

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

**Questions for the Record for Mr. Tom Firestone  
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?**

*Aggressively investigate suspected money laundering in the U.S. and, where appropriate, prosecute it.*

- 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?**

*No. The lack of transparency around anonymous shell corporations can make it extremely difficult to identify the ultimate source of certain funds.*

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

*Possible violations of campaign finance laws, in particular, Title 52, Section 30121, and the Foreign Agent Registration Act should be aggressively investigated and, where appropriate, prosecuted. In addition, Title 52, Section 30121(a)(2) should be amended by adding the words "directly or indirectly" between "a person" and "to solicit" and adding the words "or an agent of a foreign national" after the words "from a foreign national."*

- 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?**

*I am not a U.K. qualified lawyer and so it is therefore difficult for me to comment authoritatively. However, I would note that the Financial Action Task Force (FATF) Mutual Evaluation Report on the U.K., which was issued in December 2018 praised the U.K.’s*

beneficial ownership legislation.<sup>1</sup> In particular, the FATF report stated that "The UK has acted as a global leader in [transparency and beneficial ownership], promoting the use of public registers of beneficial ownership and using a variety of fora to encourage transparency in this area....The UK acknowledges the risks posed by UK corporate structures and Scottish Limited Partnerships, and is taking steps to mitigate these risks. This includes its recent establishment of the People with Significant Control (PSC) register which is fully public and highly transparent...."<sup>2</sup>

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

*Yes, generally speaking. The EU's money laundering directives are based on FATF's 2012 Recommendations as updated. Increasing transparency on who ultimately owns and controls corporate structures is a key step in creating an environment of trust and accountability. As EU directives impose minimum standards, Member States may choose to apply more stringent measures and so together with different approaches to implementation across the EU, each State's AML regime may vary in its detail.*

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

*Based on the FATF report, it appears that the information in the registry is largely unverified and sometimes inaccurate. Any US legislation should be drafted in such a way as to ensure that the penalties for providing false information are significant enough to ensure accurate reporting. In addition, the information in the UK registry is publicly available, which may raise privacy concerns. Similar legislation in the US should adequately address the privacy interests of those providing the information in order to ensure that the register is not abused for improper purposes.*

5. The PATRIOT Act amended the Bank Secrecy Act to require certain industries in the United States to implement anti-money laundering systems, including the real estate industry. In the past few years, the Treasury Department has issued Geographic Targeting Orders, which require U.S. title insurance companies to obtain the beneficial owners of certain high-value, cash real estate transactions, in certain major cities.

**a. What is the national security risk of foreign investment in real estate that is owned, or that benefits, US lawmakers**

*Real estate is an asset and lack of transparency around the ownership of real estate raises the same concerns as anonymous ownership of other kinds of assets, including money laundering and terrorist financing. Anonymous foreign ownership of real estate could also present other national security risks. For example, if the US government leases space from*

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<sup>1</sup> Available at <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>.

<sup>2</sup> *Id.* at 11.

*an entity that is secretly owned by a foreign government, the security of the operations in that facility could be compromised.*

**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**

**Mr. Tom Firestone**

1. A concern on beneficial ownership laws is that they could unduly burden small businesses. You stated in your written testimony that “[b]y failing to keep pace with international standards in this area, [the United States] undermine[s] attempts to promote global transparency, which only hurts honest businesses.”
  - a. Please expand on how beneficial ownership laws help businesses in the United States, in particular by assessing the benefits of corporate transparency to the burden of filing paperwork on who the beneficial owner is.

*Such burdens should be minimal. Ordinarily, small business owners will, or should, know their owners and ownership structures. While it is theoretically possible for a small business owner to have a complicated set of arrangements involving multiple entities and chains of ownership, such that tracing the ultimate beneficial owners is complicated, this would be unusual. Moreover, such complicated structures are typically associated with large companies which should have adequate resources to meet the filing requirements. Since the information provided would be strictly factual, gathering it should not necessitate the retention of outside legal counsel. Furthermore, such transparency will help the United States to keep pace with international standards on corporate transparency which will, in turn, strengthen its efforts to promote transparency around the world by, among other things, removing the argument that U.S. is hypocritical and employs a double standard. Greater transparency at the international level also helps US companies to know who they are doing business with, which helps them to protect themselves from corruption, fraud and those seeking to evade sanctions.*

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

*Yes. Identifying beneficial owners of corporations is essential to following money flows and helps to identify both makers and recipients of payments, both of which are essential to uncovering criminal schemes.*

3. 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.

*Our money laundering laws are effective, but they must be enforced. Enforcement often requires understanding the beneficial ownership structures of entities involved in money laundering*

*transactions. The ease with which anonymous corporations can be established in the US can impede effective enforcement, thereby facilitating money laundering. Creation of a register of corporate ultimate beneficial owners accessible to law enforcement agencies would help to address this problem.*

4. Our lack of corporate transparency facilitates human trafficking, because criminals can operate a seemingly legitimate business, but it is in fact a front for human trafficking.
  - a. Would legislative proposals to identify the beneficial owners of a business help prosecutors and law enforcement investigate these cases, and penalize human traffickers?

*Yes. The creation of a register of corporate ultimate beneficial owners accessible to law enforcement would help law enforcement to combat all forms of organized crime, including, but not limited to, human trafficking.*

**Combating Kleptocracy: Beneficial Ownership, Money Laundering, and Other Reforms**  
**June 19, 2019**  
**Questions for the Record from Senator Sheldon Whitehouse**

**Tom Firestone:**

1. Do you have an estimate of the size of the global illicit economy that is supported and protected by shell companies?

*Data on the size of the global illicit economy that uses shell companies is scarce. Until governments gather and make public the data on how much value is owned by shell companies, we can only approximate the size through indirect means. For example, researchers have used balance of payments data, such as the U.S. Bureau of Economic Analysis's Direct Investment data sets, to estimate the amount of U.S. wealth in tax havens. Using this method, Gabriel Zucman from the London School of Economics estimated that, as of 2013, approximately 20% of all U.S. corporate profits were booked in tax havens, which accounts for about two-thirds of all U.S. corporate profits earned abroad.<sup>1</sup> Although much of this money is likely tied to corporate tax avoidance rather than kleptocracy, other researchers have done similar analyses in countries connected to kleptocracy. Specifically, James S. Henry of Columbia University estimated in 2016 that more than \$12 trillion had been siphoned offshore out of emerging countries—including \$1.3 trillion from Russia and \$1.2 trillion from China, Hong Kong, and Macau—and concluded that much of this was connected to arms dealing, fraud, tax evasion and other criminal enterprises.<sup>2</sup> He also found that as of 2015, between \$24 trillion and \$36 trillion was held across all financial secrecy jurisdictions as anonymous private wealth.<sup>3</sup> This obviously represents a staggering sum which could serve the world's needs much better if it were properly accounted for, taxed, and distributed according to democratically decided laws and rules.*

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<sup>1</sup> See "Taxing across Borders: Tracking Personal Wealth and Corporate Profits," *Journal of Economic Perspectives*, 28(4): 121, at 121 and 128 (2014) (available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.28.4.121>).

<sup>2</sup> See "Offshore finance: more than \$12tn siphoned out of emerging countries," *The Guardian*, May 8, 2016 (available at <https://www.theguardian.com/business/2016/may/08/offshore-finance-emerging-countries-russia-david-cameron-summit>).

<sup>3</sup> See "Taxing Tax Havens: How to Respond to the Panama Papers," *Foreign Affairs*, Apr. 12, 2016 (available at <https://www.foreignaffairs.com/articles/panama/2016-04-12/taxing-tax-havens>).

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**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*

- 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?

*The actual, ultimate beneficial owners (“UBOs”) must be identified, rather than merely the next entity in the chain of ownership and/or control. UBOs should always be natural persons, rather than entities. In order to avoid the use of nominee owners to hide true beneficial owners, any individual with ultimate de facto control should be identified.*

*For each UBO, the following information should be collected:*

1. *Full name and alias names, if any,*
2. *Residence address,*
3. *Mailing or professional address,*
4. *Country and city of birth,*
5. *Birthdate,*
6. *Tax identification number or other government-issued unique identifying number (e.g., Social Security Number or foreign equivalent),*
7. *Copy of unexpired passport or other government-issued photo identification, and*
8. *Extent and nature of the beneficial or controlling interest (e.g., approximate percentage interest in vote rights and/or value).*

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

*Issues could arise if the registry did not have to be updated frequently, or if the penalties for failure to provide required information were too weak. Issues could also arise if the beneficial owner registry did not require the names of the natural persons who are the ultimate beneficial owners—i.e., the individuals at the end of the chains of ownership involving multiple entities or individuals. The rules should clearly define ultimate beneficial ownership and should include an ownership threshold (e.g., percentage of vote or value of the entity) which would trigger an identification requirement. However, this threshold should not be the only factor requiring identification, as it is possible that in certain cases the UBO may not meet the threshold. For example, if ultimate beneficial ownership were defined solely as 25% ownership, five owners could each own 20% and thereby avoid having their ownership registered.*

- d. If you identified any other issues, how would a legislative proposal best address those issues?
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2. Some parties have expressed the concern that requiring small businesses to provide beneficial ownership information to a registry would constitute an undue burden. Among these concerns is the potential burden of seeking outside counsel to interpret which parties are beneficial owners of a business. 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?

*Such burdens should be minimal. Ordinarily, small business owners will, or should, know their owners and ownership structures. While it is theoretically possible for a small business owner to have a complicated set of arrangements involving multiple entities and chains of ownership, such that tracing the ultimate beneficial owners is complicated, this would be unusual. Moreover, such complicated structures are typically associated with large companies which should have adequate resources to meet the filing requirements. Since the information provided would be strictly factual, gathering it should not necessitate the retention of outside legal counsel. Most other developed countries have beneficial ownership registry laws. For example, the European Union has promulgated several directives for the creation of ultimate beneficial owner registries in the EU member states without apparent concerns that it would create undue burdens.<sup>1</sup> Thus, imposing such a requirement on US businesses would also be consistent with international best practices.*

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<sup>1</sup> See, e.g., Article 30 of Directive (EU) 2015/849 of the European Parliament and of the Council of May 25, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“4th AML Directive”), as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of May 30, 2018 amending the 4th AML Directive, and amending Directives 2009/138/EC and 2013/36/EU.



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

*Yes. I do not believe that the definition of "beneficial owner" in the TITLE Act creates undue burdens on small businesses. However, the definition is somewhat vague as it relies on concepts such as "substantial control," "substantial interest" and "substantial economic benefits" without defining these terms. It would be worth considering supplementing this definition with more specifics, explaining exactly what makes one a "beneficial owner." For example, the FinCen Bank Secrecy Act regulations provide the following definition of "beneficial owner":*

*(d) Beneficial owner. For purposes of this section, beneficial owner means each of the following:*

*(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and*

*(2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:*

*(i) An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or*

*(ii) Any other individual who regularly performs similar functions.*

*However, as noted above, if a 25% threshold is used in the definition, it should be made clear that this is not the sole or dispositive criterion. This is necessary in order to avoid a situation in which five beneficial owners each owning 20% avoid any registration requirement.*

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

*See above.*

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”?

*Yes.*

- a. 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.

*Yes. The provisions of Section 3(d)(3) on State Records provide that the Act shall not limit the authority of a State to disclose to the public all or any portion of the beneficial ownership information provided to the State pursuant to the Act. This would appear to allow states to make public the beneficial ownership information collected. States could be precluded from publicly disclosing the beneficial ownership information by removing this provision and adding to Section 3, subpart 4 (a)(1)(D) entitled "Information Requests" a provision making clear that states may not disclose beneficial ownership information provided under the Act, except for the circumstances identified therein..*

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

*The information could be used for improper purposes, such as blackmail or extortion, or to file frivolous lawsuits, or, in certain cases, disclosure to a foreign government, which could present serious risks if the beneficial owners are the victims of persecution by a foreign government.*

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

*See above.*

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

<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).