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Financial Reform and the Bad Republican

A G.O.P. Adviser Says He Was Ignored In Favor of Partisanship

By DAVID WEIDNER

Gary M. Brown is a self-described dyed-in-the-wool Republican. He worked on the presidential campaign for Fred Thompson. He voted for Reagan, Dole, McCain and both Bushes faithfully.

Despite his pedigree, Mr. Brown, a securities lawyer and law professor, doesn't hold much sway among the party powers inside the Beltway. It's not his credentials that are at issue. It's his stance on financial reform. He thinks there are too many holes, and partisan politics are to blame. That's rankled some of his brethren in the G.O.P. cloth who charge that Mr. Brown is distorting the record.

"I guess I don't sound like a good Republican," Mr. Brown said.

What happened to Mr. Brown and his common sense reforms underscores how partisan politics have not only taken the teeth out of financial reform but have discouraged and frustrated people with ideas and solutions from participating.

Were he just a voice from the wilderness of Tennessee where he's in private practice, he probably wouldn't warrant a shrug from the Washington G.O.P. But Mr. Brown played a role in fashioning financial reform as a top adviser for securities regulation to the Senate Permanent Subcommittee on Investigations.

So, what was so controversial about Mr. Brown's plan? Was he offering a radical proposal for Wall Street reform? Did he champion bringing back Glass-Steagall rules barring investment banking from traditional banking? Is he really a Socialist?

No, Mr. Brown only wanted to see some provisions toughened. He wanted to create a new system to eliminate conflicts of interest at ratings firms. He wanted to return investor protections to the courts, giving them the right to sue

Courtesy of Baker Donelson Caldwell & Berkowitz

Gary Brown

brokerages that fraudulently marketed securities. He wanted to regulate synthetic derivatives, highly risky securities that fueled the financial crisis.

None of it will be in the bill that reaches President Obama's desk this month.

'Hesitancy'

Mr. Brown was brought on as a consultant earlier this year at the invitation of Sen. Carl Levin (D.-Mich.) to aid with the committee's investigation of the financial crisis. The panel probed high-risk home loans, the failure of Washington Mutual Inc., securitizations, regulatory failure, the role of investment banks including Goldman Sachs Group Inc. and compensation.

As financial reform was being cobbled together elsewhere on the hill, the committee offered multiple amendments and suggestions based on its findings. Mr. Brown said that with his knowledge of the securities industry he was asked to craft and flesh out some of the proposals. The committee's work with the Senate banking committee was supposed to be, in Mr. Brown's words "hand in hand."

But when members of the senate banking committee received the recommendations, the reception was cool.

Some proposals made it in: for instance, banks that securitize loans or other assets will be required to keep 5% of those new securities on their books. But some of the more meaningful proposals were dropped. Mr. Brown said opposition came from members of both parties pressured, he believes, by Wall Street lobbyists. Democrats were squeamish, but the rejection was most pronounced by Republicans.

"There was hesitancy on the Republican side to support it," Mr. Brown said. "And part of it was 'well, if we support this then the Democrats can claim it's bi-partisan.' So not to get good bi-partisan support really points out the problems that you have in Washington today."

Senate Republicans had their issues with Mr. Brown's allegations of partisanship -- even members of the subcommittee on investigations, a historically non-partisan panel. "That's a baseless charge," said John Hart, a spokesman for Sen. Tom Coburn (R.-Okla.). "Dr. Coburn opposed the plan because it was bad policy."

Jonathan Graffeo, a spokesman for Sen. Richard Shelby (R.-Ala.), the ranking member on the banking committee, said members of both parties opposed various amendments. One, a ban on synthetic derivatives, was supported by Sen. Shelby. "Unfortunately, Sen. Dodd never allowed this bipartisan amendment to get a vote on the Senate floor," Mr. Graffeo said,

A spokesman for Sen. Susan Collins (R.-Maine), who serves on the investigations committee declined to comment except to say the senator supported several amendments presented by the committee and proposed one that made the final bill -- on capital standards at banks -- and plans to vote for the reform bill.

A spokesman for Sen. Chris Dodd (D.-Conn.), the banking committee's chairman, did not respond to requests seeking comment.

Regulating the 'dog track'

The committee's amendments included writing a law that would supersede a 1995 U.S. Supreme Court decision that does not allow investors in private deals to sue for misstatements in prospectuses -- a ruling that Mr. Brown believes makes it all but impossible for investors, such as those who lost money in Goldman Sachs' Abacus transaction, to recoup losses.

Abacus transaction, to recoup losses.

"A lot of the investment banks and credit ratings agencies have no accountability or liability for anything they do," Mr. Brown said. "Without accountability, no matter what rules are written there's going to be some smart person to find a way around it. Until you restore accountability especially on Wall Street, you're going to continue to have these issues."

The subcommittee also proposed creating an intermediary between credit ratings companies and investment banks and issuers. Those intermediaries would accept payments and help eliminate conflicts of interest. It was passed on to Sen. Al Franken (D.-Minn.) who fashioned a more detailed bill but was rejected.

"The credit ratings agencies are either in bed with the issuers or the investment banks," Mr. Brown said. "If you have 1,000 bad mortgages and you wrap them all together what do you still have? To me, 1,000 bad mortgages."

Finally, the subcommittee proposed a ban on synthetic derivatives tied to asset-backed securities, highly complex securities developed during the last decade to rev up risk and returns.

"Our point was you regulate betting at the dog track, why don't you regulate this?" Mr. Brown said. "It's nothing more than betting except your playing with massive amounts of money in the financial system."

There's no denying there was a lot of horse trading behind getting this bill passed and a lot of amendments came and went along the way. But to Mr. Brown, a veteran of multiple Washington-Wall Street investigations dating back to Enron, the failure of stronger financial reform is the result of partisan politics. Too many lawmakers are worried more about scoring political points than creating meaningful law. The Democrats just want to get it passed. The Republicans, knowing it will be passed, want to disown it and cripple it.

It shouldn't have to be said, but Mr. Brown did. When it comes to making good laws: "You have to divorce yourself, whether you're a Democrat or Republican."

Good Republican? Good Democrat? How about being a good lawmaker?

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