

Super PACs and 501(c)(4) Nonprofits:

How the Two Entities Can Work Together for Personal Enrichment

On November 12, 2012, “The Colbert Report” host, Steven Colbert, informed viewers that his popular Super PAC, “Americans for a Better Tomorrow, Tomorrow” (more commonly known as the “Colbert Super PAC”) would be dissolving.¹ Because there remained in the Super PAC nearly \$800,000,² Colbert wanted to know if there existed a way in which he might keep the funds for himself in a personal capacity, while barring the public from such knowledge. Colbert invited his attorney, Trevor Potter, on the show, and Potter explained that there is a method by which the Super PAC money can be ultimately routed to Colbert without the public’s (or the IRS’s) knowledge.³ Because Colbert also solely founded and operates a 501(c)(4) organization, “Colbert Super PAC S.H.H. Institute,”⁴ he could essentially use this nonprofit organization as an intermediary vehicle to get the funds from his Super PAC to his own bank account – without any trace of the transaction.⁵

Afraid that corporate donors would shy away from donating to the “Colbert Super PAC” because of its public disclosure of donors, Colbert formed his 501(c)(4) “Colbert Super PAC S.H.H. Institute.”⁶ 501(c)(4) nonprofits, unlike their 501(c)(3) counterparts, are allowed to engage in extensive political activity, including lobbying, participating in political campaigns and elections, and donating money to political groups. Although the practical purpose of this

¹ *Colbert Super PAC SHH! - Secret Second 501c4 - Trevor Potter*, Colbert Nation, Nov. 12, 2012, available at <http://www.colbertnation.com/the-colbert-report-videos/421160/november-12-2012/colbert-super-pac-shh----secret-second-501c4---trevor-potter>.

² Megan Wilson, *Stephen Colbert Shuts Down his Super-PAC*, The Hill, Nov. 13, 2012, available at <http://thehill.com/blogs/ballot-box/fundraising/267535-colbert-shuts-down-his-super-pac>.

³ *Supra* note 1.

⁴ *Colbert Super PAC*, Wikipedia (citing *Colbert Takes Satirical Swipe at Disclosure Laws to Create Corporation in Del.*, Delaware Online, October 6, 2011), available at http://en.wikipedia.org/wiki/Colbert_Super_PAC#cite_note-delawareonline-16.

⁵ *Supra* note 2.

⁶ *Colbert Super PAC - Trevor Potter & Stephen's Shell Corporation*, Colbert Nation, Sept. 29, 2011, available at <http://www.colbertnation.com/the-colbert-report-videos/398531/september-29-2011/colbert-super-pac---trevor-potter---stephen-s-shell-corporation>.

501(c)(4) organization was clearly to anonymously fund the “Colbert Super PAC,” the organization’s legitimate (and bigger-picture) primary purpose was to educate the public, an acceptable IRS purpose.⁷ As it turns out, the 501(c)(4) is also an effective vehicle by which to anonymously de-fund the Super PAC and personally enrich its creator, so long as the funds given from the Super PAC to the 501(c)(4) are accompanied by what Potter refers to as an “agency letter” that directs the funds elsewhere.⁸

According to Potter, an “agency letter” is simply a letter sent from the Super PAC to the recipient (here, the 501(c)(4)) with specific instructions on exactly what is to be done with the funds.⁹ Because of the directions attached to the funds, the IRS does not consider the funds ever belonging to the recipient intermediary 501(c)(4) organization, and therefore the funds do not need to be reported on the organization’s tax return (so long as the organization doesn’t keep the money).¹⁰ In Colbert’s situation, Potter suggested that Colbert form an anonymous second 501(c)(4) organization that can serve as the end point and mechanism by which to disburse the funds back to Colbert. Should the agency letter simply instruct the intermediary (older) 501(c)(4) that it is to route the given funds to the anonymous second 501(c)(4), which will then, in turn, disburse the funds to Stephen Colbert, then the Super PAC funds would successfully be transferred to its creator without any trace of the transaction.¹¹

Essentially, the agency letter, when attached to the transfer, creates what Potter refers to as a “legal fiction”: the transferred funds were never received nor spent by the nonprofit organizations, and the beneficiary of the disbursement takes free and clear of any public record

⁷ *Colbert Super PAC*, Wikipedia (citing *Colbert Takes Satirical Swipe at Disclosure Laws to Create Corporation in Del.*, Delaware Online, October 6, 2011), available at http://en.wikipedia.org/wiki/Colbert_Super_PAC#cite_note-delawareonline-16.

⁸ *Supra* note 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

of the event ever taking place.¹²

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November 19, 2012

¹² *Id.*