

Utah Corruption Case is Classic Political Crime Case Playbook: The Noose Tightens

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A Campaign Inquiry in Utah Is the Watchdogs' Worst Case

By [NICHOLAS CONFESSORE](#) MARCH 18, 2014

Photo



State Representative James A. Dunnigan, center, led an investigation in the Utah House into a former state attorney general. Credit Jim McAuley for The New York Times

It is the nightmare scenario for those who worry that the modern campaign finance system has opened up new frontiers of political corruption: A candidate colludes with wealthy corporate backers and promises to defend their interests if elected. The companies spend heavily to elect the candidate, but hide the money by funneling it through a nonprofit group. And the main purpose of the nonprofit appears to be getting the candidate elected.

But according to investigators, exactly such a plan is unfolding in an extraordinary case in Utah, a state with a cozy political establishment, where business holds great sway and there are no limits on campaign donations.

Public records, affidavits and a special legislative report released last week offer a strikingly candid view inside the world of political nonprofits, where big money sluices into campaigns behind a veil of secrecy. The proliferation of such groups — and what campaign watchdogs say is their widespread, illegal use to hide donations — are at the heart of new rules now being drafted by the Internal Revenue Service to rein in election spending by nonprofit “social welfare” groups, which unlike traditional political action committees do not have to disclose their donors.

Photo



John Swallow Credit Pool photo by Tom Smart

In Utah, the documents show, a former state attorney general, John Swallow, sought to transform his office into a defender of payday loan companies, an industry criticized for preying on the poor with short-term loans at exorbitant interest rates. Mr. Swallow, who was elected in 2012, resigned in November after less than a year in office amid growing scrutiny of potential corruption.

“They needed a friend, and the only way he could help them was if they helped get him elected attorney general,” State Representative James A. Dunnigan, who led the investigation in the Utah House of Representatives, said in an interview last week.

What is rare about the Utah case, investigators and campaign finance experts say, is not just the brazenness of the scheme, but the discovery of dozens of documents describing it in fine detail.

Mr. Swallow and his campaign, they say, exploited a web of vaguely named nonprofit organizations in several states to mask hundreds of thousands of dollars in campaign contributions from payday lenders. His campaign strategist, Jason Powers, both established the groups — known as 501(c)(4)s after the section of the federal tax code that governs them — and raked in consulting fees as the cash moved between them. And affidavits filed by the Utah State Bureau of Investigation suggest that Mr. Powers may have falsified tax documents submitted to the Internal Revenue Service.

“What the Swallow case raises is the possibility that political money is never really traceable,” said David Donnelly, executive director of the [Public Campaign Action Fund](#), which advocates stricter campaign finance laws.

A lawyer for Mr. Swallow, Rodney G. Snow, said in an email last week that he and his client “have some issues with the conclusions reached” but did not respond to requests for further comment.

Walter Bugden, a lawyer for Mr. Powers, said the special committee’s report found no evidence that the consultant had violated the law.

“Using 501(c)(4)s so that donors are not disclosed is done by both political parties,” Mr. Bugden said. “It’s the nature of politics.”

Ties to Company Founder

A former state lawmaker, Mr. Swallow had worked as a lobbyist for the payday loan company Check City, based in Provo, Utah, becoming close with its founder, Richard M. Rawle, a charismatic entrepreneur who had built a sprawling empire of payday loan and check-cashing companies. One witness would later describe Mr. Swallow's attitude to his former boss as one of "reverence."

When Utah's sitting attorney general, Mark Shurtleff, decided in mid-2011 not to run for a fourth term, Mr. Swallow, then his chief deputy, laid plans to run as his successor. He teamed with Mr. Powers, a Republican political consultant who has helped elect most of Utah's most powerful political figures.

To support his campaign, Mr. Swallow turned to payday lenders and other businesses that frequently clash with regulators.

"I look forward to being in a position to help the industry as an AG following the 2012 elections," Mr. Swallow wrote to one Tennessee payday executive in March 2011.

Payday lenders had every reason to want his help. The newly created federal [Consumer Financial Protection Bureau](#) had been given authority to oversee payday lenders around the country; state attorneys general were empowered to enforce consumer protection rules issued by the new group.

In June 2011, after receiving a commitment of \$100,000 from members of a payday lending association, Mr. Swallow wrote an email to Mr. Rawle and to Kip Cashmore, the founder of another payday company, pitching them on how to raise even more.

Mr. Swallow said he would seek to bolster the industry among other attorneys general and lead opposition to new consumer protection bureau rules. "This industry will be a focus of the CFPB unless a group of AG's goes to bat for the industry," he warned.

But Mr. Swallow was wary of payday lenders' poor reputation. It was important to "not make this a payday race," he wrote. The solution: Hide the payday money behind a string of PACs and nonprofits, making it difficult to trace donations from payday lenders to Mr. Swallow's campaign.

The same month as Mr. Swallow's pitch, Mr. Powers and Mr. Shurtleff registered a new political action committee called Utah's Prosperity Foundation. The group advertised itself as a PAC for Mr. Shurtleff. But documents suggest it was also intended to collect money destined for Mr. Swallow, including contributions from payday lenders, telemarketing firms and home-alarm sales companies, which have clashed with regulators over aggressive sales tactics.

"More money in Mark's PAC is more money for you down the road," a campaign staffer wrote to Mr. Swallow in an email.

In August, Mr. Powers and other aides also set up a second entity, one that would never have to disclose its donors: a nonprofit corporation called the Proper Role of Government Education Association.

Directing Contributions

As the 2012 campaign swung into gear, Mr. Swallow raised money for both groups, as well as a second PAC set up by his campaign advisers. He often called his donors from Check City franchises around Salt Lake City, designating particular checks for each of the groups.

Between December 2011 and August 2012, Utah's Prosperity Foundation contributed \$262,000 to Mr. Swallow's campaign, more than one of every six dollars he raised. About \$30,000 in contributions to the foundation during the campaign came from four out-of-state payday companies.

But the biggest payday contributions went into the new nonprofit. The Proper Role of Government Education Association collected \$452,000 during the campaign, most of it from the payday industry. Mr. Rawle himself allegedly provided \$100,000 in secret money to Mr. Swallow's effort. Mr. Cashmore's company and others provided about \$100,000.

Underscoring how explicitly political the nonprofit became, a memo on one \$5,000 check described it as a "campaign contribution."

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"It's a parallel universe where almost nothing is reported publicly, where contributions are made in secret," said Jim Mintz, president of the Mintz Group, a private investigative firm that conducted the Utah House investigation with lawyers from Akin Gump Strauss Hauer & Feld.

Helping with all three groups was a Republican lawyer in Oklahoma named Anthony J. Ferate.

Mr. Ferate, who declined to comment for this article, has been an official or consultant for numerous such groups in several states, according to a New York Times review of federal and state records.

Some of the groups appeared to have employed a particular strategy for evading federal and state campaign disclosure requirements: using a nonprofit group to collect contributions on behalf of a "super PAC." Anyone looking up the super PAC's contributors would see only the name of the nonprofit, not the individuals or businesses that provided the cash.

Documents and emails obtained by investigators suggest similar tactics at the nonprofit established on Mr. Swallow's behalf. The association collected money from Mr. Swallow's donors and spent it to help him win Utah's Republican primary for attorney general.

The first television ads appeared in late June 2012, just days from the primary, scorching Mr. Swallow's Republican opponent, Sean D. Reyes, for what it said were unethical campaign finance practices. A wave of radio ads followed, dredging up a 1993 altercation with a motorist and raising questions about Mr. Reyes's temperament.

The group behind the ads was listed as a Nevada-based super PAC called It's Now or Never, for which Mr. Ferate served as treasurer, and which spent at least \$140,000 on the campaign.

When the ads appeared, Mr. Swallow's spokeswoman, Jessica Fawson, denied any involvement. "We're actually really proud of the fact that we've been running a positive campaign," Ms. Fawson told The Deseret News.

In fact, say Utah House investigators, the money came from the Proper Role of Government Education Association — for which Ms. Fawson, among others, was a director, and which funneled more than \$150,000 to It's Now or Never via other nonprofits, masking the source of the money behind the ads.

The association also paid for a second wave of attacks, against Brad Daw, a four-term Utah state representative. Mr. Daw, a Republican, had pushed for legislation that would have barred payday companies from making loans to individuals who were already deep in debt.

Mr. Daw's approval ratings went negative, and he went on to lose his primary that June.

"I think the point was to send a message: If you try this, this will happen to you," Mr. Daw said.

Inquiries by I.R.S.

Mr. Swallow beat Mr. Reyes in the primary and went on to win the general election handily in November. Mr. Rawle did not live to see his protégé take office: He died of cancer in December 2012, at age 73. Mr. Swallow was sworn in a few weeks later. That same day, according to the investigators, he sent a text to Mr. Cashmore, thanking him for his help.

But cracks had already begun to appear in the edifice of anonymous money that helped elect Mr. Swallow. That fall, the I.R.S. had asked the Proper Role of Government Education Association to document its activities and expenditures. According to the Utah House investigators, Mr. Powers responded by making changes to the group's records, reclassifying roughly \$156,000 of election expenditures as "non-electioneering." Both he and Mr. Ferate then faxed the records back the I.R.S.

In affidavit filed in the case by an agent with the Utah State Bureau of Investigation states that the two men "together participated in making false statements and agreeing to make false statements to the Internal Revenue Service" because the association's actual political expenditures would break I.R.S. rules.

Mr. Bugden, the lawyer for Mr. Powers, said a witness had misled the agent. "We absolutely, categorically, unequivocally deny that Mr. Powers and Mr. Ferate made any false statements to the I.R.S.," he said.

The I.R.S. sent a follow-up letter early last year. But in the spring of 2013, as the agency was engulfed in accusations that it singled out conservative nonprofit groups for harassment, the two concluded that "the I.R.S. now had little leverage over them," according to the Utah House report, and declined to provide the agency with more information.

A spokesman for the I.R.S. said he could not comment on particular taxpayers or cases.

In September, the Justice Department closed a related investigation into whether Mr. Swallow and Mr. Rawle had sought to bribe Senator Harry Reid of Nevada on behalf of a businessman under federal indictment. Mr. Swallow, Mr. Rawle and Mr. Reid had all denied the allegations.

But in November, Mr. Swallow nevertheless stepped down, saying the continuing investigations had taken a toll on his family.

The F.B.I. is pursuing potential charges under state law with the district attorneys for Salt Lake County and neighboring Davis County.

"At the end of the day," said Troy Rawlings, the Davis County district attorney, "people will be surprised at both the breadth and depth of this investigation."

Kitty Bennett contributed reporting.

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