

Generation Now and FirstEnergy's Dark Money Scandal

From 2017 to 2020, the state of Ohio faced a highly publicized scandal that threatened to unravel Ohio's citizens' trust in nonprofit organizations as well as the public's trust in the state's legislature—all in one fell swoop. U.S. Attorney David M. Devillers described the events examined below as “likely the largest bribery, money laundering scheme ever perpetrated against the state of Ohio.”¹

What Occurred

The events that occurred were akin to a movie script. The main organizational players involved in the scandal were FirstEnergy and Generation Now. FirstEnergy is an electric company operating predominately in the Midwest. Generation Now is a 501(c)(4) organization,² meaning the entity was intended to promote social welfare. At the heart of the scandal was Larry Householder, Ohio's Speaker of the House at the time, who—according to wire-tapped telephone conversations—was the secret owner and creator of Generation Now.³

In its 2020 Complaint, Ohio's state prosecutor alleged that Generation Now collected over \$60.8 million in bribes from FirstEnergy and other affiliated companies.⁴ The bribe money was then funneled to the House Speaker at the time, Larry Householder, with the ultimate goal of assisting Householder in securing his House of Representative seat during that year's election.⁵ In exchange for securing his House position, Householder promised to use the additional funds to ensure the state legislature passed House Bill 6.⁶ House Bill 6 included a \$1.3 billion bailout for Ohio's nuclear industry.⁷ FirstEnergy's interest in the bailout was apparent—the entity had owned two failing nuclear powerplants that were in need of the bailout funds.⁸ Thus, the scandal revolved around a quid pro quo of bribery money.

¹ Fiulia McDonnell Nieto del Rio, *Powerful Ohio Republican is Arrested in \$60 Million Corruption Scheme*, NY TIMES (July 22, 2020), <https://www.nytimes.com/2020/07/21/us/larry-householder-ohio-speaker-arrested.html>.

² *Social Welfare Organizations*, IRS, <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations> (last visited April 1, 2021).

³ Complaint to the Ohio Elections Commission, [hereinafter Complaint] https://www.ohiosos.gov/globalassets/media-center/news/2020/2020-08-27.pdf?_cf_chl_jschl_tk_=8389f2b15a2339070b065e8a41d70ac939cbd46b-1617916445-0-AUZREPB_GwcFkji760B69QWkXR5A2MihCs00t9MIHI58NQm6H0Nu_XJ2VPVeQKxYKqqrEmOOh0c7x0x_tAVSMuC19bTcoP5OXAS0tQT2WEczBUZf0AklgBU12QXNY7mZSM7R1ssXbVyWDd5VacF-Jr7mUGyCzClha7X3WPj7lcbFBNVWcSmtecnzBqLi_FP_SK5IDwk051Ayf4YT-xLFZgEx0FIJHb0bI48JGgkAbf4r1qoRpMljfbXQo2GQ3xQyg0SbybySuvhuqeq2wJEHYLVsQTh6VjbPdvicj3rROXH6-qiDSFbgIZ_ht_afYUTGI9ar1MJltKFwDv04E6KtZgWa26f--IfB9RqIJ-7307B086thMwH_e0QRktgXtJ1m5Rsnc2F3UapW6pDJtsvf6Uf2XOkGy6B8VeZv85TUm_G-_swsrreQxKk6eaubOkocbw91jBoTRhftMzSLPgiweXwOBlCfDxhA3eCSITDvp5rL6r0XDIGGA2imviaf1ILQ.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ John Caniglia, *Generation Now, The Nonprofit That Prosecutors Say Received Millions in Bribes Pleads Guilty to Racketeering Charge Involving House Bill 6*, Cleveland.com (Feb. 19, 2021), <https://www.cleveland.com/court-justice/2021/02/generation-now-the-nonprofit-that-prosecutors-say-received-millions-in-bribes-pleads-guilty-to-racketeering-charge-involving-house-bill-6.html>.

⁸ Complaint, *supra* note 3.

Householder used at least \$97,000 of the bribe money from FirstEnergy and its affiliates to pay expenses for his 2018 House Campaign. Notably, along with using the funds from Generation Now to secure his legislative position, the Complaint alleges that Householder used “over \$100,000 of the . . . bribe money . . . to pay costs associated with Householder’s Florida home.” Essentially, money was passing through the entity to Householder in exchange for political favors as well as for his personal use.

501(c)(4) Donor Nondisclosure

According to the IRS, a 501(c)(4) entity may lobby for legislation germane to the organization’s program, assuming the lobbying satisfies social welfare purposes.⁹ However, the IRS makes it clear that participation or intervention in political campaigns is not acceptable as promotion of social welfare.¹⁰ Although some political activity is permissible, political activities cannot be its primary purpose. Notably, a large part of this scandal revolved around “dark money.” “Dark money” is money that is donated to an entity, such as a social welfare nonprofit, with the source of the money is kept secret. The type of money at the forefront of dark money, is typically money that is used to influence a political campaign. Here, since Generation Now is a 501(c)(4) social welfare nonprofit, the group was not required to publicly disclose its donors and was successful in collecting \$60.8 million dollars’ worth of bribe money. Legally, 501(c)(4) social welfare programs can collect unlimited donations and spend that money on elections without ever publicly reporting the source of the money.¹¹

The core of this scandal is that the real purpose of the nonprofit, according to the plea agreements, was to receive undisclosed donations that directly benefited Householder and FirstEnergy.¹² The whole nonprofit was set up as a bribery scheme which resulted in Larry Householder, Generation Now, and other individuals being charged with conspiracy to participate, directly or indirectly, in the conduct of an enterprise’s affairs through a pattern of racketeering activity.¹³

Where Does the Matter Stand Today?

In February of this year, FirstEnergy and Ohio’s Attorney General entered into an out-of-court settlement.¹⁴ The terms are as follows: FirstEnergy will be barred from collecting \$102 million in 2021 in customer surcharges that were approved under a controversial law at the center of House Bill 6’s bailout provisions.¹⁵ Similarly, Generation Now is required to forfeit all

⁹ <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>

¹⁰ *Id.*

¹¹ Donations to Section 501(c)(4) Organizations, IRS, <https://www.irs.gov/charities-non-profits/other-non-profits/donations-to-section-501c4-organizations> (last visited April 11, 2021).

¹² Complaint, *supra* note 3.

¹³ *Id.*

¹⁴ Sebastien Malo, *Ohio AG, FirstEnergy Agree to End \$102 Mln Surcharge in Nuclear Bailout Scandal*, REUTERS (Feb. 1, 2021), <https://www.reuters.com/article/usa-energy-lawsuit/ohio-ag-firstenergy-agree-to-end-102-mln-surcharge-in-nuclear-bailout-scandal-idUSL1N2K71X6>.

¹⁵ *Id.*

of its assets—including \$1.5 million in the organization’s bank account.¹⁶ The nonprofit is also likely facing a five-year probationary period and will receive intense scrutiny in the years to come.¹⁷

On March 3, 2021, Ohio’s Senate voted unanimously to repeal the nuclear subsidies provided under House Bill 6.¹⁸ Householder, the representative for Generation Now has since been forced from his position as House Speaker in Ohio. However, he was reelected to a new term in November and is awaiting trial that is set in the fall.¹⁹

CONCLUSION

This scandal will likely lead to more conversations regarding whether 501(c)(4) entities should be protected from publicly disclosing their donors. This issue is particularly noteworthy here, because unlike 501(c)(3) entities, social welfare nonprofits may engage in unlimited amounts of lobbying. Had the rules for social welfare nonprofits been more akin to the reporting requirements for 501(c)(3) entities, it is foreseeable that this scandal would have either been caught earlier or would have not occurred altogether.

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¹⁶ Jeff Yoders, *Ohio Political Nonprofit, Generation Now, Pleads Guilty to Federal Racketeering*, ENR (Feb. 22, 2021), <https://www.enr.com/articles/51273-ohios-generation-now-controlled-by-firstenergy-pleads-guilty-to-federal-racketeering>.

¹⁷ *Id.*

¹⁸ Andrew J. Tobias, *Ohio Senate Votes to Repeal Nuclear Subsidies in House Bill 6*, CLEVELAND.COM (Mar. 3, 2021), <https://www.cleveland.com/open/2021/03/ohio-senate-votes-to-repeal-nuclear-subsidies-in-house-bill-6.html>.

¹⁹ *Id.*