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Householder, Dark Money Groups, And The Future Of Political Donations

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The convictions of former Ohio Speaker of the House Larry Householder and ex-Ohio Republic Party Chairman Matt Borges have thrust dark money and 501(c)(4) “social welfare organizations” into the national spotlight and left many businesses wondering what this conviction means for donations to these vehicles going forward.

As it seems the whole world knows by now, a federal jury last week found them guilty of racketeering conspiracy. Prosecutors alleged a \$60 million scheme to pass state legislation securing a \$1 billion bailout for nuclear power plants formerly owned by Ohio-based FirstEnergy. FirstEnergy donated over \$60 million in bribes to Generation Now, a 501(c)(4) labeled as a “dark money group” channeling cash to Householder in exchange for Householder securing the bailout law known as Ohio House Bill 6. Householder’s defense was that he fought for the legislation because he believed in it and that this was just normal political activity.

Prosecutors entered almost 900 exhibits into evidence, including text messages, emails, bank records, secretly recorded phone calls and more documenting Householder’s and Borges’ interactions with FirstEnergy executives, including pressure to secure the bailout and gratitude once it passed.

While prosecutors demonstrated beyond a reasonable doubt that the Householder case is clearly an egregious instance of public corruption, the

fact remains that the Internal Revenue Code does provide for the creation of 501(c)(4) social welfare organizations whose primary purpose is to promote the general welfare and can include some lobbying and political activities. Furthermore, there is no requirement within the code to disclose the identity of donors – allowing the money to become, for lack of a better term, “dark.”

It is clear that the DOJ now has a spotlight on 501(c)(4)s. So the question is: How can companies interested in donating to these vehicles ensure they are staying on the right side of the law? As highlighted by the arguments put forth by Householder’s attorneys, the answer isn’t as simple as a bright line in the sand and depends on context and circumstances. The primary purpose of a 501(c)(4) cannot be political, and a 501(c)(4) cannot benefit a person with substantial influence over it.

There is a lot of room for grey area in terms like “primary purpose,” “political” and “substantial influence” that makes this analysis highly fact specific and nuanced. Companies need to understand those nuances before donating to 501(c)(4)s.