

RALPH NADER RADIO HOUR EP 450 TRANSCRIPT

Male: It's the *Ralph Nader Radio Hour*.

Steve Skrovan: Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan, along with my co-host, David Feldman. David, this is show 450. Can you believe it?

David Feldman: Wow. Wow. This is—might be the best one.

Steve Skrovan: Arguably the best one we've ever done. We've finally gotten it right after 450. And the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello, everybody, worldwide audience.

Steve Skrovan: Research indicates that for the past decade, over half a billion dollars of dark money has been spent on remaking the federal courts. That's billion with a B. Well, who is paying all that money? And what do they think they're getting for their investment? Those are the questions Senator Sheldon Whitehouse asked in his new book, *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court*.

Senator Whitehouse approaches these questions like a detective would investigating a crime. He examines means, motive, opportunity, and, perhaps most tellingly, *cui bono*. Who benefits? We look forward to hearing some of the answers to those questions and asking Senator Whitehouse what we can do to restore the legitimacy of the highest court in the land.

Also, Ralph takes the opportunity to give some good advice to Senator Whitehouse about how the Democrats can win the midterms. Also, in the second-half of the show, we're going to welcome back our resident constitutional expert, Bruce Fein. He's been reading all the books about Donald Trump that've been coming out. And he's got a little problem with them that they have very little to do with the constitutional implications of his actions and deal with him more as just this funny character. We're going to talk more about those constitutional implications and how he, Donald Trump, violated them.

And as always, somewhere in the middle we'll check in with our corporate crime reporter, Russell Mokhiber. But first, let's talk to Senator Sheldon Whitehouse about the court that dark money built. David?

David Feldman: Senator Sheldon Whitehouse represents Rhode Island. He has served as his state's United States Attorney and as Rhode Island's state attorney general. He has also been the state's top business regulator. Senator Sheldon Whitehouse is the author of *Captured: The Corporate Infiltration of American Democracy*. And his new book is *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court*. Welcome to the *Ralph Nader Radio Hour*, Senator Sheldon Whitehouse.

Senator Sheldon Whitehouse: Thank you very much for having me on.

Ralph Nader: It's very rare, Senator Whitehouse, as I mentioned to you earlier, to have a senator who so explicitly focuses on the corporate crime wave. I remember you went to the Senate floor years ago with a spectacular speech on the subject, and your prior book focused heavily on this. And now we're dealing with this dark money. We're talking billions of dollars that are distorting the electoral process and moving not just to the legislatures, but now to the Supreme Court itself, which is the subject of your new book, just out, *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court*. And they certainly have captured it. Can you describe the scheme?

Senator Sheldon Whitehouse: I can give sort of the quick overview. The first thing to understand is that the way the court has turned out wasn't something that just happened. It was actually done. It was done using techniques that would be familiar to people who've been involved with intelligence operations. It was essentially an internal covert operation. And the effect was something that you've been familiar with, Mr. Nader, for a very long time, which is agencies, regulatory agencies that are captured by the industry that they're supposed to regulate, whether it was something like crooked 19th-Century Railroad Commissions that were doing the railroads' bidding, or whether it was the energy regulators that let the platform explode in the Gulf of Mexico; there's been a long, sordid American history of agency capture. And in this case, that capture phenomenon actually has taken place in courtrooms instead of in agency hearing rooms. So we have some familiar concepts here of covert operations and of agency capture, but nobody's ever seen it applied like this to a court before, and that's what people need to recognize.

Ralph Nader: And it succeeded beyond their wildest dreams, they have six members of the nine-member Supreme Court almost tap dancing in unison on what kind of policies?

Senator Sheldon Whitehouse: Well, there are a very broad array of policies. I mean, the Dobbs (abortion) Decision that took away women's right to determine their own reproductive choices was a product of this court. They did a recent decision, the AFPP (Americans for Prosperity Foundation v. Bonta) case that in kind of marvelous corrupt circularity created a constitutional right to dark money. They have gone after the regulators in favor of the polluters, and they have done their level best to undo the Voting Rights Act. So that's just a handful of things and behind it all is a whole array of issues that you, as an expert, would be very familiar with--trying to protect corporations from courtrooms and reporting and accountability so that they can get away with mischief, and send people off into corporate-selected forums to settle disputes instead of into American courtrooms.

Ralph Nader: They're about to decide on their restrictions of the water pollution control law in the early '70s and restrict the ability of the EPA (Environmental Protection Agency) to enforce it and unleash contamination of water, which affects everybody, onto the nation. And next year they may be even doing a more radical thing, given what they've been saying in the last couple years, they may want to give the state legislatures the authority, which they don't have under the Constitution, to overturn state elections for federal office. Correct?

Senator Sheldon Whitehouse: That is perhaps the most dangerous decision they could make. And what's peculiar about it is that a lot of the groups that were involved in the big lie, a lot of the groups that were involved in the effort by Trump and his front groups to overturn the election, a lot of the arguments of which have caused disbarment proceedings to begin against lawyers, to have lawyers thrown out of court for making preposterous suggestions that infiltrated

the Department of Justice and caused a near mass resignation, because it was all so appalling; the same groups and the same arguments are now showing up in the Supreme Court saying this is the way the Constitution should be read. It's basically undo the election 2.0.

Ralph Nader: Six conservatives judges so self-styled, becoming unprecedented judicial activists way beyond the range of the Supreme Court. Yeah, well you know—

Senator Sheldon Whitehouse: All the years of conservative talk about judicial activism and the most activist group that's ever been is this group of, as you say, so-called conservatives because they're actually not conservatives by any judicial measure.

Ralph Nader: Well, we've always known about dark money and international transactions, tax havens here and different localities for subsidiaries of corporations to avoid federal income taxes and other taxes. And we have listeners from Singapore to Scotland in addition to the listeners domestically here and in Canada, so they're quite aware of this dark money. But what you've done in your book is you've shown how it's gone beyond the control of legislators to now the control of the judiciary and not just the Supreme Court. Obviously the same dark money pushed for nominations through the Congress for Federal District Court and Court of Appeals. Can you name people who are behind this dark money? There is this recent contribution. which escaped to taxation of \$1.6 billion to some political outfit, which has staggered even the most cynical reporters. Can you give some names behind this dark money?

Senator Sheldon Whitehouse: Well, the Koch brothers and their political operation were early adopters. I think other far-right billionaire families like the Mercers and the Uihleins have been involved. I think that if you dug into this you'd find that most of this money came out of the fossil fuel industry, which is a Koch industry, as you know, and I think there's logic to it. When I first started looking into this, it was trying to figure out why we are failing at dealing with climate change. And once I stopped talking about polar bears and theropods and started looking at why, I began to look at the money flows and how the dark money flood that followed Citizens United

(v FEC) coincided with the end of Republican support for climate legislation. And so that put me on to that connection, and we've been sort of digging since then.

But I really think that back in the day when the tobacco industry was pretending, while setting up fake science, that tobacco wasn't really bad for you. And when they finally lost and were convicted of fraud, all that machinery switched over to talking about climate change and how fossil fuel emissions don't really do any harm to you. And so there's this long, long, long tradition going back decades of the fossil fuel industry being the primary beneficiary of the dark money operation.

Ralph Nader: And to make matters worse is this dark money has been exposed. It was exposed in the *New Yorker* magazine and a famous series of articles. You've talked about it in widely televised hearings by your position on the Senate Judiciary Committee. I remember hearing you point this out on more than one occasion sitting before a proposed nominee. So I'm curious, Senator Whitehouse, why haven't there been House Judiciary and Senate Judiciary hearings on dark money? Or have I missed something?

Senator Sheldon Whitehouse: Well, I can only speak to the Senate, since I sit in the Senate. With the rules that we're operating under right now, with a 50-50 Senate, you can't really run an

investigative hearing because you can't do subpoenas. You can't get information without the cooperation of Republicans. And Republicans' cooperation comes to a screeching halt as soon as you get anywhere near dark money. So we haven't been in a position to hold investigative hearings, because of the rules under which we're operating as a 50-50 Senate. So I've tried to replace that by writing this book, by giving my scheme speeches, by bringing it up in judiciary hearings and encouraging my colleagues to do the same. Because one thing we find is the American people are thirsty for somebody to tell them what's going on. And they understand that this dark money is out there, and they understand that it sucks, and they understand that it's taking away their voice. And I've got a lot of support, I think, from people out there when I talk about this.

Ralph Nader: As a matter of fact, the Republican senators aren't reflecting Republican voters here. There's a recent poll where 80% of Republicans oppose Citizens United and the unlimited amount of money that corporate interests can give for or against political candidates running for office, 80%. That's the Republican polls in that way, and it's obviously not reflected in the US Senate. Well, you do have a bill, you mentioned a bill that has been introduced, can you describe that and give the number?

Senator Sheldon Whitehouse: Yeah, it's called the DISCLOSE Act, and we just had a vote on it in the Senate, and every single Republican voted against it. They voted—to a person—to protect dark money, despite not only 80% of Republican voters feeling opposed and hostile to dark money and all this corporate influence, but really angrily opposed to it. These are people that come in with a very high sense of frustration and fury. It's a very salient and even emotional issue, and yet they all voted—to a person—against it. Because, in my view, they've become as dependent on dark money as a deep-sea diver is on that air hose that goes up to the ship. And they have to continue to vote to protect dark money because they need it.

Ralph Nader: Why do you think this isn't a prominent campaign issue? You don't hear it much described because people of all political backgrounds really want election reform. They want to clean up the system. It doesn't matter whether they call themselves liberals or conservatives, they do want to clean up the system. You would think with an 80% Republican support, even higher Democrat support that this would be a great campaign issue because our Republic is being literally sold down the river here. Politics is for sale and the ones that have the most money can buy the most politics. Why isn't it coming out of the Democratic National Committee, Republican National Committee? It's so popular.

Senator Sheldon Whitehouse: That's probably a whole separate book on what's going wrong within the Democratic Party to miss an issue like this. But I think if you're dependent on the same traditional pollsters who, year after year, like, the teacher coming in with the same lesson plan asked the same traditional questions and message, that same traditional ads in the same traditional way, you end up in a rut. And dealing with this relatively new phenomenon, I mean it's basically been a decade, is something that we should have at the forefront of our agenda. It would be good for us with voters to have it and we're on the side of right and transparency and honesty and democracy, and yet we seem to be unable to persist at making this point. We're just not—well you see, I'm not a member of any organized political party. I'm a Democrat.

Ralph Nader: That's right. You have three recommendations to address the dark money issue as to what regular citizens can do. Can you tell us?

Senator Sheldon Whitehouse: Well, I think the first thing to do is to get involved and make sure your voice is being heard because at the end of the day, that really does make a difference. The second is that if you have an issue that you care deeply about—civil rights, the environment, good government, public health and safety—whatever substantive issue you care about, we are getting clobbered because of dark money across all of those different issue arenas. And so every group that Democrats are a part of that is fighting for these different issues needs to also have a part of that group that addresses dark money, that identifies where it's coming from, that tells the truth about it to the public, and that would be; the third thing, is that the more we can expose what's going on, the more we can take advantage of the work that's been done to show who is pulling the strings behind the Republican Party, the better off we will be.

Ralph Nader: We're talking with Senator Sheldon Whitehouse, Democrat Rhode Island, written a brand new book, *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court*. And you've also said something that very few elected officials say--you want to get corporations out of the electoral system. And you say, "The founders gave no role to corporations in our Constitution." Indeed, the word corporation, the word company, never appears in the Constitution. It's all people and persons, so can you elaborate on that in terms of what you'd like Congress to do on that? Corporations are not human beings. They're artificial entities.

Senator Sheldon Whitehouse: So if you're a corporate CEO, you can play in politics just like anybody else can. You can use your own pocketbook, which is bigger than most because you're a corporate CEO. You can use your own sphere of influence, which is bigger than most because you're a corporate CEO. And you can tell your employees and your customers what you think and urge them to support your views. But you shouldn't be able to go over to your office and crank up your multimillion dollar corporation and set that monster loose in the political sphere in addition to your own personal efforts. It's just not fair to have some people able to basically drive a bulldozer around in politics while everybody else has to do it with their bodies.

Ralph Nader: And of course, they never ask approval by their shareholder owners.

Senator Sheldon Whitehouse: Nope, they don't have to disclose it to the people who listen to their ads. They hide behind phony front groups and they don't have to disclose it to their shareholders. So it's worse than just corporate bulldozers driving around through our democracy. It's anonymous corporate bulldozers, just one who you don't know who's behind them driving around through our democracy. And no wonder the ordinary person doesn't feel they don't have much of a shot up against people spending \$250 million, not of their own money, from corporate treasuries, from trusts, to go out and corrupt the operation of our democracy.

Ralph Nader: By the way, there's probably one question our listeners are asking now is they think that some campaign money has to be disclosed under the law and dark money doesn't. Can you elaborate what has to be disclosed and what doesn't? How they got away with huge billions of dollars not being disclosed that they put into the electoral system?

Senator Sheldon Whitehouse: Yes. So if you give a campaign contribution to a candidate's campaign, that is limited and it is reported. It has to be disclosed. But if you're extremely, extremely, extremely rich, you can set up, for instance, a super PAC, which can spend its own

unlimited money in that same campaign. It can take pieces of video right off that candidate's website and run them in its own ad, so it's clearly aping aligned with the candidate, and it has to disclose who gave it its money. But that money can come through a front group like Donors Trust or like a phony 501(c)(4) with a name like Rhode Islanders for peace and puppies and prosperity. So that when they report who gave them the money, the real donor isn't what's reported. A shell corporation or a front group is what is reported. And with that, you see in campaign contests recently and for the first time, more money coming into campaigns through these outside groups than through the campaign itself. They're actually outspending the candidates in a race. So it's really, really powerful stuff and it's anonymous, so it's poisonous.

Ralph Nader: And it's just getting underway. I mean, I can imagine what the figures are going to be 10 years from now. I mean, these companies and their CEOs—Tim Cook, who's the CEO of Apple, is being paid at the rate of \$833 a minute on a 40-hour week. \$833 a minute. And Apple, bought back \$90 billion of stock in just one year recently.

Senator Sheldon Whitehouse: Let me give you a bigger one. The International Monetary Fund, its economists have taken a look at how big the subsidy is for fossil fuel in the United States. The subsidy, as calculated by the International Monetary Fund for fossil fuel in the United States, is \$660 billion with a B, billion dollars every year. So if you are benefiting by Congress leaving you alone with a \$660 billion annual subsidy, there's almost no amount of money that you can't spend in politics to protect \$660 billion a year. If you spent \$6.6 billion a year in politics just protecting that, you'd be winning a 100 times return on your investment year after year after year. So there really is no limit to how much money is going to pour in when you can influence policy in a way that affects corporate interests to the tune of hundreds of billions of dollars.

Ralph Nader: And these are billions of dollars that belong to the US Treasury if they were fairly taxed without all these subsidies, so it is a system out of control. Our people really are very practical, Senator, and they want to know what's going to be done. And we know Congress is the key institution here, so let me run a number of things by you. There are 14 Democratic senators up for reelection and seats. But there are 20 Republican seats that are up, so this cycle favors the Democrats on that point. Now let's say you have a 55-45 majority come next year with the Democrats in the Senate, what do you think of the following proposals: One way to deal with campaign finance abuses—it doesn't cover the whole waterfront, especially dark money—is to pass legislation that says any company that does business with the US government cannot contribute campaign money to either members of Congress or the president. And that type of reform was actually enacted in about four Southern California cities like Santa Monica years ago.

In other words, you do business with the government, you're not going to pay money into the campaign treasuries of the very people who are going to decide what kind of contracts, how, when, where and who gets it. What do you think of that, since Citizens United is not about to be overturned by the Supreme Court and we're not about to get a two-thirds amendment out of Congress with three quarters of the states having to ratify a clean election amendment. What do you think of that, the reciprocity on government procurement contracts?

Senator Sheldon Whitehouse: Well, I think there's a lot that could be done with government contractors to make sure that they're not taking advantage of political schemes to enhance

themselves. I think if you're focused only on campaign contributions, though, those have become pretty nominal. I mean, they max out at \$5000 per candidate. You can give another five or ten through PACs and then you're done. The power for these big corporations is to filter money into front groups and through them into super PACs, and then show up in that same race, not as a campaign contributor who gave 10 grand, but as an independent expenditure pummeling the voters with poisonous ads by 10 or 20 or 30, 40 million dollars. That's where the big danger is and that's where we have to focus. And unfortunately part of the capture of the Supreme Court has been that the Supreme Court has very diligently been facilitating corporations' ability to do these independent expenditures from hiding. And as you know all too well, a \$5000 contribution may get you a little bit of attention, but if you're going to jump into the race with a \$50 million spend for the benefit of a candidate, that's a whole different equation.

Ralph Nader: Well, if this legislation that I just proposed also included disclosure, the diversion of corporate funds to these super PACs would have to be disclosed and they couldn't do business with the federal government. I mean, almost every corporation of any size is doing business with the Department of Defense, Interior, Agriculture, Commerce Departments, you name it, so it almost covers the entire waterfront of corporations. And if the legislation is drafted in a tight way where it also requires disclosure, which you have spoken out for many times, don't you think that that is a way--because you can't do it constitutionally--the Supreme Court is not going to overturn their cases--isn't that something that you would like to get underway if you could have a workable majority in the Senate?

Senator Sheldon Whitehouse: Yeah, the key thing is the disclosure, because once you can see what they're up to, the fun of playing these games goes away. Once people know it's Exxon behind a \$50 million expenditure, and the voters are clued in that that's what's going on, then there's almost no point in doing the expenditure because everybody gets the joke. Then you've got the question of what shareholders should know. And believe it or not, the Republicans actually passed a law that forbids the Securities and Exchange Commission from spending \$1 to promulgate any kind of a rule that requires companies playing in this political sphere to disclose to their own shareholders whose money they're using what they're up to.

Ralph Nader: Well, just by freezing the IRS budget, the Republicans, since 2011, have been aiding and abetting tax evasion by all these corporations and super wealthy, literally, because the IRS doesn't have the skilled auditors. In fact, they have far fewer than they had 20 years ago, to deal with these complex tax returns and expose these rackets domestically and internationally. Yeah, the Republican Party can be fairly accused of being the party of corporate crime. But part of it, and I keep going back to these hearings, all the legislation in the past that helped this country started with congressional hearings in auto safety, environment, OSHA, you name it. And we haven't seen these hearings, which is the way to get media aroused and informing the public; it's a way to get people back home, connected.

So let's say next year you do have a senate majority--you have a subcommittee, Senator Blumenthal has a subcommittee--are you thinking about corporate crime hearings getting through? I think Senator Durbin, who's the chairman, favors a corporate crime database; the Justice Department doesn't have a corporate crime database. We've been trying this for 45 years. They have a street crime database. But if you don't have a corporate crime database, you're not likely to have corporate crime law enforcement be a priority, and you're not likely to have an

informed public. So what can you assure us if you have a working majority, not a 50-50 split on the Senate Judiciary in terms of corporate crime hearings and a corporate crime database?

Senator Sheldon Whitehouse: Well, we have two things that change if we get a majority and not just a 50-50 tie with the vice president tiebreaker. One is that we can actually hold hearings based on investigation, based on subpoenaed information, the way the January 6th Commission succeeded, because they actually had the power to investigate and to bring people in and to force subpoenas, including of the president and of documents and so forth. So our ability to enlighten the American public through public hearings goes up dramatically.

The other thing that it does is it allows us to forge paths around the 60-vote cloture rule in the Senate, and allows us to find ways on issues that are of vital importance, like protecting our democracy from unlimited corporate dark money to forbid the Republicans from using the cloture rule as their veto to the American people. And if we can do those two things, a whole new arena of opportunity emerges to restore democracy.

Ralph Nader: And to begin restoring a quality judiciary, I might add, wouldn't you say?

Senator Sheldon Whitehouse: Yeah, the tough thing about that is that if you have one party that is putting judges on the court who've been selected because they will basically do what they're told by the interest groups that come in with their marching orders, and you have another party that appoints judges that try to be fair and follow the law, in the long run, that tilts things towards the party that is appointing the partisan and the captured judges, because you can't just offset a captured judge with a neutral judge. We are working very hard to make sure we get as many judges as we can. And Chairman Durbin has worked really hard and done very well actually operating ahead of Trump's pace of judicial appointments.

But at the end of the day, what we're trying to do is to get real judges in. At the end of the day, what they were often up to was getting people in who would do what the big donors wanted. And that's just never going to be a fair fight. And on our side, having partisan Democrats who have predisposed determinations and counterbalancing those two is a rotten thing to have happened in the judiciary. We really need to figure out how you solve that problem. One of the reasons I wrote the book is to bring public attention to the problem where it's at its worst, which is at the United States Supreme Court, so we can start thinking about what the solution should be there. But you can't do solutions if you don't understand the problem. So my book tries to explain the problem so that people feel comfortable that they can process different solutions.

Ralph Nader: Well, we're coming up to the November elections, and I'm sure you saw this lead article in the *New York Times*, Sunday, October 16th, which says, "Democrats quiet on aid victories as prices spiral, fearing GOP attacks." And basically, Jim Tankersley, who reports out of Georgia that nationwide, said, that with few exceptions, the Democrats aren't boasting about what they've done. They don't talk enough about pushing for a \$15 minimum wage opposed vigorously by the Republican Party, the extension of the \$300 child tax credit to 58 million children, which cut child poverty by a third that was blocked in January by the Republicans in Congress. All the infrastructure jobs down to the community, rebuilding, renovating, repairing that Biden's legislation is funding. And the *Times* is almost perplexed by this when Tankersley said, "In the midst of a critical runoff campaign that would determine control of the Senate, the

Reverend Raphael Warnock promised Georgia voters that, if elected, he would help President-elect Biden send checks to people digging out of the pandemic recession.

Mr. Warnock won. Democrats delivered payments of up to \$1,400 per person. But this year, as Mr. Warnock is locked in a tight re-election campaign, he barely talks about these issues.

Democratic candidates in competitive Senate races this fall have spent little time on the trail or the airwaves touting the centerpiece provisions of their party's \$1.9 trillion economic rescue package, which party leaders had hoped would help stave off losses in the House and the Senate in midterm election. In part, that is because the rescue plan has become fodder for Republicans to attack Democrats over the inflation issue. Well, the Republicans are doing it anyway every day in their ads accusing the Democrats of the inflation problem. Corporations are the ones who sell drugs, autos, gasoline and food. The government doesn't sell it. These are corporate, market-determined prices. It's a worldwide problem—inflation, supply chain and all that. And Republicans think the Democrats are causing that. You don't have any reluctance in talking about these issues. You talk about minimum wage, you talk about the \$300 child credit, you get elected handily in Rhode Island. It's a winning issue to talk about what the Democrats have finally done since they replaced the Republicans in the Senate in January 2021. And there are people, very smart people in politics, including pollsters like Celinda Lake, who think that the Democrats are going to lose in November if they don't raise these economic progressive agenda issues that affect people who live, work and raise their families, and are not very ideological when it comes to bread and butter issues, regardless of the political labels they put on themselves, Democrats, Republicans.

You get a lot of Republican voters voting for you in Rhode Island. What's your forthright view on this? There aren't many days left. They can turn it around, start talking about these issues. They're well documented. We have 23 citizen groups who put out with us a report called *Winning America* at winningamerica.net, which everybody should go to, which puts forth all these policy strategies, tactics, rebuttals, slogans and ways to get out more votes from nonvoters—there are going to be 120 million nonvoters in November—and these groups are beside themselves. They can't get the attention of the Democratic elected officials with this report winningamerica.net.

And so on the community civic side, Senator Whitehouse, we're extremely frustrated and we can't get through to Senator Gary Peters, in charge of the Senate reelection; we can't even get through to our friends, Oregon Senators Ron Wyden, and Jeff Merkley on this. And if people can't get through to their members of Congress, they can't get anything done, period. It's over. It doesn't matter. They can't communicate to their members, especially during this crucial two and a half, three weeks left. What's your forthright comment on that? We've had Senator Markey (MA) endorsing winningamerica.net, and Congresspersons Hakeem Jeffries (NY), Jamie Raskin (MD), Carolyn Maloney (NY), Peter DeFazio (OR), John Larson (CT), and it's not getting any traction with the people in charge of the Democratic reelection efforts.

Senator Sheldon Whitehouse: Well, I would say two things are going on. One, particularly in the Senate, different states have different priorities. And my colleagues need to tailor their message to their home state. And they've got every interest in doing that because they can win or lose depending on that. But the second thing, which is happening kind of behind that, is that our candidates generally have to develop their own message. They go to a fairly small group of

pollsters and messaging people and ad makers who then try to craft the message and you get a lot of different voices and all of that.

On the Republican side, they start with *Fox News* operating 24/7 as a propaganda channel. They feed immense amounts of propaganda through that. They figure out the very best theories are for marketing themselves, and then all of their candidates fall into line with that marketing. And it's very well done. I mean, there's a reason that corporations spend tens of millions of dollars on marketing. It's because when it's done well, it makes you money. And they have a system for marketing and propaganda that we simply do not match.

And I think of *Fox News*, as a 24/7 propaganda machine, continually blaming Joe Biden for inflation. Imagine blaming Joe Biden for high gas prices when the fossil fuel industry actually sets the gas prices. If they let Joe Biden set gas prices when they were high, he could have knocked a dollar per gallon off like that. But of course, he can't. We have a market economy. But they blame him for it nonetheless. And they got people running around putting stickers on the gas pumps saying Joe Biden did this. Well, none of it is true, but we don't have the countermeasures to either respond to what they're doing, or to look behind the curtain and show the American people who was behind what they're doing. And I think that's the big flaw that I see in our operation right now. And it's dangerous because they're outgunning us because they've got that advantage.

Ralph Nader: Well, they do. The Democrats have raised a lot of money, like the Republicans, and they're putting a lot of ads on TV and social media, and they've got the issues that get left/right support among workers in this country. Just like to give you a list, we put this on our website, winningamerica.net, and you'll see, you'll see the appeal and why this should have been front and center and it's still not too late. It's called your choice, meaning the voters--Your Choice in 2022. Compare the Democrats and the Republicans. Now I'm going to list them and they are coming in at 60%, 70%, 80% in the polls.

One, raise the frozen minimum wage. Two, tax the wealthiest firms and the super-rich who are grossly undertaxed, especially with the Trump tax cut. Three, strengthen gun safety law. Yeah, a majority want that. Four, guarantee freedom for women, *Roe v Wade* issue. Five, end Citizens United and dark money. We've already talked about the huge support. Six, provide Medicare for all. Seven, raise frozen Social Security benefits. Eight, restore voting rights. Big support on not messing around with voter suppression. Nine, fund child care and family sick leave, which all western countries have, by the way. Ten, fight climate violence with renewable energy--support for solar and wind power is tremendous in this country, not to mention energy conservation with all the jobs in the community. Eleven, try this one; reduce skyrocketing drug prices. And twelve, this is right where you focus; increase funding to prosecute corporate crooks. That thing will go up to 90%. And so you have this card, you're campaigning on the hustings here. You pass out this card, and you say to voters, hey, look, pull yourself on these twelve issues. And then turn the card around and you'll see that on the record, the Democrats say yes; the Republicans say no. And this Winning America effort has almost been blacked out by the press. The *Washington Post* reported it recently. But that's the way to win an election. That's the way you win the elections. And this is nationwide, Senator Whitehouse. This is not something that says, oh, this doesn't play in Alaska or Texas or Florida. No, it plays everywhere. There are Florida referendums against the fast food industry dominating the ads that raised the minimum wage. It

was, like, they were outspent 90/95 to 5. And Arkansas had a referendum—raise the minimum wage. Workers all bleed the same color, regardless of whether they call themselves Republicans, Democrats, conservatives or liberals.

If Democrats don't campaign with that in mind, which is what O'Rourke in Texas has got to do, they're going to lose. They're going to lose far more elections than they should have landslided this worse Republican Party in history. Can you imagine what even Ronald Reagan would think of these Republicans? Never mind Senator Robert Taft or Dwight Eisenhower. So there's still time. Listeners can get this list by going to winningamerica.net, and I hope you can disseminate this, because you believe in all these things, to your fellow senators, including Senator Gary Peters. I'm telling you, I've said it again and again, the Democrats have got 12 arrows in their quiver and they're using two. And that's what the *New York Times* confirmed. And then the next day, this last Monday, they showed the polls are turning in favor of the GOP, in favor of a corrupt party-- violence prone, suppressing votes, lying as a practice daily, Wall Street over Main Street, anti-worker, anti-livelihoods, social safety net, cruelty to children, incredible. I wrote a column a month ago on the serial cruelty of Republicans to children--not only pesticides, but family leave, sick leave, insurance--not funding Medicaid in various states, even though the federal funds, as you know, supply it. So I'm relying on you, and I hope you can disseminate this to your fellow senators because a lot of these races are going to be decided by one, two or three points I would gather. What's your reaction to all this?

Senator Sheldon Whitehouse: They are going to be very close. I think on the merits, the policy agenda you've summarized is a very positive one that we ought to be able to run on. And I just can't at this point dictate how my colleagues are going to run their own campaigns. I hope your message gets out there and we need to move that way in the future. But don't forget, we're not on an even playing field of policy prescription against policy prescription. They also have enormous amounts of dark money and they have *Fox News*, which is disseminating propaganda 24/7, 365, so that the base listener of *Fox News* is continually being moved towards whatever issues they want to drive to the top. And we've got to be, I think, just more energetic and more aggressive about calling out the mischief that they're up to as well as the policy differences. But I agree with you on all the policies. Thank you so much for having me on and I hope that my book, *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court* appeals to a lot of your listeners and helps to explain to them what's going wrong with the Supreme Court.

Ralph Nader: Indeed, our listeners should form discussion groups about this. This is not a book just to be read by individuals--discussion groups, book clubs, donate it to your local public library, talk about it, phone up the local newspaper and ask for it to be reviewed. It's called *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court* by Senator Sheldon Whitehouse with Jennifer Mueller. He is the Democratic Senator from Rhode Island.

Senator Sheldon Whitehouse: Thank you very much. I've got to go onto something else in one minute, so I'm going to let you go with great appreciation for all of your work. Thank you.

Ralph Nader: And good luck on this great important book. Thank you, Senator Whitehouse.

Steve Skrovan: We've been speaking with Senator Sheldon Whitehouse. We will link to his book, *The Scheme* at ralphnaderradiohour.com. When we come back, we're going to talk to our

resident constitutional scholar, Bruce Fein. But first, let's check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington, D.C., this is your *Corporate Crime Reporter* "Morning Minute" for Friday, October 21, 2022. I'm Russell Mokhiber.

AT&T Illinois will pay \$23 million to resolve a federal criminal investigation into alleged misconduct involving the company's efforts to unlawfully influence former Illinois Speaker of the House, Michael Madigan. The investigation of AT&T Illinois is being resolved with a deferred prosecution agreement under which the company admitted it arranged for payments to be made to an ally of Madigan to influence and reward Madigan's efforts to assist AT&T Illinois with respect to legislation sought by the company. Under the agreement, the government will defer prosecution on the charge for two years and then seek to dismiss it if AT&T Illinois abides by certain conditions, including continuing to cooperate with any investigation related to the misconduct alleged in the information.

For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russell. Our resident constitutional scholar, Bruce Fein, has been reading a lot of books about Donald Trump lately, and he finds that there's few things missing. David?

David Feldman: Bruce Fein is a constitutional scholar and international law expert. Mr. Fein was Associate Deputy Attorney General under Ronald Reagan, and he is the author of *Constitutional Peril: The Life and Death Struggle for Our Constitution and Democracy*, and *American Empire: Before the Fall*.

Welcome back to the *Ralph Nader Radio Hour*, Bruce Fein.

Bruce Fein: Thank you.

Ralph Nader: Yes, welcome, Bruce. You keep being astounded at the absence of public dialogue from all directions—Congress, the media, authors of books, on and on—of the constant violations of our Constitution. Trump obviously did it as a course of White House action every day, all kinds of impeachable offenses, but Congress doesn't make this a big issue. Writers and media don't make this a big issue even though they report the situations, conditions and behaviors by officials that are unconstitutional--wars that aren't declared, for example, that are unconstitutional; defiance of subpoenas from Congress by the White House is an impeachable offense against the Constitution. Tell us what you found recently and give us your view of what needs to be done to turn this around and make political campaigns focus on the violation of the fundamental charter of government, the US Constitution, all the time with impunity.

Bruce Fein: Well, thank you, Ralph. I think the most recent example are two books by *New York Times* reporters, Maggie Haberman called *Confidence Man*, and another by Peter Baker and his wife Susan Glasser called *The Divider*. They focus on personalities. Let me just give you one example, I think, that will help the audience. Article II of the United States Constitution makes it clear that before a president can take office, he has to swear to say that he will faithfully execute the office of the president, and will to the best of my ability, preserve, protect, and defend the

Constitution of the United States. He has to make that under oath before he can even take office. That's a comparable requirement for members of the House and the Senate.

And we have a president of the United States saying openly, "Then, I have an Article II, where I can do anything; I have to the right to do anything I want as president," which is a clear violation of his oath. If that were true, the Constitution would not have seven articles, it'd be one article. The President has the right to do anything he wants. That's the end of the game.

A flagrant example of how this fundamental precept of our government is ignored in these books; they're combined 1500 pages. There isn't a focus at all on all of the violations of the oath of office of not only President Trump, but the members of Congress when they're derelict and refusing to exercise their responsibilities to impeach, to go to war or not go to war, instead of handing off all of their power to the executive branch--a complete silence out there. And I say it's truly stunning that the focus is all on personalities. Well, is Trump a sociopath? No. Does he like X? Does he like Y? How many people are hypocrites in Congress? That's what it's about instead of on our fundamental charter.

There's only one oath that all of our members of Congress and the president take, and the judiciary take—the one oath to uphold and support the Constitution of the United States. They don't take an oath to support their political party. They don't take an oath to get re-elected. They don't take an oath for any other purpose other than to uphold and defend the Constitution.

And as you were pointing out, one of the clauses that's violated every day for the last 50 years is the president exercises the war power, which belongs only to Congress, as everyone understood from George Washington on for the first hundred-some years. It's very, very clear. Congress only has the power to declare war. And we have not only President Trump continuing wars never declared, we have President Biden saying, well, he'll go to war over Taiwan if he wishes on his own. He'll respond to nuclear weapons that Putin might use in Ukraine on his own. That's not the only instance, as you pointed out. Transparency is the coin of the constitutional realm. It's the checks and balances. It's the sunshine that's the best disinfectant. And the president flouts congressional subpoenas every single day.

Well, we don't want to tell it to you. It's state secrets privilege to this or that. And the US Supreme Court has held Congress can actually imprison individuals in the executive branch for failing to comply with the subpoena that's relevant to their oversight duties and legislative powers. And one example of how this authority is so neglected is in the recent discussion of, well, what might happen when the January 6th Committee to President Trump is flouted. There's nowhere mentioned in these analysis. Congress, if they wish to, could put him in a detention facility on Capitol Hill. It's all well, they can go to court and wait five years or try to criminally prosecute him down the road.

And if we don't get back to the understanding that the crux of our country, the crux of our Republic is process—following process as prescribed in the Constitution, and if you lose, you go back and you make a better argument, or if you think the Constitution is defective, you propose an amendment. We had the Bill of Rights was an amendment process. The Civil War amendments were amendments. That is what makes us different from other countries. And this preoccupation with personalities is leading us off of a cliff very fast.

Ralph Nader: Your broader point, Bruce, is truly being occluded by people who engage in the public press and congressional activities. Your broadest point is that we are living in an age of massive serial violations of our Constitution by our elected representatives, and of course, by implication, government officials who are working under these elected representatives in the branches of government. And this breeds a culture of lawlessness all the way down to the corporate crime wave to violations of consumer rights, worker rights, civil rights, civil liberties, governors of states taking the law into their own hands. So this breakdown is a precursor to a collapse of a society that pretends to be ruled by the rule of law procedurally and substantively.

Now you've read every page of the massive book by Obama. You read every page by the two books that you just mentioned. And you would think that if they're focusing on the White House, if they're focusing on President Trump, if Obama's talking about his eight years, there'd be serious attention to these serial, entrenched to now almost institutionalized violations of our checks and balances of our federal system of government rooted in the Constitution. Presidents spend money, huge money without congressional appropriations. Trump used the White House lawn for his political campaigns, violating the criminal statute called the Hatch Act. They not only violate the Constitution, they violate criminal federal statutes that are reflecting constitutional imperatives. So you read every page, what did you find?

Bruce Fein: Well, there are glancing fleeting references in, like, one word to the Constitution. That's it. And it's literally one occasion only in collectively, you were talking about 2500 pages written by the highest level of our intellectual class here. It's truly amazing. And let me report one incident where I was moderating a week ago, a discussion with former Senator Chuck Hagel from Nebraska, who served as Secretary of Defense. And Mr. Hagel is not extremist by any means. He has many laudatory qualities to him. And I said, Mr. Hagel, you are a senator, you know what a treaty looks like, right? Why wasn't the treaty with Iran, treated as a treaty? Why was it an executive agreement? And he says cavalierly, without embarrassment, "Well, yeah, it was a treaty. It's right in the Constitution. It's text. It was a treaty, but we couldn't get the votes in the Senate, so we just did an executive agreement." And he shrugged his shoulders and moved on.

And in this audience that was attended by people who are high-level former officials, everyone just shrugged their shoulders, said okay, we need to move on to another topic. I was just stunned. I said, wait a minute, how many provisions do you get to white out and ignore it? You pick and choose what happens to fit your fancy on a Wednesday or Tuesday or whatever. But that's an example because Chuck Hagel is not a neocon crazy. And yet we've so debased our constitutional understanding that now it's viewed as a scrap of paper that you pay attention to and it's a validity. Yeah, it's good if you can go along with it. But if the Constitution doesn't fit into your political program, okay, cast it aside. That's how bad it is.

Ralph Nader: Well, this was a real concern of Senator Robert Byrd from West Virginia, which is why he got through the Congress years ago, Constitution Day in September. And he was urging universities and schools to study the Constitution. It's not just an exhortation, it's a system of checks and balances, with all its warts and could be amended--a system of checks and balances to hold the society together and not have it fall apart, and fight each other and devolve into all kinds of strife, corruption, lack of accountability, abuses of power by people who are using the sovereign power, the people under the Constitution, namely our elected officials, federal, state and local.

Anyway, we're out of time. Thank you for your insight here, your dutiful reading of these books. Obama taught Constitutional Law at the University of Chicago and he had just one glancing reference in hundreds of pages in his book, which is a very compelling sign that these violations of the Constitution are not episodic. They have been institutionalized and we've got to wake up to this issue because it affects everybody in all kinds of ways where they live, work and raise their families. Thank you very much, Bruce Fein. To be continued.

Bruce Fein: Okay, thanks, Ralph. Have a wonderful day.

Steve Skrovan: So we've had a very full show with Senator Sheldon Whitehouse and Bruce Fein. But we want to button it up today with Ralph talking about Tort Law Day that's coming up. Talk about that.

Ralph Nader: We have National Tort Law Education Day. Tort Law is the law of wrongful injury. If somebody wrongfully injures you, whether on the streets or corporate product dangers, or toxic pollutants, or unsafe conditions in hospitals, workplace hazards, that's tort law. It gives you the right to get a contingent-fee lawyer and go to court and have a trial by jury or settle it in anticipation of being an open court with full rights of getting information and cross examination. All this is yours free if you go to tortmuseum.org where you can see the schedule of speakers that afternoon and have a short course in tort law, the law of wrongful injury, and celebrate the American trial by jury system, which is pretty special in our world.

October 29th between 1:00 and 4:00 ET, when you will get a short course on Tort Law from leading practitioners and leading scholars and advocates, in making usable on a broader front, the law of wrongful injury, for adequate compensation, for injuries or diseases inflicted by wrongdoers, for disclosing information, and for deterrence against similar practices by other wrongdoers--a triple header, it's all yours free, tortmuseum.org--October 29th, 1 PM Eastern Time to 4 PM Eastern Time.

Steve Skrovan: I want to thank our guests again, Senator Sheldon Whitehouse and Bruce Fein. For those listening on the radio, that's our show. For you podcast listeners, stay tuned for some bonus material we call "The Wrap Up." A transcript of this program will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

David Feldman: Subscribe to us on our *Ralph Nader Radio Hour* YouTube channel. And for Ralph's weekly column, it's free, go to nader.org. For more from Russell Mokhiber, go to corporatocrimereporter.com.

Steve Skrovan: The American Museum of Tort Law has gone virtual. Go to tortmuseum.org to explore the exhibits, take a virtual tour, and learn about iconic tort cases from history. And Saturday, October 29th, is Tort Law Day. Visit tortmuseum.org to view the program, register for the free virtual event, and join Ralph for an afternoon of education and inspiration.

David Feldman: To order your copy of the *Capitol Hill Citizen*, "Democracy Dies in Broad Daylight," go to capitolhillcitizen.com. The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music "Stand Up, Rise Up" was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

David Feldman: Join us next week on the *Ralph Nader Radio Hour* when our guest is Chris Hedges, author of the new book, *The Greatest Evil is War*. Thank you, Ralph.

Ralph Nader: Thank you everybody. And remember, without civic activity, there's no democracy and no justice.