

RALPH NADER RADIO HOUR EP 347 TRANSCRIPT

Steve Skrovan: Welcome to the *Ralph Nader Rader Hour*. My name is Steve Skrovan along with my co-host, David Feldman. Hello, David.

David Feldman: Hello, everybody.

Steve Skrovan: Good to have you here. And it's also good to have the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hey. How are you, everybody?

Steve Skrovan: Now, Ralph, before we get to our first guest, you wanted to clear up something about an article that appeared in *Salon* this week. Do you want to tell us what that's all about?

Ralph Nader: Yeah. It was a long interview- which was edited by *Salon* - of me and very misleading. They had me saying, "In the swing states, you have to vote for Joe Biden." I was saying that that was [Noam] Chomsky's position: "In the safe states, you can vote your conscience; in the swing states, you have to vote for Biden." They transposed that as if it was my words. And when we went back to the audio, it's clear they doctored the audio. The interviewer doctored the audio in order to come up with this kind of headline. They've taken it down but they haven't changed the interview. As a result, there's a lot of critical feedback understandably from people. My position has always been that there are many ways to fight and defeat Trump, both inside and outside the electoral process, and that people should follow an act on their own conscience, and they can do it in a whole variety of ways. And I don't say people should vote for one or the other; it's important to make that clear. So anybody listening who got wind of the doctored audio-driven article by *Salon* they should be ashamed of themselves. And we're going to try to get an apology from them, not just a correction; they might want to hear what I've just corrected. That includes a lot of people who are our friends around the country.

Steve Skrovan: Yeah. And we did get some mention of that in our inbox. And it seemed like, to me, at least in one of the messages that people were kind of aware that this must've been doctored because they know your position well on that.

Ralph Nader: And on another point, you know, it's amazing how the Democrats never use the full force of the arguments against Trump and the Republicans in terms of actual campaigning. It's one thing when they don't pick up the issues like we're going to hear some of them from Patriotic Millionaires in a few seconds, but why haven't they picked up the midnight campaigning for the millions of Americans who work the midnight shift and keep the society going for the rest of us? You know who they are: healthcare workers, firefighters, police, nursing home workers, all night drug stores--all kinds of people, security guards--and they never hear from or see a candidate. And if the Democrats wanted to pay respect to these people and campaign for a couple hours from midnight on, I think there'd be a lot of word of mouth. Well, you know, they just put these ads on TV, and their consultants collect 15% and they have less and less effect these TV ads, so it's unfortunate. I think the key thing on people's minds now—it doesn't matter if they're conservatives, liberals or whatnot—is anxiety, dread and fear. And the Democrats really should fill the blanks there because the Republican Party under Trump is the manufacturer and promoter of anxiety, dread and fear. Just think of all of his lies, his slanders, his false accusations, and how he has mishandled the COVID-19.

Steve Skrovan: All right, Ralph. Well, thank you for that opening. Let's get to the main part of our show here, and to do that, I'm going to point out that last month, *the New York Times* obtained President Trump's tax returns. And we learned a lot. We learned that the president avoided paying millions of dollars on his tax bill for the past decade. And that in 2016 and 2017, Trump paid \$750 in income taxes--750. That is less than some minimum-wage workers pay. And the people were rightly outraged, but it's also important to realize that what Donald Trump did is very common among the wealthy and powerful. Trump wasn't being clever. He was simply doing what most millionaires and billionaires do. And this is all the result of a system that dotes on the wealthy. In order to change this, we need to change the laws. Luckily, there's an organization of millionaires working to do just that. These millionaires think that greater wealth equality is better for everyone in society as a whole. This group called Patriotic Millionaires includes members like Chuck Collins, the heir to the Oscar Mayer Wiener fortune, and Steve Silberstein. We've talked to both of them on this show. And today we are joined by the Chair of Patriotic Millionaires, Morris Pearl. We will hear from Mr. Pearl about Trump's tax cuts and Biden's tax plan as well as what actions his organization is taking right now.

That's the first part of the show. And in the second part of our show, we will be joined once again by one of Ralph's absolute favorite Republicans, constitutional scholar Bruce Fein. He is going to warn us about how President Trump is a clear and present danger to the nation and why he needs to resign immediately. Mr. Fein wrote up a 14-point memo about all the reasons that

Trump is a danger to us all. These points include the way he has wrecked environmental- and worker-safety laws as well as his attempts to suppress fair voting. We will go over this all with Mr. Fein today.

In between, we will as always, take some time to check in with our corporate crime reporter, Russell Mokhiber. Maybe we'll throw in some listener questions if we have a little time at the end, but first let's talk to a proud traitor to his class. David?

David Feldman: Morris Pearl serves as Chair of the Patriotic Millionaires, a group of hundreds of high-net-worth Americans who focus on promoting public policy solutions that encourage political equality, guarantee a sustaining wage for working Americans, and ensure that millionaires, billionaires, and corporations pay their fair share of taxes. Mr. Pearl used to be a managing director at BlackRock, one of the largest investment firms in the world. He retired to work for Patriotic Millionaires full time. Patriotic Millionaires has a book coming out in April of 2021 called *Tax the Rich!: How Lies, Loopholes, and Lobbyists Make the Rich Even Richer and What to Do About It*. Welcome back to the *Ralph Nader Rader Hour*, Morris Pearl.

Morris Pearl: Thank you. It's great to be in your show again.

Ralph Nader: Thank you indeed, Morris. Tell us a little bit how Patriotic Millionaires got underway. I mean, this has really never happened in American history. You've had quite a bit of coverage, 600 media stories in 44 countries and all kinds of op-eds, but by my standard, you can't have enough media. So tell our listeners about how you got underway and what kind of people belong to Patriotic Millionaires.

Morris Pearl: Sure. It started about 10 years ago when President Bush passed tax cuts in 2000, that were set to expire in 2011. And some of us thought this was ridiculous that taxes would be lowered on rich people. We were urging then President Obama to let the Bush tax cuts expire just for the top bracket, for people who were under, say a million dollars a year. And then President Obama thought we were kind of dorks for attacking him from the left, or at least that's what Ms. Valerie Jarrett, [his special assistant] said he thought. But then he realized we were actually helping him. We had hundreds of rich people from all over the country sending in a letter which got a huge amount of press saying, "For the good of the country, raise our taxes." And he actually invited us to stand on the podium with him when he gave his famous Buffett Rule speech on April 15th, talking about how it's ridiculous that these wealthiest people in America--we had a bunch of our members standing with their assistants, and he was saying how

it's ridiculous that these wealthiest people have lower tax rates than their assistants did. And it's true. That's part of what makes the wealthy people very wealthy. Because once you're at the point where you're spending less money than you're making on your investments, every year you get more and more rich because that difference compounds. And so the rich get richer, because they're paying less taxes, than people who work for a living. And we have hundreds of “high-net-worth;” it sounds like a ten-dollar phrase. I just say, “We have hundreds of rich people from around the country who are speaking out and making their voices known and making it known that it's not good for us either to have this gross inequality. We can't invest in businesses and make money in a country with a few rich people and lots of poor people. We need that huge middle class that made America what it is for decades and decades. And we're afraid that things are changing and moving the wrong direction. You know, people are marching in the streets and people are angry. And I'm old enough to have seen this play out in, say South Africa in the seventies and eighties, and that did not end well for the rich people. And I'm afraid that America is currently moving in the wrong direction and we're trying to do something about it.

Ralph Nader: Well, you certainly are. Listeners should know that Patriotic Millionaires has been a fierce advocate for livable federal minimum wage, advocate—as you heard from Morris—of a highly progressive tax system, an advocate for equal political representation. They say, “The country will be more stable and more prosperous when more of its citizens are authentically engaged in the governance process, rather than ceding control to a small number of self-interested actors.” Do you have any billionaires that have joined, not just millionaires?

Morris Pearl: A few. Mostly we have fairly normal millionaires--people who worked for living, saved up, you know, millions of dollars over time because they were successful in their businesses or whatever. We're not getting a few celebrity spokespeople; we're getting the kinds of people that organize businesses on every main street in America, the kind of businesses that were around when you and I were younger that paid for the rotary clubs and the recreation parks and the little leagues and all of those things that America used to have because we did things together. We weren't all in it for ourselves!

Ralph Nader: Did you have meetings at all before COVID-19 turned everything into virtual?

Morris Pearl: Oh, we did. We did. We did have events. We did a huge *Tax the Rich!* conference in Washington, D.C., another in San Francisco. Frankly, we've been getting higher attendance at our virtual events, because our members are all over the country. So, it's easier to get somebody to call in for a Zoom meeting than it is to get people to travel across the country.

Ralph Nader: Years ago, you know, Warren Buffett, who is worth about \$70 billion, not only called for higher taxes in his famous statement, which I'm sure you remember that his secretary had a higher tax rate than he did. But he actually came to the U.S. Senate once and met with Democratic senators and they came for lunch and he made his pitch and then they drifted away and did nothing. And he was pretty disgusted with them. Does he connect at all with Patriotic Millionaires? Because you seem to be on the same base in terms of progressive taxation, and he has also written op-eds on this in *the New York Times*.

Morris Pearl: Yeah. I mean the original meeting I was talking about in the White House with President Obama, that's why it was called the Buffet Rule, because that's what Buffet said that was ridiculous. And it's mainly because people who get income from investments, long-term capital gains, pay much lower tax rates than people who work for a living. And that's what's unfair. So, I mean, yes, we're on the same page with Warren Buffet. We've worked with Nick Hanauer, [and] you know, a number of wealthy people. And a lot of our members, including Steve Silberstein, are speaking out, and this is what we do. We have a staff of people based in Washington, D.C., mostly [and] a few in California and New York, who are helping our members be on radio shows like yours and do op-eds and media interviews and go on Fox News and, you know, all of that kind of thing. So that's what we're doing, is we're trying to get the word out that gross inequality is actually not good for anybody.

Ralph Nader: Morris, let's talk numbers here, because I think some of our younger listeners have no idea what corporate taxes used to be like, and start out with what corporations used to be taxed, when it started, and how it was gradually shredded. I just saw an IRS pie chart where of all the money that the government raises, including for Social Security and Medicare and customs fees and income tax, and all corporations that have been reporting spectacular profits like Apple and all these other companies contribute just 5 percent, 5 percent of the entire expenditure of the Federal Government. Could you start out with a little history [and] show us how it was shredded, then divided between capital gains and so on?

Morris Pearl: Well, sure. I mean after World War II, both corporations and the richest individuals paid much higher tax than they do now. It was above 50% for corporations at some points and above 90 percent at the peak for the wealthiest individuals among us. And that slowly declined. It was 35% for many years after the tax cuts during the Ronald Reagan administration, and now it's nominally 21%, but half of that for multinational corporations, because the government has a policy of sort of trying to appease multinationals. Individual tax rates were 70% for many years. The very people that are running the "complaining about high taxes" bus tour paid taxes of 70% when they were starting their businesses, and now it ranges from 10% up to around 30 something percent for individuals, but 0 to 20 percent for investors in late, long-term capital gains.

Ralph Nader: And the point that someone used to make, people like Bob McIntyre, who headed for many years the Citizens for Tax Justice, is that if we raised corporate taxes to the level that they were imposed on corporations in the prosperous 1960s, we'd have a huge amount of money for infrastructure, creating good jobs, repairing and modernizing America's public services in every community. How come the argument isn't made if they paid higher taxes in the 60s and they made a good profit and money was used for the people more than today? What happened in the meantime?

Morris Pearl: Well, it's that these Republican young staffers have made up this fiction that profits are fixed. They say, "The bottom-line profits are fixed; that can't be changed." The corporation gets a certain amount of revenue. And so every dollar they pay in taxes, that's \$1 to take out of paying in payroll or something like that. Whereas in reality, that's simply a fiction; in reality, corporations pay what they need to pay to get people to work. And whatever is left over, that's what the owners/the stockholders get. But somehow the Republicans have made up this crazy story that they have to make a choice between paying taxes or paying salaries, and [that] if we raise their taxes, they have to lower the salaries. And that's simply the most ridiculous idea I've heard of, but somehow people believe it. That's why, you know, the head of AT&T was running around saying, "Oh, we could hire so many more people if we didn't have to pay taxes." Whereas he should know that taxes are only calculated in profits. Profits are calculated after payroll is deducted. And so it just doesn't make any sense at all, but that's what Randall Stephenson claimed to think. I don't know.

Ralph Nader: Well, another argument that they make is that they need tax cuts to retain more capital from their profits, so they can invest in productive activity and create jobs. This is what the Congress bought from them twice in the last 20 years to give them all kinds of tax cuts and repatriation from abroad while they were using 7, 8, \$9 trillion of their profits, these big companies, to buy back their stock in order to establish better metrics for executive compensation at the top. How do you crank in this enormous wasteful stock buyback binge?

Morris Pearl: Yes, because when corporations have more money, the owners of the corporation get the money. That's the point that we've been trying to make. If you want to help somebody, you can help somebody; send them money. If you want to help owners of corporations, you can change the tax laws to give them more money. If you want to help working people, you can change the law to give them more money. But somehow thinking that, oh, we should help owners of corporations, and somehow that will indirectly help working people, is just ridiculous.

Ralph Nader: What do you think of the argument that's often made for years in the right-wing literature that "corporations don't pay taxes, people do." They just pass it on to the consumer or the economy. How would you rebut that?

Morris Pearl: Well, there's two things. One is, they don't mean the consumers; they mean the owners of the corporations. And frankly, a lot of corporations don't have owners who pay taxes. They're owned by mutual funds and people's 401(K)s and various other retirement funds that don't pay taxes anyway. So the very wealthiest among us have much of their money in things that don't pay taxes. Even I have millions of dollars in IRA accounts that don't pay taxes. So yeah, when corporate taxes are lowered, that makes me much more wealthy; that's true. But it's not because I was double paying taxes. It was because taxes were being charged once at the corporate level and not at all at the individual level.

Ralph Nader: Well, there is a growing double standard, isn't there, under the law. I always wonder when some lawyer will come around and say, it's a violation of the Equal Protection Act. Why should individuals pay close to 40 percent maximum income tax and corporations pay no more than 21 or 22 percent? Have you ever pursued that with your lawyers?

Morris Pearl: Can't say we looked at that argument, but we think that the wealthiest should pay a higher share of the tax burden. And we think the very richest people should be paying higher taxes than people who work for a living, not lower rates as is currently the case.

Ralph Nader: Yeah. Unearned income pays lower taxes than people who sweat it out every day 40 hours or more a week going to work; that's called earned income, and they pay a higher tax rate. It's part of the craziness, I'm sure, that you've described in this system.

Morris Pearl: Frankly, that is the fundamental issue with the Buffet Rule is that investors, [and] investment income is the unearned income you were talking about. Income from our investments and long-term capital gains has a lower tax rate than the tax rate paid by people who work for a living and get paid for their labor. And it's just ridiculous. That's why the rich are getting richer and everyone else isn't.

Ralph Nader: Well, I want to put something in front of you and get an explanation, which I think listeners would really look forward to. When I was a young man, the ratio of top corporate

pay to the average worker in the corporation was like 12 to 14 times. So the CEO got 12 to 14 times more than the working guys got in their companies. And then it went up; in 1980, it was about 40, 50 times, and now it can range between 300 and 500 times the average worker pay. And to translate that, there are a million Walmart workers who are making \$11 or less an hour, who were making even less about a year ago, while the head of Walmart is making \$12,000 an hour on the average, not counting benefits, eight hours a day. That's sort of translating it into dollars. Now, how did this come about? We're talking to Morris Pearl, the Founder and Head of Patriotic Millionaires, which has offices in Washington, D.C. How did this come about? Is it because of the crumbling of the labor movement, countervailing power? Is it because social norms were broken down by the corporate greed at the top? But it's really quite extraordinary. Many years ago, *Fortune Magazine* had a cover story saying why CEO salaries are so high and why nothing will be done about it. [Rick Kirkland *Fortune* contributor-June 2006]. What's your reaction to all this? How did this happen? And in foreign countries, as you know better than I, in Japan and Europe, it's a much lower ratio. It's maybe 50 times or 60 times.

Morris Pearl: I mean, I think it's both and all of those things, you know? Republicans have hated working people since they passed the Taft–Hartley Act over President Truman's veto. I think that it's also a breakdown of social norms. As companies get bigger and bigger, the executives no longer see themselves as sort of owners who are responsible for the workers, or in some way, you know, they've started seeing themselves as just responsible to the shareholders. And then somehow, they feel they [should] get credit for all the profits the corporation makes. You know, I think it started frankly in the 1970s, with the takeover boom. Then, you know, when hostile takeovers started, and sort of corporate executives saw all this money, and they thought they deserved it somehow because whatever...

Ralph Nader: Isn't this another factor, Morris, that almost nobody talks about? There used to be an argument that these CEOs don't have enough stock in the company, so they don't have a stake in the company's well-being. And then under Bill Clinton, I guess they passed a bill that said that CEOs could only deduct the first million dollar in salary as deductible expense to the corporation. So this opened up the whole stock option opportunities for these CEOs, and everything went haywire in terms of massive self-enrichment. Is there something to that?

Morris Pearl: Yeah, I think it's true that that happened. And yes, the corporate executives got aligned with the shareholders in some ways and saw that they thought they should become massively wealthy, whether it was sort of their personal fault or not that the corporation was doing well or not. And it works well with your corporate executive. You know, you can bet it all on red, and if your corporation wins, you got credit for making a huge amount of money. If you lose, well, that's fine, and then you go look for another job somewhere else the next year.

Ralph Nader: Yeah. So Warren Buffet once said that excessive executive compensation was one of the biggest problems involving fairness in our economy, because of all the consequences that come from that--not just inequity in terms of pay, inequity in terms of taxes paid, but also in terms of morale, in terms of what it does to the workers to see this kind of difference when they can't live on what they're making in a company where the boss makes, you know, \$12,000 or \$15,000 an hour. Well, you have been supporting a legislation in Congress to surtax multimillionaires? Can you explain that?

Morris Pearl: Yes. I mean, we'd like to see more tax brackets. Currently, it ends for married people at about \$622,000; that's the top rate, 37%. We believe people that earn millions and millions of dollars should pay even higher tax rates than people that make hundreds of thousands of dollars. So we think that would help reduce inequality in some way. And, you know, yes. So we've been supporting more tax brackets. Whether you call it a surcharge or a higher bracket or however you want to call it, we're supporting people that make more money paying higher tax rates. And that's what we think is important.

Ralph Nader: Well, it's all about Congress, isn't it? It starts with the House Ways and Means Committee and the [U.S.] Senate Finance Committee. And I keep telling our listeners, all roads lead to the Congress. That's where you have the greatest leverage. There are only 535 men and women there. And we know their names, unlike the federal bureaucracy or federal judges, we often meet with them. So give us your composition of the House Ways and Means Committee and the Senate Finance Committee. And what do you predict if the Democrats sweep the Congress? Is that going to change the first hurdle, namely who serves on the House Ways and Means Committee and the Senate Finance Committee? I was just talking with Congressman Lloyd Doggett from Austin, Texas. He's almost going to be ranking member behind Chairman [Richard] Neal from Massachusetts. And he said that one of the reasons people get on those committees is because they're under the thrall of the moneyed interests. And so nothing gets going; you don't have really great investigative hearings. Can you give us some thoughts on that?

Morris Pearl: Well, I went to the office of the Ways and Means Committee one day before the pandemic started, shortly before the pandemic started actually. And I asked them, you know, what big, bold things they're planning to do, being, in charge of the majority? And the answer was "none." I think there's a big contingent who, yeah, "enthral" is the word; they spend a lot of time with rich donors and they sort of get to know rich people really well, because they spend a lot of time with rich people. And they get to know the problems and concerns of rich people. And for many rich people, lowering inequality is not one of their main concerns. And yeah, I'm not sure, you know, Congressman Doggett is great, but he's not going to be the chairman. He's not going to be in control, for better or worse. And frankly, I'm not sure that a lot of the members, on either side of the aisle on the Ways and Means Committee, really want to do something big.

Ralph Nader: Thank you very much, Morris. We're talking with Morris Pearl, the Chairman of the Board and progenitor par excellence of Patriotic Millionaires. How can we reach you again?

Morris Pearl: patrioticmillionaires.org is our website. Thank you very much.

Ralph Nader: Thank you, Morris.

Steve Skrovan: We've been speaking with Morris Pearl, Chair of Patriotic Millionaires. We will link to their website at ralphnaderradiohour.com. Let's take a short break. When we return, we're going to talk to frequent guest and 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 30, 2020; I'm Russell Mokhiber. Newly released emails show that in 2015 and 2016, [U.S.] Food and Drug Administration [FDA] scientists urged the agency to ban toxic formaldehyde in hair-smoothing products, often referred to as "Brazilian blowout" treatments. That's according to a report from the Environmental Working Group [EWG]. The communications, obtained by EWG, document increasing frustration among FDA scientists about the agency's efforts to regulate toxic chemicals in cosmetics. A July 2016 email shows that the scientists succeeded in convincing the FDA that a ban was justified. However, more than four years later, the treatments remain available and the FDA has taken no public steps toward a ban, EWG reported. Brazilian blowout treatments smooth hair and intensify shine by bonding methylene glycol, a liquid form of formaldehyde, to the hair cuticle and then heating it. For the Corporate Crime Reporter, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russell. Welcome back to the *Ralph Nader Rader Hour*. I'm Steve Skrovan along with David Feldman and Ralph. Now, President Trump refuses to answer whether he would peacefully transfer power after the November 3rd election, insinuating that he will summon the military to prevent Biden from taking over office if he loses the election. It's just one of the many reasons that our next guest says that President Trump is an immediate danger to our nation and needs to resign. David?

David Feldman: Bruce Fein is a constitutional scholar who was Associate Deputy Attorney General under Ronald Reagan. Mr. Fein has been a visiting fellow for constitutional studies at the Heritage Foundation and an adjunct scholar at American Enterprise Institute. He has advised numerous countries on constitutional reform, including South Africa, Hungary and Russia. He's 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 Rader Hour*, Bruce Fein.

Bruce Fein: Thank you.

Ralph Nader: Thank you, Bruce. Let's get to what you've just put out. It's called, "Trump is a clear and present danger to the nation and should resign immediately" I might add, America can't wait until January 2020, because he can wreck the country in the interregnum even after he loses. So listeners, please remember that you can get a transcript of our program any week, and you can get a transcript of what Bruce Fein is about to discuss, one after another. And the whole is greater than the sum of the parts. You have 14 points, Bruce, why don't you go for it?

Bruce Fein: Yeah. Well, the first and I think the most terrifying, if you will, President Trump has stated and openly boasted, "And then, I have Article II where I can do anything I want as president." Now, those words are indistinguishable from 'the king can do no wrong'. Really? He can do anything he wants as president? And of course he has. He goes to war zone; you know, he spent money on his own; he revokes treaties on his own; he spies on his own. The idea that a president would openly boast, 'I can do anything I want as president', you know, contrary to the separation of powers principle, the crown jewel of the Constitution, is truly stunning. You know, my baptism in Washington was Richard Nixon and his impeachment by the House Judiciary Committee and resignation. And many may recall the famous or infamous Richard Nixon quote [of] David Frost, "When the president does it, that means that it is not illegal." And when Nixon said it and acted on it, burglarizing, among other things, the office of Daniel Ellsberg, psychiatrist, and committing many other crimes and coverup, it forced him from office. He needed a pardon to escape criminality. Trump states it and it's just stunning to me.

Ralph Nader: When Nixon stated it, he wasn't president. He didn't dare say it when he was president.

Bruce Fein: No, he didn't, but he acted like he could do it as president and that caused him to be ousted from office and impeached, if you will, de facto, because he left office before the articles

were voted on, and he needed, he needed a pardon to escape criminality. It's true that he didn't say it until he was out of office, which reinforces the idea that a president with a boldness to say it while he's in office is even more terrifying. You really believe that there's nothing the U.S. president can do that's illegal? That is like somebody coming into your home, Ralph and saying, "You know, if I felt like it, I could murder you and pillage everything in your home, but for now, I'm going to be a nice guy." You'd kick that person out and call the police and say, they're threatening to kill you. The Constitution did not intend the American people to wait until a president has driven them off a cliff before there was a remedy.

Ralph Nader: And he's really going to go up the wall on that boast of his that he can do anything he wants as president in that 77-day interregnum after he loses the election, if he does, between November 3rd and January 20th. How about the second point?

Bruce Fein: Yeah. Well, that one was mentioned at the outset. No president in 230 years has ever insinuated that, you know, after the votes have been counted, all legal avenues of redress had been exhausted [that] he wouldn't accept the results of the election. President Trump has repeatedly, not just in isolation, repeatedly continued saying, "No, I'm not going to concede that I wouldn't accept a peaceful transfer of presidential power." Which would mean, oh boy, if he's not, how do you not accept a peaceful transfer other than by summoning, you know, police forces or militias or something, or violence to try to prevent the new president from being inaugurated on January 20th of 2021? That is simply not acceptable...

Ralph Nader: And the third?

Bruce Fein: And the third, running through, he has made even according to his former National Security Advisor, "obstruction of justice is a way of life". The president has an obligation to take care that the laws be faithfully executed. No, he has interceded, you know, with regard to the [Michael] Flynn prosecution, Roger Stone, the Mueller investigation, [and] refused to answer questions relating to his conduct as president. So that's another reason for ousting someone who has dishonored his oath of office to uphold rather than to sabotage the Constitution.

Ralph Nader: And fourth?

Bruce Fein: The fourth is turning the White House into a Hatch Act crime scene. The Hatch Act is quite specific that a president or anyone else running for federal office cannot commandeer federal property or federal employees to assist in promoting an election. And Trump and his aides do this constantly, even delivering addresses from the White House to the Republican National Committee. Yet this is a flagrant violation of the criminal provision of the Hatch Act. People oftentimes misunderstand that other elements of the Hatch Act do not apply to the president or vice president, but commandeering property or employees does [apply].

Ralph Nader: Or telling [U.S. Department of] Treasury employees to put his name on all the checks that are sent out in the [Coronavirus Relief] stimulus bill.

Bruce Fein: Yes. And also on direct deposit beneficiaries, he uses White House stationary and federal employees to send them letters saying, see, I am the one responsible for your direct deposit with the stimulus check.

Ralph Nader: And the only people who can prosecute him are in the Justice Department run by?

Bruce Fein: Yeah. William Barr, who basically doesn't believe that the president can do any wrong. I mean, this is one of the funny things about Mr. Barr. He has not been as explicit as President Trump has. He has never stated ever that there is any limit on presidential power! And he takes the view, at least tacitly, that no, as long as the president is in the White House, I can't do any criminal prosecution because he's immune; he's above the law.

Ralph Nader: The fifth, the fifth one.

Bruce Fein: Well, he has violated the Federal Election Campaign Act, and this needs a little expansion. The act prohibits anyone from soliciting a foreign in-kind or real contribution in money to assist in a campaign. And here we have open and notorious, even on Trump's own recorded phone conversation with the President of Ukraine him soliciting. "Hey, you know, I will give you something of value, namely weapons, assistance and money, in exchange if you'll announce you're going to open an investigation against Joe Biden." And that obviously was with the purpose to try to hamper Biden's candidacy for the presidency in 2020. Then there's a companion kind of a problem. And that is that Mr. Trump, according to published reports, openly and notoriously chats with [Sean] Hannity of Fox News, and he makes his appearances,

and they collaborate in how he can utilize the appearances and what he says and what questions are asked to advance his 2020 campaign. Hannity is not acting as an independent journalist; he's acting as an arm of the Trump campaign. Indeed, sometimes he actually appears at Trump rallies. That, again, is an in-kind contribution from a corporation that's not reported under the federal election laws, and it's a corporation because Hannity works for Fox. It's illegal as corporations cannot make direct donations to presidential candidates.

Ralph Nader: Can anybody sue on that? And the same thing for the two hours on Rush Limbaugh's show; that was the contribution in-kind by Rush Limbaugh. Who can enforce that one besides the recalcitrant Justice Department?

Bruce Fein: Well, these are criminal violations. You could try to get the fines imposed by the Federal Election Commission, but it has the equally divided Democratic and Republican commissioners and so they all logjam, you know, whenever one of their own is under investigation. So it's turned into a completely useless commission.

Ralph Nader: Let's go to six.

Bruce Fein: The power of the purse is one of the things that James Madison thought was critical to ensuring that Congress retain control over the executive. And the Congress is the only institution that can authorize the expenditure of money; they need to appropriate money. And here, the president has illegally raided funds from the military construction account to build a wall with Mexico, [which] not only violates the Appropriations Clause, but the Antideficiency Act [ADA], which makes it a crime, to spend money for purposes not appropriated for by Congress. And he's done the same; he's raided billions of dollars from the Federal Emergency Management Agency [FEMA] to pay unemployment compensation benefits to those who are out of work because of COVID-19—clear, flagrant violations of the Spending Clause and criminal violations of the Antideficiency Act.

Ralph Nader: To seven.

Bruce Fein: Well, this is one where Trump really is not unique. He's followed predecessors, beginning at least as far back as Harry Truman. He runs or continues these unconstitutional wars all around the world. They've never been specifically authorized and declared by Congress. Right

now, we've got them in Libya, Somalia, Syria, Yemen, Pakistan and Iraq. They cost trillions of dollars; they're endless. They cost millions of lives, lost limbs. They're clearly and flagrantly unconstitutional. Unfortunately, Congress does nothing, and the president persists on them. Even he clearly is of the view that he could initiate a nuclear war on his own when that's been prohibited by the Declare War Clause that was enshrined in 1787. The framers celebrated that particular War Clause as ensuring that we would only go to war in order to protect our self-defense, because all history showed that it's the executive, who is by nature aggressive, because they hope for monuments, and the nature of the executive branch is to crave activism and domination, secrecy and power. And that's why the war power is not entrusted under the Constitution to the president.

Ralph Nader: This has been deeply entrenched in both parties, whoever controls the Federal Government, it's almost a seamless web of transition from Republican-Democrat to Republican-Democrat. Empire. Number eight:

Bruce Fein: Eight is literally hundreds of congressional subpoenas or requests for information testimony that has been flouted by the president. Congressional oversight transparency is one of the critical components of separation of powers. Like Louis Brandeis said, "Sunshine is said to be the best of disinfectants." And we have one indeed that is so important that in the Nixon investigation, one of the articles of impeachment voted against him by the House Judiciary Committee was failing to comply with a single subpoena. And here we have Trump and his aides flouting subpoenas, requests for documents, requests for testimony or information, which facilitates secret government. Now, Congressman [Bruce] Morrison of Connecticut - your home state congressman - has introduced a House Resolution 111 that would make such defiance, you know, impeachable offenses. It's simply not acceptable to try to go to court to enforce these demands. It's too long. They become politically irrelevant. Every subpoena expires after the end of every Congress, which is every two years. And that's why the House Judiciary Committee didn't go to court. They simply insisted that if Nixon didn't comply with the subpoena, they would impeach and remove him from office. So that's very, very critical if we're going to get any check on the executive lawlessness in the enforcement of the subpoena authority.

Ralph Nader: And it shows the deterioration of Congress in the 1970s to now, in what they will tolerate in terms of defying congressional investigative authority vis-a-vis the executive branch through the use of subpoena or demand for testimony. When they demand the high official in the Trump regime to come, they just thumb their nose at his empty chair at the table [and] nothing happens.

Bruce Fein: Yeah, it's truly stunning. I think, you know, with a member, I mean, I dealt with an inferior to John Dingell [named] Jack Brooks. If the cabinet office did that to them, they would have an impeachment article, you know, voted in the next 24 hours. Wait a minute, you work for us. The executive branch works for Congress and the American people. They get paid by them. The fact that they wouldn't show up, shows you how the Congress has really been reduced to an inkblot—supine, cowardly—they don't try to assert any of their prerogatives.

Ralph Nader: Working three days a week at best when they're not on recess. And part of the three days, they go outside the Congress to cubbyhole private offices to raise funds by dialing for dollars. Number nine.

Bruce Fein: Yeah. He has violated his oath, you know, faithful execution of the laws. Now, one of the things that's critical for the Department of Justice and our system of law enforcement to work, is that although you can obviously, as president and as attorney general, decide that certain areas need priority; the law is to be evenhanded that it is not to be used to target political adversaries or opponents. And here we have a situation where President Trump openly and notoriously instructs his attorney general, “You need to throw a Hillary Clinton in jail; you need to throw Joe Biden, Hunter Biden in jail.” He needed to throw Mr. [John] Brennan in jail or Eric Holder or Obama. These are clear and open incitements, if you will, to transform the Department of Justice into a department of injustice; go after political enemies. That's what we see in authoritarian countries. And Trump says it, you know, and that by itself is disqualifying. He has totally destroyed the whole idea of evenhanded, blind justice.

Ralph Nader: And number 10 is “kitchen table issues”, as they say. This is the big one in terms of your well-being, listeners.

Bruce Fein: Yeah. This is the wrecking ball to consumer, environmental, labor, worker safety laws. One of the things that the president can do because Congress has basically abdicated its role as legislator anymore. You know, the legislative rules promulgated by the executive now, dwarf that of the Congress by a ratio of like 30 to one. And so all of these legislative rules that were protective under previous administrations, the Trump administration has simply revoked, repealed, stripped of any substance across the board. In many scores of lawsuits, most of them have succeeded, the decisions being arbitrary capricious, in violation of the Administrative Procedure Act. But even during the interim of the litigation, the laws go unenforced and the results are clear for anyone to see.

Ralph Nader: And these laws are laced with congressional mandates. You shall protect workers' health and safety under OSHA. You shall protect the environment under EPA. So it's not just discretion by executive branch henchman although it includes that. It's violating mandates of Congress.

Bruce Fein: Well, it is. But part of it is that, you know, a companion problem is not in all, but in many of these cases, Congress gives the executive branch, virtually limitless discretion. They try to avoid being more specific... well, they shall do something, but their level of generality permits a lot of manipulation.

Ralph Nader: And waivers.

Bruce Fein: And waivers, yeah. I mean, that was, instead, for example, when they were trying to set the minimum requirements in the Affordable Care Act that needed to be kind of ailments and treatments that needed to be covered, the Congress said, "Whatever the Department of [Health and Human Services] HHS decides is good enough." You know, it made no effort; it didn't even give standards. It just said the executive branch should just fill in the blanks. And that's unfortunately characteristic of why the executive branch is out of control.

Ralph Nader: Yeah. It's rampant government by waiver. Bruce wrote to the major law reviews saying, do you want to do a major article on government by waivers? I mean, the Congress keeps saying to the executive branch, "you may", rather than shall, which leads to a lot of potential corruption and inaction. And there was no response, right, in the law reviews?

Bruce Fein: Yeah. Because not all, but very, very frequently, these are so-called national security waivers. I mean, national security means whatever the president wants it to mean; it has no heart and soul to it. And it's been expanded, you know, beyond anything that a person would think is rational. Well, if we have an influx of imports of peanut butter, they could be a danger to the peanut farmers, and so then you can impose quotas and who knows, tariffs on importations of peanuts and things like that, which the presidents do under the Trade Expansion Act.

Ralph Nader: And the worst one is completely unbridled power to declare national emergencies from which fascism can emit.

Bruce Fein: Yeah. The National Emergencies Act is quite stunning, because although it purported to repeal of previous national emergencies, it made no definition of what it was. So if the president says, is COVID-19 a national emergency? Is unemployment a national emergency? Is the loss of President Trump's popularity a national emergency? And he'd be willing to say anything is now that he thinks is unfriendly to his political ambitions. Congress makes no attempt to try to control that by giving any specificity to any of these delegations.

Ralph Nader: We'll, go to 11 now.

Bruce Fein: Yes. The Constitution intended that the high-level officials be confirmed by the Senate. They didn't trust the president's judgment when it came to very, very prominent executive authorities. The Appointments Clause, you know, that executive officials who execute laws of the United States have to be confirmed by the Senate. And here we have President Trump has really systematically populated his cabinet with acting members, acting individuals, who have never been confirmed by the Senate. I mean, one example is with John Bolton. John Bolton, his National Security Advisor, was never confirmed by the Senate. Those with some history remember that he was nominated to be UN ambassador under Bush, and he couldn't get confirmed. So he got an interim appointment that wasn't full time. But as National Security Advisor, he didn't require any Senate confirmation whatsoever. And Trump has used this to try to keep the cabinet on a short leash because they aren't there confirmed with any permanency to them. And they haven't ever gone through congressional or Senate scrutiny, which is required in order to ensure that they'll faithfully execute the laws. And as we well know, Ralph, there are all sorts of promises and leverage that Congress can use during confirmation hearings to ensure that they continue to exercise some authority over the day-to-day administration of a cabinet official. They ask questions, "Will you do X; will you do Y; will you do Z?" When you don't even have a confirmation hearing you don't have any of that congressional influence at all.

Ralph Nader: Well, let's move to 12.

Bruce Fein: Yes, the treaties power in the Constitution was divided between the president and the Senate, because Alexander Hamilton was explaining, and think it's Federalist 75, that you couldn't trust the president to be neutral in international affairs, because his ambitions could equally corrupt him and put him in cahoots with foreign powers, or do things that were reckless and cause great consternation to the country, unless it was checked by the Senate. And so the Senate is required, under the Constitution, to ratify any treaty by two-thirds vote, and correspondingly the revocation of a treaty, which is equally as significant as entering a treaty,

should require a Senate's two-thirds vote, though the Supreme Court has never opined on the issue. And here we have President Trump, without the consent of the Senate, he has jumped out of the Open Skies arrangement [Agreement]. He has left the Intermediate-Range Nuclear Forces [Treaty] agreement with Russia. Probably he'll end up abandoning the START Treaty [Strategic Arms Reduction Treaty] with Russia. In all of these treaties, Ralph, the language states that if you're going to revoke the treaty, it has to be on behalf of the "United States". It doesn't say the president. Well, the president is not the United States. We have a tripartite branch of government, and the Congress is of equal dignity of the president being the United States. Indeed, there are more express foreign affairs powers entrusted [to] the Congress and the Constitution than to the president, including not only power over war and peace, power to regulate foreign commerce, power to define international crimes or violations of international law, powers to raise and fund armies and prescribe rules for the military. But the president just unilaterally runs around taking a wrecking ball to treaties whenever he feels like it. And again, Congress does not attempt to assert its prerogatives.

Ralph Nader: And of course, in all these, listeners, the media seems to be constitutionally uninformed and they hardly raise these issues. They automatically say acting secretary or acting assistant secretary, without knowing that there's no such thing as an acting secretary or acting assistant secretary, without confirmation.

Bruce Fein: Right. Exactly. Yeah.

Ralph Nader: So let's go to 13.

Bruce Fein: Yeah. Well, this is one of the things that Alexander Hamilton wrote in Federalist 65, that an impeachable offense would be violating some public trust that was less specifically defined in/by statute. And here, if there's anything that Trump has done, this is violating the public trust. No, he incites [and] condones violence, whether it's Charlottesville or in various cities that are subject to the George Floyd protest, to convulse civil society. He displays constant lying, deceit, misogyny, bigotry, racism, xenophobia, you know, uses vulgar language, not only against Americans, but foreigners. And the purpose is to divide, to separate, to convulse civil society. He thinks that's the way to activate his base. Yet the purpose of the presidency is to help to try to heal wounds, not aggravate them.

Ralph Nader: That would have been a great impeachable offense hearing in the House Judiciary Committee if Nancy Pelosi, the speaker, would have allowed it. That would have been all over

television, and people would have understood what abuse of public trust means in contemporary times. The 14th and last one. And then we're going to show you light at the end of the tunnel, listeners.

Bruce Fein: Yeah. Well, this is one where, I guess, it's illustrated by Trump's infamous statement, "Well, everybody should vote twice"--you know, to show that we have fraudulent elections. He has attempted really to suppress rather than to expand the franchise. We know you got to meet deadlines and [be] free and fair, but he has done everything to try to complicate and block people from voting rather than trying to ensure that all votes are fairly and correctly counted on time. [He] withheld funds from the U.S. Post Office. He appointed his crony as the postmaster general who began to dismantle important sorting equipment from the Post Office that slowed down delivery times. And he has openly stated, you know, that there would be fraud and that there has been fraud, contrary to what all the facts show, in order to try to create doubt about the legitimacy of the election, in order to undermine a peaceful transfer of power. And, as I say, no other president has ever even come close to doing any of those things.

Ralph Nader: And the Congress has let him get away with it.

Bruce Fein: Yeah.

Ralph Nader: And your conclusion from all this?

Bruce Fein: Well, the conclusion is, number one, this is a president who if he had any sense of decency would acknowledge that he's totally unfit, that he has violated his oath of office and would resign. Mr. Trump, however, I believe his narcissism makes it impossible for him to do any such thing. But surely, these kinds of issues and violations should be in voters' minds when they enter the ballot box, and afterwards, to ensure that we do have a peaceful transfer of power, notwithstanding the efforts of President Trump to create an environment that would accomplish the opposite.

Ralph Nader: And he has annihilated, you say, the Constitution's separation of powers and checks and balances. And if that sounds vague, you can't imagine anything worse in terms of its baleful effect on the people of this country right down to where they work, live and raise their family. So is it coup d'état?

Bruce Fein: Well, let's say, it's like, it's kind of like a soft coup d'état, because as I say, he has basically transformed the country from a Republic into something indistinguishable from the British monarchy in 1776, [with] limitless power; the king can do no wrong. "Under Article II, I can do anything I want." The law means nothing, and everything is subordinated to his political ambitions. And remember, that's just not me; even close intimates like John Bolton have acknowledged the same. Anybody who is around him [says] the guy is simply unhinged in his disregard for any of his constitutional obligations. And whoever, whether Republican or Democrat, that's not something that the American people should tolerate in the presidency. We all should hearken back to the Benjamin Franklin statement, after he had left the Constitutional Convention, and the document had been approved and sent to the states for ratification. And he replied to a lady who asked whether we had gotten a Republic or a Monarchy, he said, "Well, a Republic, madam, if we can keep it" And that's the challenge on November 3rd. Can we keep the Republic or not?

Ralph Nader: And all this can be turned around by less than 1% organized people, congressional districts, coming in on their Congress, demanding they go to town meetings back home, and changing the Congress. You don't have to change them all.

Bruce Fein: No.

Ralph Nader: You can start with 60% of them. And this could be turned around. Congress is your lever. I think we can end on that optimistic note because we all know their names in the Senate and the House. We know what they want from us—votes, much more than money from special commercial interests. And here we go again, listeners, you got to show up and start these Congress Watchdog Groups. And Bruce is coming out with a report very soon, the Constitution Restoration Project. We'll have you on to describe it. And it provides the response, the solutions to the horrendous descriptions that you've just heard over the last 30 or 40 minutes. Thank you very much, Bruce Fein.

Bruce Fein: Thank you.

Steve Skrovan: We've been speaking with constitutional scholar Bruce Fein. We will link to his work at ralphnaderradiohour.com. I also want to thank Morris Pearl of Patriotic Millionaires. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for

some bonus material we call “The Wrap Up”. A transcript of this show will appear on the *Ralph Nader Rader Hour* website soon after the episode is posted.

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

Steve Skrovan: For a copy of *The Day the Rats Vetoed Congress*, go to ratsreformcongress.org. And also, check out *Wrecking America: How Trump's Lawbreaking and Lies Betray All*, co-written with Mark Green. We will link to both of those. The producers of the *Ralph Nader Rader Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

David Feldman: Our theme music “Stand Up, Rise Up” was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our intern is Michaela Squier. Join us next week on the *Ralph Nader Rader Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. Let's wait and see what happens in the election and the aftermath. We have to stay vigilant.