Through Sanctions Act of 2017 Regarding Interagency Efforts in the United States to Combat Illicit

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<sup>1</sup> Fuller, Clay R. “Dismantling the Authoritarian Corruption Nexus.” July 8, 2019. American Enterprise Institute. [https://www.aei.org/publication/dismantling-authoritarian-corruption-nexus/?utm\\_content=buffer9f0a0&utm\\_medium=social&utm\\_source=twitter&fbclid=IwAR3B6A4yGiiRckAmDdzMF0Ph5Lu7Oz5akB5gbYYgvqzkMrEZHxepiVpOL3E](https://www.aei.org/publication/dismantling-authoritarian-corruption-nexus/?utm_content=buffer9f0a0&utm_medium=social&utm_source=twitter&fbclid=IwAR3B6A4yGiiRckAmDdzMF0Ph5Lu7Oz5akB5gbYYgvqzkMrEZHxepiVpOL3E)

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Finance Relating to the Russian Federation,” August 6, 2018, 13,  
[https://home.treasury.gov/sites/default/files/2018-08/U\\_CAATSA\\_243\\_Report\\_FINAL.pdf](https://home.treasury.gov/sites/default/files/2018-08/U_CAATSA_243_Report_FINAL.pdf).



1. Can you share examples of instances in which anonymous shell companies were used to defraud the Department of Defense?

For years, the Department of Defense has struggled to combat the abuse of anonymous shell companies by actors seeking to defraud American taxpayers. A litany of high-profile examples are included in two recent reports by the Global Witness and the FACT Coalition. In one instance cited by Global Witness:

“A U.S.-Afghan contractor funneled at least \$3.3 million of U.S. taxpayer dollars to notorious Afghan power brokers, who deliberately hid their ownership interests in companies within the contractor’s network to avoid association with the insurgency. These individuals in turn funded the purchase of weapons for the Taliban and insurgents.”<sup>i</sup>

In another case cited by the FACT Coalition:

“An investigation revealed that Eagle Logistic Solutions and Eagle Logistics Aerospace, two anonymous Wyoming companies registered at the same address, won four contracts worth more than US\$50,000, and sold knock-off parts to the Pentagon. In one case, the government found that the firms “knowingly supplied air and fluid-filtering kits for military tractor-trailers between 2001 and 2005 that were reverse-engineered in Turkey to look like they were made by Parker Hannifin, the required manufacturer.”<sup>ii</sup>

Ultimately, the exploitation of America’s weak beneficial ownership transparency requirements has facilitated tens of millions of dollars’ worth of fraud at the expense of US taxpayers. While the fraud committed against the Department of Defense is certainly egregious, it represents only the tip of the iceberg when one considers the countless examples of fraud committed using anonymous shell companies against other government agencies at the state and local levels.

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<sup>i</sup> Global Witness, “Hidden Menace: How Secret Company Owners are Putting Troops at Risk and Harming American Taxpayers,” July 2016, 8, <https://www.globalwitness.org/en/reports/hidden-menace/>.

<sup>ii</sup> David M. Luna, “Anonymous Companies Help Finance Illicit Commerce and Harm American Businesses and Citizens: A Need for Incorporation Transparency,” FACT Coalition, May 2019, 19, <https://thefactcoalition.org/wp-content/uploads/2019/05/Report-Anonymous-Companies-Help-Finance-Illicit-Commerce-and-Harm-American-Businesses-and-Citizens-FINAL.pdf>.

**Clay Fuller**  
**Jeane Kirkpatrick Fellow**  
**American Enterprise Institute**  
**Questions for the Record**  
**Submitted June 26, 2019**

**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?

Yes. Uniformity in the collection of information is critical to its usefulness in leveraging computing and other technologies.

- 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?

Most proposals require a name, ID#, and an address. I believe this is the current requirement for financial institutions regarding the Customer Due Diligence (CDD) rule from Treasury last year. I am not convinced that anything more is needed.

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

If a registry is made public, illicit actors will leverage that information to their own benefit. Furthermore, a public registry (which is not being proposed in the US, but exists in the UK) creates an incentive for people to obfuscate the reported information as many company owners do not want their ownership to be known worldwide. For instance, business owners that cater to specific religious or ethnic minorities, political refugees, and others may have valid security reasons for not wanting their ownership status to be easily available to anyone. Authoritarian states, criminals, and terrorists may use a public registry to target dissidents and political opponents in any number of ways. If the registry is strictly maintained and protected by FinCEN, the US Congress would be able to exercise proper oversight and accountability for how the registry is used. Furthermore, the information would be more credible (i.e. less of an incentive to obscure or obfuscate reported information) and thus could be more effectively leveraged for the registry's goal of creating a more level playing field.

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

Most existing legislative proposals appear to be largely sufficient. If anything, I would suggest strengthening privacy rights while increasing transparency (transparency objectively defined as “government disseminated credible aggregate economic data,” meaning that in the aggregate, and accessible only to law enforcement or qualified agents, individual privacy rights are maintained through the rule of law and independent judiciaries).

2. Some parties have expressed concern that requiring small businesses to provide beneficial ownership information to a registry would place a burden on small business owners. One such concern involves the potential burden of needing to seek outside counsel to interpret who the beneficial owners of a business really are. We should seek solutions that root out dark money and shed light on shell companies used by international illicit actors, but we also want to be mindful of limiting the burdens placed on legitimate American small businesses.
  - a. Do you foresee any significant burdens that would be placed on small business owners—including, for example, requiring them to seek outside counsel—from a beneficial owner disclosure requirement?

No, I do not. I believe that small business owners largely know who they are.

- b. If so, do you believe that proposed legislation like the True Incorporation Transparency for Law Enforcement (TITLE) Act<sup>1</sup> sufficiently addresses these concerns by providing an adequate definition of “beneficial owner”?

Treasury’s Customer Due Diligence (CDD) rule issued last year, contains a definition of beneficial owner that appears to be widely accepted.

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<sup>1</sup> S. 1889, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1889>.

- c. If you identified any additional burdens not solved by the aforementioned definition of “beneficial owner,” how would those concerns be resolved?

I have not identified any additional burdens.

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.<sup>2</sup> 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”?

I believe that is an issue that states and Congress will need to work this out. As noted in my written testimony, “sunshine laws” have had both positive *and* negative effects (see “The Dark Side of Sunlight” in Foreign Affairs, May/June 2019). In order for transparency to operate as a strategic public good in combatting international money laundering, it must be accompanied by strong individual privacy rights, meaning that people (in this case, company owners) should have some level of choice over what they want to be made public or private. In this case it may be prudent for Congress to directly address this issue of disclosure with the states. Ultimately, I believe the states also have some say in this area, which is why I state that Congress will have to work through this specific issue of “sunshine laws.”

- b. Do you believe that states could make public the beneficial owner information collected under the proposed TITLE Act? If so, please identify how states could be precluded from making that information public.

I believe that states and the federal government have enumerated powers and it would up to states and Congress to work out where this issue fits into our system of federalism.

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

None that I am currently aware of. I believe the information proposed to be collected is relatively simple and straightforward.

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

If collected at the national level, Congress could require that the registry be handled by FinCEN in the same manner that banking information is protected.

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<sup>2</sup> 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).