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A well-earned name: Nothing is simple in world of ‘dark money’ politics

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By Laurie Liles

WASHINGTON – Paul G. Ryan asked the Arizona Secretary of State’s Office what seemed like a simple question: Is a state nonprofit that spends money to influence elections actually a political committee?

Almost six months later, it’s clear that the question is not so simple.

Ryan’s question about the Arizona Free Enterprise Club sparked an expedited review by the secretary of state’s office, which found reasonable cause to turn the question over to the attorney general.

After Attorney General Tom Horne declared a conflict of interest, his office turned the matter over to the Scottsdale prosecutor’s office. It, in turn, bumped the matter to the City of Peoria, which is now looking into the matter.

The case illustrates the difficulty of peeking into the operations of so-called “dark money” organizations, which sit at the intersection of tax law, campaign-finance rules, nonprofit governance and the question of what constitutes the social good.

“It’s hard for nonprofits who are applying (for nonprofit status), it’s hard for lawyers who are advising nonprofits,” said Lisa Gilbert, who runs [Congress Watch](#) for the consumer-rights advocacy nonprofit Public Citizen.

“Why don’t we instead put into place something that’s firmer, that’s a bright-line standard?” to define nonprofit political activity, Gilbert asked.

She said the current line is anything but bright.

“You kind of just need to know political activity when you see it,” she said.

It’s just one of the murky areas that earned dark-money organizations the name. Critics say it’s hard to find out who’s funding the groups or what their real purpose is.

These groups are set up under section 501(c)(4) of the federal tax code, which is for nonprofit “[social welfare](#)” organizations. The IRS allows such groups to engage in political activity in

addition to their social causes, as long as the politicking is less than half of their overall expenditures.

Although they have been around for decades, they surged to prominence in the wake of U.S. Supreme Court decisions of the last several years that eroded federal limits on outside election spending.

Unlike political organizations, 501(c)(4)s are not subject to the strict reporting requirements of the Federal Election Commission. Once a year, social welfare groups have to report to the IRS how they spent their money; they never have to say who gave them that money.

That makes it hard to follow the money. In this year's elections, the most expensive midterms in U.S. history at nearly \$3.7 billion, the Center for Responsive Politics estimated that at least \$169.2 million went for congressional campaign advertisements nationwide from groups not required to disclose donors.

That uncertainty concerns people like Prescott Valley resident Bethany Braley, who worries that the system makes it too easy to hide who's financing campaigns.

"It's basically influence-buying," Braley said in response to a query from Cronkite News' Public Insight Network. "And since it's anonymous, no one is required to be honest or to stick to the facts."

But Arizona political operative Sean Noble said forcing disclosure would be "counter to the First Amendment."

"The whole purpose of the First Amendment was the ability to criticize the government without fear of reprisal. And that's why anonymity is so important," he said.

Noble, who runs a 501(c)(4) known as [American Encore](#), among others, pointed to reports that the IRS had targeted organizations in 2013 based on their political activity.

"If people or organizations are required to tell the government who they are when they're speaking and criticizing the government, and the government has the ability to target them," he said, it can lead to abuse by the government being criticized.

Noble said the Founding Fathers recognized that potential for abuse by those in power, which is why he said the First Amendment is designed to protect against such actions.

"They recognized that freedom of speech and association and criticizing government actions was a very important part of a free and open society," he said of the Founders.

Critics disagree. They began reform efforts – both nationally and in Arizona – well before this year's elections, but those efforts have foundered so far.

Public Citizen – pointing to the IRS flap Noble referenced – has [been pushing](#) the IRS for years to clarify “vague” rules defining nonprofits’ political activity, but the agency’s first attempt at a rewrite drew fire from groups on the left and right. The IRS is now back at the drawing board and set to release a second draft in early 2015, Gilbert said.

In addition to those upcoming IRS rules, Gilbert said her group is pushing the Securities Exchange Commission to require publicly traded companies to disclose their political spending.

And it has asked President Barack Obama to take executive action that would “advance disclosure requirements for government contractors’ campaign contributions.”

During her campaign for Secretary of State, Sen. Michele Reagan, R-Scottsdale, emphasized “shining a light on dark money.”

Now secretary of state-elect, she did not respond to requests for an interview. But the [plan outlined](#) on her campaign website said the first step would be requiring that any nonprofit or other entity that “intends to participate in electioneering” register with the secretary of state.

It also calls for legislation letting the secretary of state refer complaints about organizations to jurisdictions other than the state attorney general, as well as “legislative authority to penalize” any nonprofit in Arizona that falls out of favor with the IRS.

Similar [proposals](#) by Sen. Reagan died in recent legislative sessions.

That’s just as well to those like Ilya Shapiro, who believe the reformers are misguided.

Shapiro, the senior fellow in constitutional studies at the libertarian [Cato Institute](#), said the Constitution protects political speech, including anonymous donations that influence elections.

Shapiro is not against disclosure of campaign donors – for very high-dollar amounts. Otherwise, he believes that current limits on contributions to candidate campaigns should be eliminated and smaller donations should not have to be reported.

“Calls for reform, so-called, are really calls for restrictions on political speech,” Shapiro said. “I think anonymous political speech is an important value.”

But where Shapiro sees anonymity, Ryan and others see secrecy. That has turned Ryan – a semi-retired real-estate appraiser from Fountain Hills – into a crusader for more sunlight on dark money in Arizona politics.

That crusade led him to the Arizona [Free Enterprise Club](#), which is a 501(c)(4) that is registered with the Arizona Corporation Commission as a state nonprofit.

When Ryan looked at the club’s tax filings, they showed that it spent about \$200,000 on social welfare activities in 2011 and about \$530,000 in 2012.

But when he looked at the club's independent campaign expenditures – any group that makes such an expenditure has to report it to the secretary of state – he saw that it spent more than \$1 million on elections this year.

A 501(c)(4) can't spend more on politics than it does on social welfare activities. So Ryan asked Secretary of State Ken Bennett to see if the club "is on track in 2014 to double its social welfare activities" in line with its independent expenditures this year.

Club President Scot Mussi did not return calls seeking comment on Bennett's probe. But in a letter to the secretary of state's office, attorney Michael Liburdi said the club was in good standing with both the Arizona [Corporation Commission](#) and the IRS. The secretary of state did not have the authority to examine the club's "conformance with its social welfare purpose," Liburdi said.

But the secretary of state's office responded that it does oversee Arizona [campaign finance](#) laws, and that it was asking a "legitimate threshold question" about whether the club was acting as a political organization or a nonprofit.

After a short investigation this summer, it found reasonable cause to believe that the club violated campaign finance laws by not filing as a political committee. It turned the question over to the attorney general, starting the chain of events that led to the city of Peoria.

Ryan said he hopes the investigation will eventually bear fruit. And Ryan, who worked with Reagan in the past, said he would like to see the Arizona Legislature take up the issue in 2015.

He thinks lawmakers should take a hard look at legislation recently passed in Utah, which "allows unlimited campaign contributions, but requires disclosure over a minimum amount given for political purposes."

"I think the political climate is more conducive to an approach that would be similar to [Utah's law](#)," Ryan said.

Whatever form that change takes, voters like Braley think something has got to give.

"There's just a lot of angst in America these days," she said. "Is there going to be a way that we can ... take our government back?"