



## **MEMORANDUM**

**TO: Interested Parties**

**DATE: September 23, 2014**

**FROM: Terry Goddard, Democratic Nominee for Secretary of State**

**RE: My Plan to Get Dark Money Out of Arizona**

Our Democracy is under threat from anonymous corporate interests determined to hijack our elections. Transparency is, of course, our best tool in fighting these shadowy organizations. But providing that transparency will require a hard-nosed commitment and a careful plan of attack – I have that commitment to provide transparency for all political contributions and in this memo, I give the outline of my plan. The outline is pretty complicated, but closing the enormous loopholes that allow Dark Money groups to operate so freely in our state will take multiple different actions. Arizona must enact a multi-pronged effort to require disclosure which has state and federal law components.

An effective strategy will include:

- Additional, beefed up disclaimers on all political communications
- A bright line distinction applying disclosure requirements to all political communications 60 days before an election
- An expanded definition of doing business in Arizona
- An audit capacity to verify organizational filings
- A way to ‘peel the onion’ to determine the identity of the original source of all political contributions and expenditures
- Reenactment of charitable registration requirements
- A commitment to real-time disclosure of all political contributions and expenditures
- Presumptions to avoid uncertainty as to which contributors have to disclose.

Arizona law should clearly and straightforwardly state its intent to require transparency -- the disclosure of the original source of all money spent to influence Arizona elections. Statutes will need to be amended to accomplish that intent.

Other states, notably California, New York, Utah, Maryland and Connecticut, have taken a stand against anonymous corporate cash. Arizona can learn from their example and be inspired by their leadership.

Unfortunately, Arizona’s campaign finance laws are so lax that we are becoming the Cayman Islands for Dark Money. After careful analysis and research, I believe we can reverse the trend and turn Arizona into a national leader for transparency. I will strive to implement this plan if Arizona elects me its Secretary of State.

## **The Arizona Plan**

### ***Statement of Intent***

It is the intent of the State of Arizona to abolish Dark Money in election campaigns; to require complete, accurate and timely disclosure of the original source of every contribution or political expenditure made to influence an election in Arizona.

### ***Disclaimer***

The Supreme Court in *Citizens United* encouraged disclosure of the source of political contributions. However, the Arizona Legislature's post-*Citizens United* statute (16-914.02(F)) requires that the disclaimer by a Dark Money group contain significantly less information than required of non-dark money committees.

Requirements similar to those of 16-912.01 and 912 should be required of dark money organizations. At the very least, a Dark Money organization must to disclose its four largest funding sources and say in the disclaimer that it is not affiliated with any candidate and does not disclose its ultimate source of funds.

The disclaimer would also state that the majority of the sources of funds are from outside Arizona, unless the Dark Money group can prove otherwise with records showing the ultimate source of the funds.

At the very least, the disclaimer should say: **“Paid for by X which is not affiliated with any candidate and does not disclose the identity of its contributors.”**

### ***Bright line***

Arizona should adopt disclosure and registration for any organization that expends funds on any electioneering communications within a window of *sixty (60) days* before a primary or general election. The trigger for registration will be *mentioning any person* who, or proposition which, will appear on the ballot. This bright line trigger is similar to the bright line trigger upheld by the United States Supreme Court. Both express advocacy and issue advocacy ads would be covered in such a definition, giving increased clarity to the disclosure requirements.

### ***Doing Business***

The definition of doing business in Arizona should be broadened to include taking any action that will result in the expenditure of money for an electioneering purpose. This will require non-Arizona entities that contribute money for political use in Arizona to register. If an entity does not register, that organization and its controlling entity/persons will be barred from doing business in Arizona.

### ***Audits***

Establish an audit protocol for all registered political entities that provides for auditing a random sample of 10% to 20% of the Dark Money organizations each election cycle to verify their

statements about the original source of their funds. The audits should be confidential, like a tax audit, with the auditors having subpoena power. The audit function could be placed in the Department of Revenue where staff already exists who are expert in how to track money.

***Require Disclosure of the “Original Source”***

Amend the post-*Citizens United* statutes to require disclosure of the original source of funds of all organizations making political contributions or expenditures. Specifically, allow for timely investigations with the power of subpoena of entities that refuse to disclose donors. The new requirements might look something like this:

- *Registration*  
Within 48 hours after an entity makes a contribution or \$2,000 to influence an election or makes political expenditure(s) of \$2,000 or more in an election cycle, the organization shall file a registration form with the Secretary of State.
- *Registration Form*  
Registration shall be a sworn certification made by the Chief Executive Officer, Chairperson or other officer exercising final authority over the organization setting forth the identity of all non-exempted original source(s) of contributions to the organization over the past 12 months. If the responsible parties cannot or will not reveal the identity of the original source of the funds so as to complete the certification, no further political expenditures may be made.
- *Original source*  
A person who makes a contribution or political expenditure from membership dues, labor union treasury funds or corporate or personal funds on which all income taxes have been paid; not included in this definition are entities similar to the final contributing entity be they 501(c)(4) foundations or other legal forms which transfer funds without tax consequences.
- *Political expenditure*  
Any payment made by to influence the outcome of an Arizona candidate election – including direct contributions to candidate, payments for printing or any form of advertising or for the production of any printing, video or digital communications –which advocates the support or defeat of a ballot proposition or any candidate(s) for office, either individually or as a group. (See bright line rule above)
- *Political organization*  
An organization making a contribution to a political campaign or making an expenditure for the purpose of influencing the election or defeat of a candidate for office or a ballot proposition.
- *Exceptions from reporting*  
An organization does not have to disclose the identity of donors who specifically restrict their contributions to nonpolitical activities. If there is a concern that disclosure of the identity of the donor will result in reprisals against that donor, upon petition to the Secretary of State and a determination of just cause, the identity may be concealed. Should the organization have demonstrable sources of income in excess on the political activities expenditures (such as income from litigation or related business sources), individual contributors need not be disclosed.

- *Penalty*  
Making any political expenditure without filing a registration form is a class 6 felony punishable by a fine at minimum equivalent to the amount of the expenditure or contributions made to the date of notice of violation from the Secretary of State, ranging up to three times that amount. The penalty for a false certification as the identity of the original source is the penalty prescribed by law for perjury.

### ***Tax Law***

Clarify Arizona tax law that political contributions and expenditures are not tax deductible.

### ***Charitable Regulations***

One important area for disclosure of nonprofit corporations is the traditional obligation of charities to register with the Secretary of State before conducting business in Arizona. Unfortunately, that authority was taken away by the Legislature in 2013 with State Senator Reagan casting the deciding vote for abolition.

### ***Timeliness of disclosure***

All disclosures of political contributions or expenditures should be disclosed electronically within 24 hours of deposit or payment and the Secretary of State shall post the disclosures on its website.

### ***Presumptions and notice to contributors***

If a political organization makes clear in its solicitation for funds that they will be used for a political purpose – or if from its past practices it is clear that the organization has been involved in political activities – contributors are on notice that their names will be disclosed.

Contributions of over \$ \_\_\_\_\_ will be assumed to be made for the purposes of the political activities and the donors must be disclosed, unless there is a specific condition that the contribution not be used for political activities. Once an entity is determined to be a political organization, all donors of \$ \_\_\_\_\_ or more must be notified that their identity will be disclosed.

### **Changes Needed to Federal Law**

While Arizona's Secretary of State has no control over federal elections law, I intend to be a vocal advocate for necessary reforms at the Federal level. I will use the podium provided by the office of Secretary of State to advocate for the following changes to federal law.



***Exclusively definition in the Tax Code***

Push the IRS to interpret “exclusively” as used in 501(c)(4) and other 501(c) statutes to mean its common definition, not “primarily” or up to 49% as the Service has been using the word. In other words, adopt the plain meaning of the 501(c)(4) statute and the precedent of the United States Supreme Court in *Better Business Bureau v. U.S.*

***527s***

Congress has enacted section 527 as the tax-exempt entity to use for political expenditures; this should be the exclusive federal entity.

***SEC***

Support action by Security and Exchange Commission to require public corporations to disclose political spending to their shareholders; many reputable corporations already do this. Political spending may be very material to share value; it should be disclosed.

***Tax law***

Work for federal law that political contributions and expenditures are not deductible.