

# BENEFICIAL OWNERSHIP TRANSPARENCY: CASE STUDY

## US HOUSE PASSAGE OF CORPORATE TRANSPARENCY ACT

This case study is part of a retrospective evaluation sponsored by [TAI](#) to assess the roles and contributions of TAI funder members & grantee partners in achieving select policy outcomes advancing global beneficial ownership transparency (BOT) from 2016-2021. See full report for insights across outcomes.

### WHAT WAS THE OUTCOME?



***In October 2019, the U.S. House of Representatives voted to pass the Corporate Transparency Act (HR 2513), by a bipartisan vote of 249 to 173, with 25 Republicans voting in favor. This legislation required corporations and limited liability companies (LLCs) to disclose to law enforcement and others with legally mandated anti-money laundering responsibilities (e.g., financial institutions) information on the beneficial owners of the entity at the point of formation.***

### WHO CONTRIBUTED TO THE OUTCOME?

#### TAI FUNDERS

OSF, Luminate, Ford Foundation

#### GRANTEE PARTNERS

- FACT Coalition

Members:

- Global Witness
- Jubilee US Network
- Transparency International
- Global Financial Integrity
- One Campaign
- Publish What You Pay
- Tax Justice Network
- The B Team

In 2016, the U.S. Treasury Department finalized consumer due diligence regulations requiring beneficial ownership disclosure of anyone who worked with banks and Reuters published a report outlining how Delaware had kept America safe for corporate secrecy.

The FACT Coalition, the primary group pushing for beneficial ownership transparency (BOT) in the U.S., was founded in 2011. They describe themselves as a non-partisan alliance of veteran policy experts and groups who witness the abusive impacts of anonymous shell companies, loopholes, and offshore tax havens. Though always bi-partisan, FACT was able to enlist early support from “traditional allies” (i.e., progressive groups and Democratic legislators). However, in 2016, with both houses of Congress and the White House under Republican control, then FACT Executive Director Gary Kalman and board members focused greater efforts on garnering support from conservative groups and law makers. Support from the Bank Policy Institute represented a pivotal conservative alliance for the campaign. From 2016 to 2019, through direct lobbying, education and consultation, FACT was able to enlist advocacy, or reverse opposition, for BOT from key constituencies. These include the Fraternal Order of Police, the Delaware Secretary of State, key members of the faith community, the National Foreign Trade Council, the National Association of Realtors, the Chamber of Commerce, and then Treasury Secretary Steve Mnuchin.

After more than a decade of focused effort, in June 2019, U.S. lawmakers finally took meaningful steps toward ending the incorporation of anonymous companies in the U.S. when the House Financial Services Committee became the first committee of Congress to vote in support of legislation to end anonymous shell companies. In 2020, the Senate was able to pass the ILLICT Cash Act and include elements of HR 2513 into the National Defense Authorization Act (NDAA) which was enacted in January 2021.

### HOW WAS THE OUTCOME ACHIEVED?

Early beneficial ownership legislation —entitled the Incorporation Transparency and Law Enforcement Act (S.2956)— was first introduced in 2008 by then Senator Carl Levin (D-MI) along with then Senators Norm Coleman (R-MN) and Barack Obama (D-IL). The bill, designed to help law enforcement stop the misuse of U.S. corporation, has been reintroduced in various iterations across the years by representatives Carolyn Maloney (D-NY), Pete King (R-NY), Ron Wyden (D-OR), Marco Rubio (R-FL), Charles Grassley (R-IA), and Claire McCaskill (D-MO).

Although this legislation was not enacted, several key world events heightened awareness of the need for increased corporate transparency and accountability, including the financial crisis of 2008, the Russian invasion of Crimea in 2014, and the release of the Panama Papers in 2016.

## MOST CRITICAL ENABLING FACTORS

### GLOBAL EVENTS WITH LOCAL IMPLICATIONS

- Global movement towards anti-corruption and tax justice
- UK's G8 leadership and launch of public BOT registry
- Sanctions against Russia following the annexation of Crimea

### LOCAL EVENTS & OPPORTUNITIES

- 2016 due diligence regulations
- Historically bi-partisan supported legislation (i.e., the NDAA) provided a vehicle on which to attach beneficial ownership provisions

### MEDIA COVERAGE

- Release of the Panama Papers in 2016
- Reuters article about Delaware
- Global Witness' 2014 TED Talk Award and 2016 undercover investigation, "Undercover in New York," which aired on 60 Minutes
- NY Times articles exploring the people behind opaque deals in series called "Tower of Secrecy: Piercing the Shell Companies"

### ROLE OF CIVIL SOCIETY

- Through strategic education and lobbying with traditionally conservative constituencies, FACT members provided cross-sector actors with the language and understanding of BOT to effectively apply pressure on their representatives
- Coalition relationship networks and expertise due to more than 9 years of advocacy and experience

### INDIVIDUAL CHAMPIONS

- Then Treasury Secretary Steve Mnuchin likely influenced then President Trump to support the legislation
- Pioneering beneficial ownership work by Senator Carl Levin in 2008 set the stage for subsequent efforts

### CROSS-SECTOR MOTIVATIONS

- Concerns with the use of anonymously owned companies to enable human trafficking
- Use of shell companies by foreign adversaries generated widespread support

### GLOBAL STANDARDS AND NORMS

- Vocal support from the B20 (global business community across G20 member states and economic sectors)

## BIGGEST BARRIERS TO PROGRESS

- A majority conservative government and political gridlock increased the time and effort needed for advocacy
- Groups with vested interests against beneficial ownership transparency (e.g., politically exposed persons; Wall Street; tax evaders; business owners)
- Direct opposition from key associations (e.g., American Bar Association, National Federation of Independent Businesses)
- Lack of data about the benefits of BOT
- Registers will not be public

## DIRECT FUNDING OUTCOMES

- Grantee partners unanimously reported the essential nature of C4 funding for these efforts. Since 2016, most of the work of the FACT Coalition had been lobbying. Grantee partners mentioned that only OSF provided this level of sustained funding for the Coalition, and that this outcome could not have occurred without the Coalition.
- Grantee partners reported that OSF's involvement increased the credibility of its campaign.
- Other work funded by OSF allowed Global Witness to conduct essential research outside of the US and serve as critical thought leaders before and during the FACT campaign.
- Grantees partners described funders as being flexible, trusting, and responsive to shifts in the Coalition's strategy.
- Funders made invaluable connections across civil society actors
- Outside of TAI, funding from the UK Government (SOCnet) was noted as critical.

## ADDITIONAL OR UNINTENDED OUTCOMES

- This outcome led other funders to come on board with C4 funding in 2020.
- Grantee partners noted this outcome may have influenced the Canadian federal government.
- This work brought together a coalition of CSOs that otherwise would not have worked together.

## SIGNIFICANCE OF OUTCOME

Beyond marking the first legislative victory for BOT advocates in the United States, this outcome represents growing bi-partisan support for ending the incorporation of anonymous U.S. companies. This support is evidenced by the introduction of the bipartisan ILLICIT CASH Act (S.2563) in the Senate, which requires the disclosure of those with substantial control of corporations to the Financial Crimes Enforcement Network (FinCEN). Provisions of both S.2563 and HR.2513 were included in H.R. 6395 National Defense Authorization Act for Fiscal Year 2021 and enacted on Jan 1, 2021.

## BIGGEST LESSON LEARNED

The US case was unique in the explicit effort expended to gain the support of non-traditional (i.e., more conservative) allies as a means of influencing key decision makers. While other jurisdictions might have had support from more progressive governments (e.g., Canada, the UK), the US case shows that through sustained education, research, and lobbying unlikely actors can be rallied to support transparency legislation.