

501(c)(4)s, State Law, and “Campaign Money Laundering”: One Case Study

One of the most contentious campaign finance issues that has arisen in the wake of *Citizens United v. Federal Elections Commission* is the disclosure of the identities of donors to electioneering nonprofits.¹ The Federal Election Commission’s authority to compel such disclosure by 501(c)(4)s is currently unclear.² However, those who value transparency in the electoral process might find some home hope from the recent saga of an Arizona nonprofit, which illustrates that states might be up to the challenge of enforcing disclosure.

On October 15, 2012, an Arizona 501(c)(4) known as the Americans for Responsible Leadership (ARL) made an \$11,000,000 donation to the Small Business Action Committee, a political committee in California dedicated to defeating Proposition 30 (a ballot initiative to raise taxes) and supporting Proposition 32 (an anti-union effort that would ban payroll deductions).³ The donation—one of the largest in California’s history—caught the attention of the California Fair Political Practices Commission (CFPPC), which demanded that ARL release the source of the funds.⁴ After ARL refused, CFPPC sued, and on October 31, 2012, the trial court ruled in favor of CFPPC and ordered ARL to disclose its contributors.⁵ ARL appealed, and just four days

¹ Richard Briffault, *Nonprofits and Disclosure in the Wake of Citizens United*, 10 ELECTION L. J. 337, 349 (2011).

² See *Ctr. for Individual Freedom v. Van Hollen*, 2012 WL 4075293, at *111 (D.C. Cir. Sep. 18, 2012); Stephen M. Hoerding, *A Sigh of Relief for 501(c)(4)s and Their Contributors*, NATIONAL REVIEW ONLINE (Sept. 18, 2012, 2:44 PM), <http://www.nationalreview.com/corner/324687/sigh-relief-501c4s-and-their-contributors-stephen-m-hoerding>.

³ Lee Fang, *Can Attorney General Kamala Harris Turn the Tide on Dark Money?*, THE NATION (Nov. 5, 2012, 10:50 PM), <http://www.thenation.com/blog/171055/could-attorney-general-kamala-harris-turn-tide-dark-money#>.

⁴ *Id.*

⁵ Minute Order, *Fair Political Practices Com’n v. Americans for Responsible Leadership*, No. 32-2012-00131550-CU-PT-GDS, 2012 WL 5351247 (Oct. 31, 2012). The CFPPC contended that ARL, as a committee as defined in Government Code section 82103(a) that contributed ten

later—two days before the November 6 election—the California Supreme Court unanimously affirmed the Trial Court’s decision.⁶

The next day, ARL disclosed that the source of the \$11,000,000 was two nonprofits: The money passed from Americans for Job Security, a Virginia 501(c)(6),⁷ to another nonprofit, the Center for Patient’s Rights, before being sent to ARL; California officials referred to the process as “campaign money laundering.”⁸ Both Americans for Job Security and the Center for Patient’s Rights have been highly involved in GOP political activities, with the Center for Patient’s Rights allegedly distributing close to \$45 million in 2010 to nonprofits to air partisan conservative ads.⁹ Despite ARL’s efforts in this last election, however, both of the positions it took failed; Proposition 30 passed, while Proposition 32 was defeated.¹⁰

thousand dollars or more to an election, it needed to file a supplemental pre-election statement detailing its contributors. *Id.* ARL argued that Government Code section 90002 only authorized CFPPC to conduct an audit after the election. *Id.* In rejecting that argument, the court noted that section 90002’s limitation only applied to a “candidate, controlled committee, or committee primarily supporting or opposing a candidate or a measure in connection with a report or statement,” while ARL “is a 501(c)(4) nonprofit corporation . . . and is not any of the entities specified in [section] 90002.” *Id.*

⁶ Fang, *supra* note 3.

⁷ *About AJS*, AMERICANS FOR JOB SECURITY, <http://www.savejobs.org/aboutajs.php> (last visited Dec. 6, 2012).

⁸ *Watchdog Agency Accuses Arizona Group of ‘Money Laundering,’* KQED (Nov. 5, 2012, 9:38 AM), http://blogs.kqed.org/election2012/2012/11/05/state-watchdog-agency-accuses-arizona-group-of-money-laundering/?utm_source=rss&utm_medium=rss&utm_campaign=state-watchdog-agency-accuses-arizona-group-of-money-laundering.

⁹ Lee Fang, *Koch Operative Steered \$55 Million to Front Groups Airing Ads Against Democrats; Ads Assailed Candidates Over Abortion, 9/11, Medicare*, REPUBLIC REPORT (May 19, 2012, 2:00 PM), <http://www.republicreport.org/2012/55million-koch-fronts/>.

¹⁰ Nannette Miranda, *Economic Forecast Calls Prop 30 Two-Edged Sword*, ABC30HD (Dec. 5, 2012), <http://abclocal.go.com/kfsn/story?section=news/politics&id=8910422>; Jon Healey, *Proposition 32 Cost the GOP Far More than Mere Money*, LOS ANGELES TIMES (Nov. 9, 2012, 6:00 AM), <http://www.latimes.com/news/opinion/opinion-la/la-ol-self-defeating-anti-union-millionaires-20121108,0,7931625.story>.

The case of ARL demonstrates the ability of state officials to effectively enforce campaign disclosure laws even on the brink of an election—here, the CFPPC obtained a ruling from the state’s highest court not even three weeks after learning about possible campaign violations. Furthermore, California was not the only state to enforce its laws; judges in both Idaho and Montana also forced electioneering nonprofits to reveal their funding sources on the eve of the election.¹¹ Such outcomes should give voters concerned about election transparency and fairness some hope, even in the absence of legal clarity at the federal level.

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¹¹ Matia Gold and Chris Megerian, *States Crack Down on Campaigning Nonprofits*, L.A. TIMES (Nov. 26, 2012), <http://articles.latimes.com/2012/nov/26/nation/la-na-state-disclosure-20121126>.