

TRANSCRIPT

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The Election Isn't Doomed ... Yet

Hosted by Kara Swisher

Inside the intricate legal battle to make sure every vote counts in 2020.

Monday, October 19th, 2020

[MUSIC - THEME, "SWAY"]

Archived Recording

(SINGING) When you walk in the room, do you have sway?

It's a battle over penmanship. Should absentee and mail-in ballot signature matching happen in Pennsylvania? Texas governor Greg Abbott made it harder to vote by mail in the second biggest state in the country on Thursday. Some former felons in Florida are still fighting for the right to vote, despite a law that should have reinstated them on the state voter rolls. There is a likelihood that this case might see itself all the way to the United States Supreme Court.

Kara Swisher

Election season is buzzing. And I'm not just talking about early voting and that fly on Vice President Pence's head. I'm talking about the action unfolding in America's courts. Forget Bush v. Gore. This is the League of United Latin American Citizens v. The governor of Texas, Trump v. Bullock in Montana, League of Women Voters v. Pennsylvania's secretary of state, and on and on. All of these lawsuits, and there are hundreds of them, may end up swaying the ultimate contest, Trump v. Biden, I'm Kara Swisher and this is "Sway." Today I'm looking at the

lawsuits that are deciding the future of our democracy. So I turn to Trevor Potter, a man who's found himself in virtually every corner of American political campaigns. He was chairman of the Federal Elections Commission in the 1990s. Later, he was John McCain's campaign counsel. He's drafted public legislation and fought in private practice. And he was Stephen Colbert's dark money guru in the late night stunt to expose the madness of "Citizens United."

Archived Recording (Stephen Colbert)

Do a lot of people go to jail for breaking the law with their PACs?

Trevor Potter

No.

Archived Recording (Stephen Colbert)

Can you name anyone who has gone to jail for breaking the law with their PACs?

Trevor Potter

Not a person.

Archived Recording (Stephen Colbert)

Ha ha ha! That's my kind of law. [AUDIENCE LAUGHING]

Kara Swisher

Potter now leads the Campaign Legal Center, a nonprofit and nonpartisan watchdog group using the art of legal warfare to protect voters. Earlier this year, they fought to get voting rights back for up to 1.4 million ex-felons in Florida. Some, like me, have used the word "apocalypse" to describe this year's election. Trevor Potter is a bit more hopeful. This is part two of "Sway's" special series about the people you

may not yet know who are fighting to keep the 2020 elections free and fair. So let's start with this battle for free and fair elections. You're in the legal trenches. Talk about how many lawsuits you're involved in right now. Because there's litigation in at least 11 states at this point.

Trevor Potter

There are currently estimated to be 350 lawsuits —

Kara Swisher

Wow.

Trevor Potter

— around the country this year relating specifically to election issues, election procedures. Of that, gosh, we've been in 30 some this year. And so the cases that we're in involve questions of whether someone will be able to vote if they can't leave their house, if they're afraid of getting ill in a crowded voting place, whether they will have the right to an absentee ballot, and then, will their vote be counted. Some states send out ballots to people's houses automatically. Other states, you request it. In either case, the piece of mail arrives and there's a name on the outside of the envelope, the address, sometimes a signature, which they can compare with their records. And the problem for voters in a number of states is, they're not sure that the signatures match. The state, in the past, the states simply threw the ballots away. They didn't count them, and they didn't tell the voter there was a problem.

Kara Swisher

What are the chances some of these cases determine the President of the United States?

Trevor Potter

You know, it's obviously going to depend on how close the election is. But you look at states like New York, and in the last election in 2018, approximately 12% of their absentee ballots were not counted because of questions with signatures. Well, you do that this year, with more people voting absentee, if that percentage or anything like it occurred in a close state, a Michigan, Wisconsin, Pennsylvania, Ohio state, it would make an enormous difference. I mean, even if it's 5%, there are people who win states by less than 1%.

Kara Swisher

Now Pennsylvania had no procedure to deal with non-matching signatures on mail in ballots. You sued. You got a consent decree forcing Pennsylvania to count them if everything else was all right. Talk about how you won there.

Trevor Potter

So what happened in Pennsylvania is they didn't do anything to let the voter know. So we sued the Secretary of State. And we said this is simply wrong. You should not throw out, effectively, ballots because you have a question about the signature. So there what happened is the Secretary of State went back and looked at the Pennsylvania law and came back to us and said, I am going to issue a notice to all of the election boards that says it is my official opinion that Pennsylvania law does not actually allow you, the election officials, to reject a ballot solely because you have a question about the signature. You are supposed to, under Pennsylvania law, verify the identity of the voter. And if you can do that on the envelope with their name, their address, their date of birth, then you have to accept the vote. What's happened in Pennsylvania though, is that it did not end, unfortunately, with the Secretary of State's decision. The Republican Party challenged that

guidance in federal court, saying they did not believe she was correct in her interpretation of state law. She then has asked the Pennsylvania State Supreme Court to authoritatively opine that she is correct. And the Supreme Court of Pennsylvania has not yet said anything. So we are still waiting to hear.

Kara Swisher

So that could change.

Trevor Potter

It could.

Kara Swisher

So you haven't really won. How many ballots are we talking about?

Trevor Potter

Well, we don't know, potentially millions of absentee ballots. I mean, one of the things that we don't know, and the polls are changing in terms of how many people intend to vote absentee. And so we don't know now. Lots and lots of people have—

Kara Swisher

So people could look at this and say my vote's not going to count. I'm going to go write down —

Trevor Potter

Or I'm nervous about it counting. I know this is an issue. So even though I've asked for an absentee ballot, I'm not going to use it. Or I'm going to vote and I'm going to go return it in person, where they can tell me if they have a question about my signature.

Kara Swisher

Right. It's really interesting. They send them out in D.C., where I am. And I want to take it down there. Even though it's D.C. and I trust the mail service here and I trust the election officials. But let's talk about Montana. Explain. There's only about 700,000 votes in Montana, not many people. Montana's governor tried to give Montanans universal mail in voting. The GOP sued and said it violated the Constitution. C.L.C. is representing the League of Women Voters to defend the governor's right to change election procedure. Small amount of votes — why go here?

Trevor Potter

So Montana is a great example in that the state did this in the primary. So both parties took advantage of this. Every county was given the option to send out ballots to all registered voters if they wanted to. And all counties did in the primary. So along comes the general. And the governor says, well, we'll do the same thing, meaning counties can do what they want. He's not ordering them to.

Kara Swisher

Right.

Trevor Potter

And the Republican Party sued. And it said, this is wrong because there's such a greater opportunity for voter fraud if registered voters are given a ballot without requesting it. The judge looked at this and said, well, what's the proof? What evidence do you have that there's been any voter fraud in Montana? You just had a primary. Were there any incidents of voter fraud? And the answer was no, we have no evidence

in Montana. And so the district court threw out the challenge and left the governor's order intact.

Kara Swisher

So you've won that state.

Trevor Potter

So we have won that state. So why Montana? Partly again because we think that's the right result, that voters should be able to vote as easily as possible this year. Partly because we think it is wrong to let these allegations go unchallenged.

Kara Swisher

Yeah.

Trevor Potter

I mean, this argument that so-called universal mail voting is fraudulent runs head on into the fact that we have five states that do that— Washington, Oregon, Utah, very Republican, Colorado, an even state, recently Hawaii. Never mind the ones that are doing it this year. Those are the ones who have been doing it with no evidence of voter fraud.

Kara Swisher

All right, let's take another swing state, Florida. What work have you been doing to ensure voters access in Florida? Now Florida's Republican legislator tried to block people with felony convictions, 1.4 million people from voting. Florida voters overturned the ban on the 2018 ballot initiative. C.L.C. represented plaintiffs in the federal case. Florida lawmakers now blocking ex-felons from voting if they owe fines. So talk about that state.

Trevor Potter

So Florida voters, two years ago in 2018, actually amended their Constitution. Which is interesting, because in Florida, as in a fair number of states, you need a supermajority to amend your constitution. So they had to get 60% of the Florida voters. They got 62% that said when you've paid your debt to society, you have served your sentence. It is important that you be a full member of the community. So Florida voters said, we're letting them vote. They've paid their debt. The Florida legislature simply didn't like that. And they envisioned the 1.4 million Floridians — it's a big state, but that's an awful lot of people, it's bigger than many states — that that number of people were prohibited from voting, based on what they said, was concerned that these were going to be perhaps more Democratic votes than Republicans. So they went in, passed a new law that said, not so fast. Whatever the amendment says, you still have to—

Kara Swisher

They're adding things on.

Trevor Potter

They're adding things on. And what they added was what we said was a poll tax. We represented the plaintiff class, so the 1.4 million Floridians. The judge asked us to represent the whole class. And the judge issued a very long, well-researched opinion that said it is effectively a poll tax. You were violating the federal Constitution. Because you're saying if you're wealthy, you can vote. Because you can afford to pay your fine. And if you're not, sorry, you don't have the money to vote.

Kara Swisher

So where are we with that case?

Trevor Potter

That case, then, the state appealed to the 11th Circuit. And here we see some of the impact of Trump judges on the judiciary. Because there were three new judges on the 11th Circuit, recently confirmed as Trump appointees. And the 11th Circuit ended up overruling the district judge and saying, we don't agree. This isn't a poll tax. And the effect of that was these Floridians could not vote this year with a couple of exceptions.

Kara Swisher

Do you know how many were registered?

Trevor Potter

When county clerks were doing this, the loose number thrown around is 40,000 registered out of that.

Kara Swisher

So these ex-felons would probably not get to vote, most of them?

Trevor Potter

If they aren't already, they won't be able to now.

Kara Swisher

Which of these cases can you not afford to lose, from your perspective? Because you kind of lost Florida.

Trevor Potter

Well, so Florida has a continuing life. Because that 11th Circuit case can be appealed to the US Supreme Court. We don't have to make the decision yet on whether to do that. But there are good arguments to do

it. And I think, particularly, the equal protection argument of Florida saying you have to pay your fine but we can't tell you how much it is, is one that even a conservative Supreme Court may not be able to stomach. They may think that that simply is an improper government action.

Kara Swisher

So but which of these many do you think you can't afford to lose?

Trevor Potter

As I said, we won in Montana. That one's done. So it's state by state. We won in Rhode Island. That was a issue involving witnesses, because many states require that absentee ballots be witnessed. Rhode Island was more onerous than most because it said you had to have two witnesses or a notary public, which —

Kara Swisher

Seems onerous.

Trevor Potter

— is pretty tough.

Kara Swisher

Yeah.

Trevor Potter

Pretty tough anyway, but you layer onto it Covid?

Kara Swisher

Yeah.

Trevor Potter

And you're being told not to leave your house. Fine. You live with your spouse who might be able to sign the thing, but now you have to go find another witness, or a notary public who really doesn't exist during Covid. So we were able to there to get a consent decrees.

Kara Swisher

So you're saying all of them. You have to win all of them, really, or as many as possible?

Trevor Potter

I think every single one of these wins is important for the voters in that state. And in a close race, again, going back to Pennsylvania, if Pennsylvania turns out to be a key dispositive state, if signatures are thrown out merely because they are questioned, you could lose literally hundreds of thousands of ballots. And the other case in Pennsylvania that has been brought by the Democratic party and is currently before the court is where, among other things, the Supreme Court said, if you don't use two envelopes, but only one envelope, you have the so-called naked ballot. You know, these are all issues that could end up being very relevant to who's president if Pennsylvania becomes the key state.

Kara Swisher

OK. So you're all in on vote by mail. Bill Barr is pushing foreign manipulation without evidence. Why are you all in? Is it just due to Covid?

Trevor Potter

What we are all in on is saying voters should have choices on how they want to vote and what is easiest and safest for them. And this is where we really end up on the other side of the president on these issues, there is nothing wrong with an absentee ballot. The fact that a voter chose to

do it on a piece of paper that was hand-delivered or put in the mail rather than on a piece of paper or a machine in a polling place does not change the legitimacy of that ballot.

Kara Swisher

So in every one of these cases you are up against the Republican Party. You have worked for Republicans most of your life. For now, more voters means the other team wins more or less. How do you deal with that? Do people attack you?

Trevor Potter

So first I want to object to the premise.

Kara Swisher

OK.

Trevor Potter

Then I'll answer the rest of the question.

Kara Swisher

Object to the premise.

Trevor Potter

So the premise is that Trump is right that the more people who vote, the better it is for the Democrats. That's what the Democrats thought in 2016. And that's been the sort of received wisdom is, bigger turnout is good for Democrats. So '16, in states like Florida, Pennsylvania, you had bigger than usual turnout. And that's how Trump won. Hillary Clinton met her targets in Florida. She exceeded Obama's vote in key areas of Florida. And they were really happy as they saw those numbers coming in. Because they knew they had turned out people. Then the Trump

numbers came in. And they were much bigger than expected. Trump was able to turn out people who did not normally vote. So I am puzzled that the Trump view is turning out all these voters definitely helps Democrats. Because that's not his own history. I think what's happening here is their view is we have figured out who our voters are. They either are contributors, or they come to rallies, or we microtarget them, or they subscribe to NRA magazine, and we bought that subscription list. So we know who they are. We are going to turn them out. And we don't want those other people turned out. Because we don't know who they are. And therefore, they may not be our people. So I think there is that calculation.

Kara Swisher

You want them to stick to their original argument.

Trevor Potter

I think that's their original — their calculation now is higher turnout will turn out people we don't know and therefore, suspect aren't our voters.

Kara Swisher

Also in urban areas, people are more afraid to go to the polls. And so vote by mail is going to help the Democrats.

Trevor Potter

In a time of pandemic, if —

Kara Swisher

They seem to be the ones wearing the masks more.

Trevor Potter

Right. There are some categories of voters who are more likely to turn out in either system. And that seems to me to indicate that merely sending people, registered voters, the ballot, is not necessarily a Democratic advantage. It depends on who's more motivated.

Kara Swisher

But is voting by mail going to help the Democrats, from your perspective?

Trevor Potter

I think a high turn out of people who don't like the way the country is going is going to help the Democrats. So there are polls that now show that, back in the spring, Republicans and Democrats, when asked if they were going to vote by mail, weren't very far apart, more Democrats than Republicans. Now there's a big gap. If you say, are you going to vote absentee? Only 25% of Republicans think that's a good idea and 50% of Democrats do. So what that tells me is that Trump has been very effective at persuading Republicans not to vote.

Kara Swisher

That their vote won't count.

Trevor Potter

Well, not to vote absentee. It's a bad thing. There are these interesting stories where state Republican parties have sent out their usual absentee ballot mailers. Because I know from my experience back as a Republican election lawyer, that Republican parties in California, Florida, Arizona, and other states have had expensive absentee ballot campaigns designed to get registered Republicans to vote in advance.

Kara Swisher

So it could suppress their own voters.

Trevor Potter

So it could. Because they are sending out these requests for this. And they're getting a lot of mail back saying how dare you ask me to vote absentee? The president says it's fraudulent. I'm not voting absentee.

Kara Swisher

And could and maybe won't vote. So you didn't really answer my question?

Trevor Potter

No. We didn't get there. I'm sorry.

Kara Swisher

Any backlash to the work you're doing from fellow GOPers?

Trevor Potter

Well, two things. There are a number of other Republican election lawyers. And I no longer consider myself in that category because I'm running a nonpartisan organization. But Ben Ginsburg, who was the Republican National Committee General Counsel and has represented all the other national Republican campaign committees, wrote a really good op ed saying this has gone too far. Voter fraud is not actually a problem. It is bad for the Republican Party to be claiming this when it's not true. It causes people to lose faith in the system. That's not good for our democracy. To your question about how do people react to me personally, I sort of crossed that bridge back. — twice in my career. Once when I went to the F.E.C. as a commissioner appointed by the first President Bush, and I was willing to vote that Republicans had broken the law as well as Democrats. Because my view was the job of the

commission was to enforce the law. And both parties should be treated equally. And I wasn't going to protect Republicans and then find Democrats had violated it. Then the system collapses. It doesn't work. And so there were Republicans at the time who thought, well, you're not being a loyal party lawyer. And my answer was this role is more judicial. You're not supposed to be partisan. And then, when I was general counsel to the McCain campaign in 2008, after McCain had won the primary, we began to hear from lawyers at the Republican National Committee, state party lawyers, and a whole range of people who did what they call ballot security, that there was a real fraud problem and that we needed to be aware of it. We needed to hire these outside consultants who were going to make sure that the election wasn't stolen. I don't know what it is about Philadelphia. But we were told Philadelphia was —

Kara Swisher

There's something wrong in Philadelphia.

Trevor Potter

Philadelphia was a big problem.

Kara Swisher

Yeah.

Trevor Potter

We have particular expertise in Philadelphia. And when I sat down in the McCain campaign with all of these people, and they wanted us to have, of course, expensive ballot security, ballot protection program, what I kept asking was, well, where is the fraud? What examples do you have of this happening? Oh, there were buses coming in. Buses? Is there a court case on this? Are there pictures? What? I could not find it. And I

went back to the campaign manager and said, you know, I've spent a lot of time on this. And I've asked all these questions. And I just don't think this is a real problem. The idea that there are just tens or hundreds of thousands of people voting illegally and stealing elections, there is no proof that I can find. And I've asked all the people. That was a wake up moment. And I think that's where some of the people who thought, well, the McCain campaign council should be onboard with the RNC in saying this is a problem were not happy with me.

Kara Swisher

OK. So if the results are contested, if it's a very close election, what will you be doing exactly two days after the election, say on November 5th or December 13, because you have that time period in between? What are you looking for?

Trevor Potter

Well, if we have a very close election, the issue will be is the counting going smoothly in all these states? And are votes being tallied? Are the people who voted having their votes counted? And so in particular in all these states where we have reached agreement with the state, or there's been a court order, I and the Campaign Legal Center will be monitoring that. Are these states doing what they have committed to do in terms of contacting voters with questions about their ballots and making sure they can get counted?

Kara Swisher

Do you have a nightmare scenario?

Trevor Potter

Oh, I think we all have lots of nightmare scenarios at this stage.

Kara Swisher

Give me one.

Trevor Potter

Well, one of them is that it all comes down to one state and the system begins to fall apart in that state. You have lots of absentee ballots out. The Trump campaign is saying they are invalid and fraudulent ballots. There are attempts to— I don't know if you remember back in 2000 what the press called the Brooks Brothers riot, where there were people dressed in coats and ties, trying to prevent — for a while, successfully preventing the counting of ballots. And that sort of thing, disrupting the counting process, slowing it down, making it difficult for the state to come up with an accurate count, is both a threat to the integrity of our system and potentially a constitutional nightmare. Because if you end up in a place where a state is unable to certify the winner of the election by the time the electoral college is meeting, then you have the question of what happens to those states' votes in the electoral college. [MUSIC PLAYING]

Kara Swisher

More with Trevor Potter when we come back.

In the 1990s, Trevor Potter oversaw the Federal Election Commission, the independent watchdog charged with enforcing the nation's campaign finance laws. Back then, there were six members, three Democrats and three Republicans. These days, there are only three members, insufficient for a forum, because Washington politics have gotten in the way of filling empty seats. Honestly, though, the empty seats haven't made much of a difference. According to Potter, Republican commissioners stopped allowing the agency to do its work a decade ago.

Trevor Potter

The current commissioners, at least the Republican commissioners who have been there, have not been embarrassed to deadlock and therefore prevent the commission from acting. I think they have seen it as a tactic to prevent the commission from enforcing the law, from pushing disclosure, doing things that they philosophically have disagreed with. And the reason the deadlock is so deadly for the F.E.C. is that the law says that it may not take any action without four affirmative votes. So first, of course, you have to have a quorum. But then, at least four have to vote to do something. And so over the last 10 years, the commission has been effectively neutered, destabilized by a failure to have four votes.

Kara Swisher

So that's rendered it powerless?

Trevor Potter

Yes.

Kara Swisher

What do you do to change that? What is the thing you need to do to get the F.E.C. — or create another body to do these things?

Trevor Potter

Well, one thing that the Campaign Legal Center is doing now is you can actually go to court and sue the FEC under the current statute, saying to the judge, they haven't enforced the law. And if the judge agrees with us, he can order the commission to do something. And so there is a way around this. But it's cumbersome. The better solution is to have a commission that works. If you put six good commissioners on, I

wouldn't worry about it at all. If you don't have that, then I think you need to change the commission structure. And the House of Representatives has passed this large bill, HR1, which reforms a number of campaign finance and voting laws. And one of the things it does is change the F.E.C. You can have an odd number of commissioners. You can have an even number with another new chair who only votes when there's a deadlock. And that chair would be chosen because they are neither a Republican nor a Democrat. I think that would be very helpful. There are registered independents that are also retired federal judges who have had a good distinguished career. Why not give them something to do in retirement? With luck, they wouldn't have to vote too often. Because I think the threat of a tie breaking vote by an impartial chair would cause commissioners to compromise.

Kara Swisher

But we have to get our F.E.C. working again.

Trevor Potter

We do have to get it working. I think the quickest, easiest way is to change the statute so that in one way or another, the tie is not the end of matters, but there is a solution when there is a tie.

Kara Swisher

So before you did this, you were in private practice, helping people in corporations figure out how to influence elections legally. Talk about your theory on helping people raise money for elections. Because I think a lot of people feel it's made a mess of everything. But you don't think that necessarily.

Trevor Potter

Well, what I think is that elections are going to cost money. We live in a free market economy. And we don't have a system where television time is provided free to candidates. Advertising on the internet costs money. Polling costs money. Travel costs money. It's going to cost money. My concern has always been where does the money come from? And how can we fund campaigns in a way that is less corrupting? It may never be corruption free. One of my principal clients was John McCain. And I worked with him on the McCain-Feingold Reform Law.

Kara Swisher

It's one of the most important campaign finance laws. It was in 2002. It was a bipartisan campaign reform act. Did those laws do any good, even, at first?

Trevor Potter

Sure. I mean, you start with the fact that it was bipartisan. Now Republicans objected to that label because they said, well, it's not 50-50. That's true. But it wouldn't have passed either the House or the Senate without Republican support. It absolutely needed that support to pass both houses. And that was in a day where bipartisan was not a dirty word. And it was fought by Mitch McConnell, who's held a grudge against that law ever since and tried to cut holes in it. But it was upheld by the Supreme Court. And it did make a difference in the election afterwards, and the couple elections afterwards, we saw no corporate money being given to party committees, because that was illegal. Soft money was banned. And we saw much more individual money going. So the argument is always made, well, the parties were ruined by McCain-Feingold because all the money ended up outside the parties. That is where we are today. But that is not the logical or natural result of McCain-Feingold. Parties were raising more money under the McCain-

Feingold law. What happened was we ended up with a range of what originally were PACs and then became 501(c)(4)s, which is to say a nonprofit organization spending money in politics claiming not to be a political committee, but actually running the same ads that a party or a candidate would run. And those groups raised money. They could have secret donors because the F.E.C. did not enforce the disclosure rules, which made it appealing. And the Supreme Court suddenly found a constitutional right that the Court had not found for the whole 20th century, for corporations to spend money directly in federal elections. So we've ended up with what the press calls dark money, secret money being spent in elections.

Kara Swisher

Now you've seen other lawyers and clients walk right up to the line on campaign finance rules. Now there's lots of ways to get in. Were you ever tempted to push the boundaries of campaign finance law yourself?

Trevor Potter

Yeah. One of the nice things about John McCain is that I had really strict instructions. I do not want you close to the line.

Kara Swisher

He had some issues.

Trevor Potter

I do not want to wear pinstripes of the vertical variety. And so the McCain instructions always were, we are going to be squeaky clean. And to be honest, I was lucky. Because when I got started in all of this, my client was George Herbert Walker Bush. And he was also squeaky clean. The reason I got to the F.E.C. partly is that, as a lawyer for the first President Bush, I saw other candidates blatantly breaking the law. Pat

Robertson was running. He was running around in a Christian Broadcast Network, i.e., a charitable airplane, which it turned out his campaign wasn't paying for, going to campaign events. If the status quo becomes, oh, well, everyone's doing it and no one is going to catch you, then you have a real problem.

Kara Swisher

Isn't that where we are now? Isn't that the case?

Trevor Potter

Well, it certainly is now in the sense that people know that there is no F.E.C. even on the beat. I think if you're a lawyer in private practice, you would say to a client, look, they've been dead locking three-three. There's no quorum. There's not going to be any investigation this year. But if you're a good lawyer, you're going to say, you know, that could change. You can say, I didn't know it was illegal. But it is not a defense to say I didn't think the law was going to be enforced. Everyone was doing it.

Kara Swisher

Right. So I didn't know I was going to get caught.

Trevor Potter

And charged.

Kara Swisher

Right. So is Pat Robertson, Christian plane the worst thing you've seen?

Trevor Potter

Well, from a purely personal perspective, what happened with secret money being spent in South Carolina to attack John McCain and his

family and to say that his adopted daughter was an out of wedlock child he'd had, all of that was terrible. Because it was so hurtful. And it violated the laws. You can't spend that money without disclosing who you are. And they did it secretly and got away with it.

Kara Swisher

When you were talking to Colbert, when you were setting up his PAC, were you even seeing emails about campaign finance loopholes or illegal practices?

Trevor Potter

Right. Yes. There was one section where we were talking about transferring money to hide it and how it was possible to give money to one of these nonprofit, dark money groups, and it would launder it into a super PAC. And at that stage, I did get an email from a Republican National Committee lawyer explaining to me that I haven't gotten it quite right in explaining how it was really done, which email I shared with the Colbert, who then put it on the air, carefully deleting the lawyer's name.

Kara Swisher

So it was much more dirty than you had described, in other words?

Trevor Potter

Yes. The point was it was even dirtier and easier to do that than I had been telling Colbert.

Kara Swisher

Why shouldn't everyone be able to spend as much as they want on a political candidate? Can you make the case for why not or why?

Trevor Potter

I think the real problem here is actual corruption.

Kara Swisher

Mhm.

Trevor Potter

Our democracy, our culture depends on believing that we have a government system that is responsive to voters. And yet polls consistently show that people think — both parties — that it is rigged. That big campaign contributors get special access, that they get results. And the problem we have with our current system is all too often that is true, and we see it in front of our eyes. Another specific example, which we have seen played out on our television screens, and I don't think people have focused on the campaign finance aspects, were the two associates of Rudy Giuliani who ended up being part of this scheme to get the US ambassador to Ukraine fired. What people don't notice is the way they got into this was to buy their way into Trump's inner circle and to dinner with the president by giving money to the super PAC.

Kara Swisher

You exposed this.

Trevor Potter

Yes.

Kara Swisher

When you end up making them central, that your group did. How did you find out about that?

Trevor Potter

What we do as part of our normal work is look at super PAC reports to see if there's something that jumps off the page.

Kara Swisher

Well, what raised your alarms there with Lev and Igor?

Trevor Potter

What we saw here was a multi-\$100,000 contribution from a company we'd never heard of. Now a couple hundred thousand dollars to a super PAC, it is bigger than most contributions. So what we will do is simply say, well, who is this? And there are a number of industries you see that give to these super PACs because they want something from the administration. But here was a company we'd never heard of. So you look it up. Turns out to be a Delaware corporation. Gosh, created only a couple of weeks before the contribution was made. That's interesting. Because now we're thinking, well, is it a real corporation? Or is it a so-called shell corporation? So with a fair amount of online research you can come up with the fact that it's doing some business in Florida but doesn't appear to have any sort of profits or real existence. It's new in Florida. So we file a pretty straightforward complaint with the Federal Election Commission saying the company says it gave this money. It's a new company with no sign of assets or business. These two individuals, about whom we know nothing, are associated with this company. You should ask them where the money came from. Because it doesn't appear to be the company's, which is a violation of law. They're supposed to disclose the true donors. So who are the two donors?

Kara Swisher

So it looked funny? It looked funny.

Trevor Potter

It looked funny because it looked like the company didn't have the money. And so whose money was it? Was it foreign? Was it one individual who put the money in? Whoever that is should be listed on the F.E.C. report. So we're pretty comfortable at the time that they haven't listed the true donor. So the bank records turned up with the full history of the wire transfers, the money coming in from overseas, the money going through another company they controlled. We then filed an amended complaint at the F.E.C. with this treasure trove of new information saying, boy, were we right. This wasn't this company's money. But look at what we found in court in Florida. And that was picked up by the U.S. Attorney's office. And they did their own investigation.

Kara Swisher

Right. The F.E.C. didn't deal with it.

Trevor Potter

Right.

Kara Swisher

So money in politics has taken a backseat to outright corruption this year. What are smart political donors doing during the cycle? What's the most efficient way to influence an election?

Trevor Potter

So a individual with money can give significant sums, we're talking hundreds of thousands of dollars, to the national party committees, the DNC and the RNC. And then, both parties have House and Senate campaign committees. Then you can give directly to individual candidates. And that would be the aboveboard, legal way in which you could still spend a lot of money. Because one of the things the Supreme

Court did was invalidate the law passed in Watergate times that there was a limit on how much individuals could give in aggregate, overall. And the Court threw that out, saying that there was no evidence of corruption.

Kara Swisher

So you can spread it around?

Trevor Potter

So you can spread it all over the place.

Kara Swisher

Right. So what would you do if you could wave a magic wand right now, would you upset "Citizens United?"

Trevor Potter

I think if you ended up in a situation where people could give directly to candidates on the record and candidates also had a way to fund their campaigns without relying on major donors, we would be much better off than we are. And it would be transparent. People could see what's happening.

Kara Swisher

Prospects for that?

Trevor Potter

Both parties' polls show that people do not like the current system. And I think we're going to see more scandals of the sort that we've been talking about. So John McCain always used to say nothing will change until we have a major scandal. I guess today the question is, what's the definition of major?

Kara Swisher

I don't know. That's Tuesday, Mr. Potter. So given all you've talked about, how much faith do you still have in our electoral process?

Trevor Potter

Yeah. I think our system needs defenders. One of the things that's happened under President Trump is that we've had findings of violations that the president is responsible for enforcing. And he has not done so in terms of violations of the Hatch Act that prohibits senior executive branch employees, most executive branch employees, from engaging in political activity. Because they're not supposed to be political hacks. They're supposed to be representing the public interest. And yet, when investigators have come up with findings that have said these are violations of the Act, basically the White House has just laughed at it and done nothing. So the answer to am I an optimist is yes. Because I do believe in our country and our democracy. And I think there are answers to the problems we have. But it's going to take some work to repair all of this.

Kara Swisher

All right. If I wanted to start a dark money organization right now, what should I do? [LAUGHTER]

Trevor Potter

I can put you in touch with a good dark money lawyer.

Kara Swisher

OK.

Trevor Potter

If they're speaking to me. They may not be.

Kara Swisher

I really appreciate this. Trevor Potter, thank you so much.

Trevor Potter

Thank you. It's really great to be with you. I appreciate it.

Kara Swisher

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