

Regulation of Charitable Solicitations in the United States of America

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The conduct of fund-raising activities in the United States is affected by a large number of forces with varying degrees of official standing. The principal actors in this range of official, semi-official, and private regulation are:

- State government agencies. Many, but not all, states and similar jurisdictions have enacted charitable solicitations statutes that vest authority in the Attorney General, the Secretary of State, or some combination of officials, to oversee charitable solicitations and provide information to the public on related topics. These officials participate in an association affiliated with the National Association of Attorneys General known as the National Association of State Charities Officials.
- Local government agencies. To a lesser extent, but still commonly, especially among larger cities, there are local solicitations rules (that may also apply to door-to-door selling and other forms of commerce²).
- The Federal Trade Commission (FTC) has jurisdiction over deceptive trade practices and has taken an active role in pursuing fraudulent solicitations, especially those that extend across state lines.
- The (federal) Internal Revenue Service (IRS) collects detailed financial information from tax-exempt charitable organizations. This information is disclosed to the public through online publication and by mandatory public access to the annual filings. Under the doctrine of the “commensurate test”, the service has challenged organizations whose commitment of funds to charitable purposes is considered inadequate. The IRS also has the authority to review compensation paid by exempt organizations to employees and contractors and, when appropriate, impose penalties both on those who have received “excess benefits” and on nonprofit officers and executives who played a part in the arrangements that led to the payments.
 - It is also true that taxpayers may be eligible to reduce their tax payments by a deduction from income that reflects charitable donations to organizations that have been “recognized” by the IRS as qualifying for such treatment. Though the barriers are not impermeable, foundation grants to recipients that have not been recognized

¹ I have been helped in the preparation of this paper, and in thinking about these topics, by Wilson (“Bill”) Levis, Robert S. Tigner, Steven Rathgeb Smith, Bill Huddleston, Dave Horn, Carolyn Hojaboom and others. Any errors or omissions that remain are, of course, completely of my own making.

² “Chugging” – the practice of approaching passers-by on street corners and soliciting support for charitable activities – has become a source of friction between local governments and solicitors in the United Kingdom. It may be that if and as reliance on this practice grows in the United States there will be louder calls for constraining it in US cities.

in this way impose greater administrative burdens on the grantor and are, as a consequence, rarely given.

- Two non-governmental organizations influence fundraising behavior by regulating financial reporting. The Financial Accounting Standards Board sets standards for reporting financial information which, in turn, are incorporated into audit and accounting guides promulgated by the American Institute of Certified Public Accountants and hence shape the presentation of fund-raising activities in audited (and other) financial statements and in governmentally required disclosure documents.
- A number of national organizations with local chapters or affiliates require adherence to standards for administration and operations (including fundraising).
- Several nonprofit organizations, collectively known as “watchdogs”, monitor charitable entities’ finances and issue public reports which highlight costs of fundraising among other factors more or less closely linked to the interests of prospective donors.
 - Some of these organizations offer a “badge” that certifies compliance with standards that may include requirements affecting the conduct or reporting of fundraising activities. Others will not accept as “members” individuals or organizations that do not execute a pledge that sets standards affecting their fundraising or related activities.
- There are also fundraising organizations – often operating in cooperation with employers – which accumulate large numbers of relatively small gifts and re-grant the proceeds to community-service and other charitable groups. Some of these limit the portion of the grant recipients’ expenditures that can go toward fundraising (and other administrative expenses); others require disclosure of those ratios by participating recipients in the informative materials they distribute to prospective contributors.

A nonprofit organization operating in one community and supported by an active cadre of well-informed local donors might be forgiven for finding this array of requirements and overseeing a bit daunting.³ Many organizations, though, depend on communicating with widely scattered donors and prospective donors for a significant portion of their support. Such organizations often find it convenient to secure specialized assistance in order to be confident that their operations and reporting are compliant with all relevant regulations and that they are presenting their operations both accurately and reassuringly in the various channels of communication that may influence donors’ decisions.

Theories of Regulation

The US regulatory landscape divides into three broad areas. The most venerable is an extension of trust law and concerns itself with the protection of charitable assets (and resources more generally). Although many enabling statutes for the formation and operation of nonprofit corporations include brief recitals of the duties of nonprofits’ fiduciaries, these matters are most commonly addressed in common, not statutory, law and have only sporadic effects on fundraising practices. An example of such an effect – reputational, not regulatory – can be found in the decision

³ Attorney Bruce Hopkins puts it more forcefully: “One has to wonder how the philanthropic world manages to do what it does while laboring under the burden of these [charitable solicitations] laws.” Hopkins (1997) p. 212.

of the American Red Cross to accede to widespread calls to “honor donor intent” in the handling of the unprecedented surge of small unsolicited donations received after the attacks of September 11, 2001.⁴

“Popular philanthropy” – the technique of raising significant sums of money for charitable activities through large numbers of small gifts – is based on emotional appeals, sophisticated management, and techniques of large-scale communication.⁵ Even when scrupulously conducted, fundraising of this sort can lead to concerns by donors and observers about the cost of the campaign versus the needs of the intended beneficiaries. Sadly, of course, not every such fundraising project has been scrupulously conducted, and some have been conspicuous and outrageous frauds. Since early in the 20th century, there have been attempts to limit “excessive” expenditures on fundraising campaigns and prevent outright fraud both through private-sector (nonprofit) organizations that monitor and report on the activities of fund-seeking groups and through governmental oversight. The protection of donors’ interests through statutes that regulate charitable solicitations will be the focus of much of this paper.

With the adoption of federal corporate and personal income taxes during the first half of the 20th Century, Congressional action was needed to address questions how to distinguish “charitable” corporations from others and about the tax-consequences of making “charitable” donations. Though the federal tax code does not directly concern itself with the regulation of charitable solicitations, it does set requirements for recognition of organizations as “tax-exempt” and as eligible to confer deductibility on donations. Those requirements generate documenting and reporting procedures. In the final analysis, the tax code results in many influences, both overt and subtle, on the conduct of organizations that hope to receive contributions, on the activities of advisors and regulators who attend to their operations and on the decisions of donors – prospective and committed – as well.

These three frameworks – loosely, trust law, consumer (or donor) protection, and tax – intersect, of course, in their effects on charitable solicitations. Further, these frameworks and their intersections are reflected in much of the related work by the less directly engaged actors listed at the start of this paper. The confluence of these legal and policy perspectives is reflected in the charitable solicitations acts adopted by state legislatures over the years since New York enacted the first in the 1950s.⁶

From the point of view of an organization that seeks support from the public, the protections for donors and other provisions in these state laws have the most immediate impact. It is true that not all states have adopted any version of a charitable solicitations statute (see Table 1). The 40 states with regulations accounted, though, for 90% of all recorded nonprofit revenues in the year preceding April of 2010—\$1.7 trillion—in contrast to \$173 billion for those that where no charitable solicitations

⁴ The issue was whether the Red Cross should follow its long-standing practice of reserving a portion of donations received in response to a specific disaster to underwrite its more general disaster-response capacity; some observers and donors objected, saying that the intent of these donations was to aid the immediate victims of the 9/11 attacks, not to support the organization more generally.

⁵ The title of chapter 6 of Cutlip (1965) is “The 1920’s: Exit Charity, Enter Popular Philanthropy”.

⁶ Though the District of Columbia is not a “state” in the Constitutional sense of the term, its government has enacted charitable solicitations regulations and it is therefore included in the discussion of these regulations here.

regulations were on the books.⁷ Further, the standards found in states where charitable solicitations statutes are in effect have a broader reach because those states maintain, with varying degrees of emphasis, that a charitable solicitation directed to any resident of the state is subject to its jurisdiction and must comply with its laws.⁸

Charitable Solicitations Acts

The 40 charitable solicitation statutes (and associated implementing regulations) have a lot in common. Many of them were strongly influenced by *A Model Act Concerning the Solicitation of Funds for Charitable Purposes* adopted by the National Association of Attorneys General (NAAG) and the National Association of State Charities Officials (NASCO) in 1986.⁹ They have all been affected to a greater or lesser extent by a trio of decisions of the United States Supreme Court – known collectively as the “Riley trilogy” – that established a firm principle prohibiting the setting of any fixed limit on the ratio of fundraising expenses to other uses of the funds raised.¹⁰

Common Requirements of Charitable Solicitations Regulations

Distinctions among classes of actors These regulations generally require that organizations and individuals that engage in certain kinds of acts comply with various conditions. Importantly, these classifications do not generally parallel other administrative classifications relevant to the work of nonprofit organizations – corporate status, for example, is not usually critical for determining whether or not a provision governs any actions or creates any obligation to perform in a certain way.

- The organizations in whose name funds are raised (often called “charities”) operate, of course, commonly as nonprofit corporations (and more rarely, charitable trusts) including unions. Unincorporated associations and government entities, such as state universities and public school districts, may also be subject to the same or similar requirements. Entities such as these are created under the laws of a single state (or other jurisdiction) but may provide services in several, or all.

Standing as an organized nonprofit is not, however, necessary for charitable solicitations rules to apply. It is the act of making a request for money or other assistance that includes an appeal for a “charitable purpose” that may bring an entity (unless categorically excluded) within their scope. The concept of such a purpose is characteristically defined very broadly; here, for example, is the language from the Washington State statute:

"Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening

⁷ Financial data from IRS Business Master File for April 2010 courtesy of the National Center for Charitable Statistics, The Urban Institute. Used by permission.

⁸ Emerson (2001) p. 163. Irvin (2005) offers a detailed analysis suggesting that there is little variation along dimensions of concern when practices are compared among regulating and non-regulating states.

⁹ Fremont-Smith (2004) p. 373. This “Model Act” is discussed in more detail below at page 12.

¹⁰ Knowles (1996) p. 11. These cases are discussed in more detail below at page 11..

neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.¹¹

The implication that such a broad definition would extend to individuals acting alone is reinforced by the presence in several of the statutes of a specific exemption for funds raised on behalf of a named individual who receives all of the proceeds of the campaign. This provision is intended to remove from the scope of the Charitable Solicitations Act the common practice of raising money for a family struck by a catastrophic disease, the loss of their home, or a similar disaster.

- “Charities” may raise funds on their own behalf or they may contract with one or several “paid solicitors”¹² to conduct campaigns in their name.

Paid solicitors are usually, though not always, for-profit firms. Many work for multiple clients at a single time. They often focus on a limited range of clients – art museums, for example, or police or veterans’ organizations. Services may include designing campaigns; producing solicitations materials; hiring, supervising and compensating staff to make direct appeals in person, by telephone or in other ways; assembling mailings, including securing and screening lists of addressees; receiving and processing pledges and other responses (called “caging” when money is received and processed on behalf of clients); analyzing and evaluating the results; and many other services.

- Paid solicitors are sometimes distinguished from “fundraising counsel.” The latter are consultants (individuals or firms) who assist with the design and execution of fundraising campaigns but who do not interact directly with potential donors or receive and process any of the proceeds. The regulations of some states specifically exclude fundraising counsel from the provisions of the law; others specifically include them for at least some requirements. Solicitors usually pay higher fees, are required to offer more extensive reporting, and often are required to post a surety bond.
- When retailers or other merchants promote their products or services by promising that sales of a product or service will result in a contribution to a charitable purpose, they fall within the definition of a “commercial co-venturer.” In some jurisdictions, commercial co-venturing requires attention to charitable solicitations rules either with specific provision for such promotions or as an instance of a charitable appeal.
- Occasionally, the regulations specifically exempt appeals addressed to foundations or other potential donors who have a published procedure for accepting and processing requests for financial support.

Registration and reporting

Charitable solicitations laws typically require filing a registration statement with a state charities official prior to engaging in any solicitation addressed to a resident of the state. The registration statements for charities and commercial fundraisers are usually different, as are the associated filing fees. In many jurisdictions, commercial fundraisers are also required to post a bond.

¹¹ RCW 19.09.020(3). <http://apps.leg.wa.gov/Rcw/default.aspx?cite=19.09.020> (accessed 5/18/10). Readers familiar with the provisions of the Internal Revenue Code will recognize many familiar phrases but will also note that this definition is designed to cast an even wider net than those standards and the related regulations.

¹² This role is identified by several different labels; in Washington State such entities are known as “commercial fundraisers.” (RCW 19.09.020(2).)

Following registration, annual reports are usually required. For the “charities”, these reports contain information confirming the location, leadership and other details about the organizations benefiting from solicitations; they often require the attachment of the federal “information return” known as IRS Form 990¹³ and may require attaching the report of an external audit or other materials. For the “paid solicitors” the reports often require aggregate financial information on the amounts raised from residents of the state and the amounts paid to (or retained by) by the fundraiser for expenses and fees as well as lists of clients and other organizational details.¹⁴

Disclosure

The registration and reporting materials filed with the regulators are typically considered public documents in the sense that they are available to the public on request. In addition, many regulators publish online lists of the charities and commercial fundraisers that have registered, sometimes including the information presented in the registration and reporting forms. Some regulators also compile annual reports that, to a greater or lesser extent, highlight the proportion of funds raised that has been expended on fundraising activities or retained by commercial fundraisers.

Many regulators also offer telephone access, sometimes with a toll-free number, that allows members of the public to discover whether a particular organization has registered and reported as required and may pass along summary information from the registration documents to callers.

Performance

The charitable solicitations rules typically set standards for how any appeal may be conducted. A summary of these rules from the Washington state statutes appears as Appendix 1. Such rules generally apply to anyone engaged in any sort of fundraising from residents of the state, including fundraising being done under circumstances or by organizations that are excluded from the registration and reporting requirements.

Exceptions

Each state’s charitable solicitations program contains some exceptions or exemptions. A telegraphic summary of these provisions is presented in Table 2. Most commonly, churches (including synagogues, temples, mosques, etc.) may conduct fundraising without registration or reporting. (This exclusion rests in part on the strict separation of church and state required by the First Amendment to the United States Constitution.¹⁵) Other exclusions may designate colleges and universities, hospitals, political organizations, and other categories that are regulated by other agencies. The patterns of coverage vary widely from state to state and there is no obviously discernible pattern that would allow predicting which types of organizations will, or will not, be touched by the regulations.

Commonly, organizations that do not rise to some financial threshold are excluded as well (Washington’s limit is \$25,000), especially if the organization is operated entirely by volunteers. Fundraising “guilds” associated with hospitals and other large-scale charitable institutions often qualify for this exclusion. There are also exclusions that simplify administration, such as the provision that exempts fund-raising on behalf of a named individual who will receive the gross proceeds of the campaign.¹⁶

¹³ Internal Revenue Service. “Form 990 Instructions and Background Documents.” <http://www.irs.gov/charities/article/0,,id=181089,00.html>. The form itself is at <http://www.irs.gov/pub/irs-pdf/f990.pdf> (accessed 5/18/10).

¹⁴ To illustrate, the Unified Registration Form accepted by 37 states is attached as Appendix 1.

¹⁵ http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html (accessed 5/18/10).

¹⁶ Gifts made in such circumstances are not deductible when making the calculation of gross income used to determine the amount of personal income tax due.

In some states, such organizations are simply excluded; nothing further is required of them. Some of these states permit the filing of an informational statement that will be available to prospective donors to indicate that the absence of a particular organization from the list of participants does not indicate a failure to comply with the law. In other states, an organization's claim that it is not among the regulated statutory categories must be documented in a form supplied to the local state charities official's office.

There are, though, lots of other subtleties in these exclusions. A couple of examples: Sometimes the financial threshold refers to the amount of money raised within the state in question; sometimes it's the total of contributions wherever raised; sometimes it's total revenue of all types. In some states, churches and similar organizations are excluded from the population of regulated organizations entirely; in others, the registration and reporting requirements do not apply but the prohibitions on certain forms of solicitation and other limits on operations must be observed. This distinction matters. In the former case a fundraising advisor or contractor would, typically, also be considered beyond the reach of the regulations entirely while in the latter whatever regulations apply to commercial fundraisers will apply to their work even when they work for religious organizations.

As might be expected in a regulatory environment of such complexity, there exist several firms that specialize in assisting organizations complete the required registration and reporting in each state in accord with the characteristics of the organizations (and its plans for charitable solicitations) and the intricacies of the state's regulations – see Appendix 2 for a representative list.¹⁷ There is also an online resource – the Multi-State Filing Project – that presents the requirements of each state and offers a “unified registration statement” accepted by nearly all the states where registration is required.¹⁸

Functions of the regulators

Like the requirements for registration and reporting, the characteristics of the responsible regulatory offices vary widely. In some states, a single unit of government performs the full range of activities, in some, the responsibilities are divided so that registration and reporting are the responsibility of one official while enforcement is handled by another. And in a few states some of the functions of the regulator are delegated to a nonprofit organization. With similar wide variation in the levels of commitment, though, the state charities regulators perform four principal functions: registration and reporting, public education and information, investigation and prosecution of alleged or apparent wrongdoing, and policy development.

Evolution of the Regulatory Environment

In the final years of the 19th century and the early years of the 20th, new techniques of fundraising demonstrated conclusively that significant sums of money could be raised from the general public in the United States. During the First World War (1914-1918), these new approaches had become nationally significant headline news: a combined campaign on behalf of seven voluntary (non-governmental) agencies active in support of the war effort raised over \$203 million for their work just as the war was coming to an end.¹⁹ A rough estimate using Bureau of Labor Statistics data converts the result of that successful 1918 campaign to the equivalent of slightly

¹⁷ Robert Tigner of the Association of Direct Response Fundraising Counsel suggests that “a reasonable (and very conservative) estimate of the staff-time and out-of-pocket cost for registering nationally is \$15,000 per year.” Communication to the author, June 4, 2010. This estimate does not include the further costs incurred by the regulators in receiving and processing the registration materials received.

¹⁸See Appendix 1. The Association of Direct Response Fundraising Counsel and the National Association of State Charities Officials co-sponsor the project. <http://www.multistatefiling.org>.

¹⁹ Cutlip (1965) pp. 144-46.

more than \$2.7 billion in 2010²⁰ – this from a campaign that lasted a total of 15 days, in a nation of 103 million people, at war, and experiencing an influenza pandemic!²¹

Earlier, though, the success of “whirlwind campaigns” to raise funds for community-based organizations had already begun to attract attention – both positive and negative.²² These campaigns were organized meticulously, drew upon the support of the community’s business leaders, government officials, and newspapers, and characteristically lasted for a week or ten days. Often a significant initial gift would kick off the campaign and daily reports of progress would be front-page news and announced by a conspicuously displayed campaign “clock.” One success led, of course, to another campaign. At the end of the first decade of the 20th century, efforts were being made to put in place some structure that could coordinate the demands on time and resources and assure that the resulting funds were put to good use. One early effort of this sort, perhaps the first, was the creation under the auspices of the Chamber of Commerce of the “Cleveland Federation for Charity and Philanthropy” in 1913.²³

The combined campaign in support of the war effort mentioned above represents one theme that characterized these efforts. Its goals were to secure the funds necessary to support work with American soldiers and sailors and assist refugees, to assure the public that the funds were being collected efficiently and expended properly, and to distinguish the participating organizations from the rapidly increasing number of rivals whose appeals were often highly specific and whose activities, even when well-intentioned and well-managed, were comparatively costly. Similar “war chests” were organized at a local level as well in many cities across the country.²⁴

The existence of these federated campaigns did not, however, prevent the emergence of a large number of other efforts to raise funds for a wide variety of purposes. The *New York Times* reported in 1917 that there were 14,855 “war relief organizations” raising money to support their work.²⁵ One response, again with roots in Cleveland, Ohio, was the creation during 1918 of the National Investigation Bureau of War Charities with the mission of conducting research to arrive at a list of “approved war charities” to be published in January of 1919.²⁶

In the interval between the two World Wars, the techniques that make popular philanthropy possible continued to be refined and extended. Several of the pioneering organizers of “whirlwind campaigns” and the like moved from positions as employees of charitable organizations to found commercial firms offering their services to local and national organizations seeking donations from the public. In the same interval, awareness of the opportunities for ill-gotten gains through well-managed (but dishonest) fundraising efforts spread as well.

²⁰ Using http://www.shadowstats.com/inflation_calculator. (Accessed 6/7/10)

²¹ <http://www.census.gov/popest/archives/pre-1980/PE-11-1918.pdf> (Accessed 5/30/10).

²² The term is closely connected with the approach used by the Young Men’s Christian Association (YMCA) to raise funds to retire debt or construct new facilities starting in the late 19th century.

²³ Cutlip (1965) pp. 64-6.

²⁴ Cutlip (1965) pp. 141-50.

²⁵ Quoted in Cutlip (1965) p. 136.

²⁶ New (1983) p. 9; Cutlip (1965) p. 143. The word “investigation” was later changed to “information” in the name of the organization; still later the name became “National Charities Information Bureau”.

In 1949, an assistant attorney general in New York State investigated the then-current practice of soliciting change and small bills from the people waiting to enter Broadway theaters. His discovery: the organizers undertook to provide a fixed amount each month to the named charitable organization while retaining for themselves (and the employees making the solicitations) whatever excess was received, often as much as 70% of the proceeds. Further investigation turned up “boiler room” operations where phone calls made on behalf of worthy causes led to as much as 96% being retained as expenses by the fundraising group. These revelations led to the appointment of a Joint Legislative Committee on Charitable and Philanthropic Agencies, chaired by New York State Senator Bernard Tompkins. The committee’s shocking reports of abuse of public generosity, and the estimate the residents of the state were making contributions of between \$20 and \$25 million dollars a year to “outright charity rackets” led to the passage of the first act regulating charitable solicitations. Within a few years, some 25 other states adopted statutes on the same subject.²⁷ As noted above, the number of states with statutory regulation of charitable solicitations in some way has since grown to 40.

By the end of the 20th century the federated fund-raising model had evolved into the familiar United Way organizations that serve nearly 1,300 American communities and the National Charities Information Bureau had merged with a similar effort of the Better Business Bureau to form the BBB Wise Giving Alliance that publishes reports on hundreds of major fund-raising organizations each year.²⁸

Abuse of people’s charitable impulses elicits, quite understandably, indignation of a special sort. Other sorts of fraud, while reprehensible, frequently rely on luring victims into unwise transactions by playing on their greed or a belief in the possibility of extraordinary good fortune. Charity fraud, in contrast, lures people by calling upon their sympathies, their values, their generosity.

Plain vanilla charity fraud exists. Hucksters promise that donors’ support will rescue orphans, cure diseases, prevent crimes, support veterans – address any and all perceived ills, the more heart-rending the better – with no intention and no capability of actually doing anything except spending their victims’ money on their own consumption and on further appeals. Prosecution of this sort of behavior occurs and perpetrators are brought to justice.²⁹

²⁷ Cutlip (1965) p. 343, pp. 441-43. The quotation is from F. Emerson Andrews of the Russell Sage Foundation when testifying to the Tompkins committee.

²⁸ http://en.wikipedia.org/wiki/United_Way_of_America; <http://www.give.org> (Accessed 5/30/10).

²⁹ In 1991, a fundraising firm paid a \$2.1 million settlement as a result of an enforcement action brought by 20 states. Knowles (1996) p. 12.

A 2009 example is the complicated multi-jurisdiction enforcement activity described by the Federal Trade Commission: “In a nationwide, federal-state crackdown on fraudulent telemarketers claiming to help police, firefighters, and veterans, the Federal Trade Commission, together with 61 Attorneys General, Secretaries of State, and other law enforcers of 49 states and the District of Columbia, today announced ‘Operation False Charity.’ Federal and state enforcers announced 76 law enforcement actions against 32 fundraising companies, 22 non-profits or purported non-profits on whose behalf funds were solicited, and 31 individuals.” <http://www.ftc.gov/opa/2009/05/charityfraud.shtm>. (Accessed 5/23/10.)

And in 2010, the FTC settled a complaint against the Civic Development Group, LLC, et al.: “Under the settlements, the defendants are permanently banned from telemarketing and soliciting charitable donations, and prohibited from making false claims about anything they sell. *[continued on next page]*”

The concerns reflected in the charitable solicitations statutes and other efforts to regulate fundraising and the uses of the resulting revenues are often, however, more subtle. Which messages pass over the boundaries of candor and induce contributions through false pretenses? What requirements can be imposed on the communications between solicitors and potential donors? Which sorts of fundraising activities are too inefficient to be tolerated? How should fundraising on the Internet be addressed? How should the costs of fundraising – or more generally, of administration – be measured? What level of fundraising or administrative costs is “excessive”? And what can be done, within the limits imposed by the U.S. Constitution, the constraints on public and private resources for enforcement, and the subtleties of the questions themselves, to maintain public confidence in voluntary charitable activities and willingness to support this work?

The examination of questions of this sort over the half century since the Tomkins Committee’s report has involved the Supreme Court of the United States, government officials in several federal agencies, most states and many municipalities, think tanks and specially appointed “blue ribbon” commissions, associations and umbrella bodies (representing, among others, commercial fundraisers, federated appeals, health and welfare organizations, professional or consultants staff engaged in fundraising, and consumer protection groups), “charity watchdogs”, the news media, and academic researchers in a variety of fields. There is still, it is fair to say, a good deal about this range of questions that remains unsettled.

Decisions by the U.S. Supreme Court have, though, brought clarity to one set of important questions. Put simply, the Supreme Court has ruled that fundraising activities are constitutionally protected speech and cannot be subject to prior constraints; in particular, that it is unconstitutional

Defendants Pasch and Keezer are required to turn over numerous assets to a court-appointed liquidator. Pasch will turn over a \$2 million home; paintings by Picasso and Van Gogh valued collectively at \$1.4 million; a guitar collection valued at \$800,000; \$270,000 in proceeds from a recently sold wine collection; jewelry valued at \$117,000; three Mercedes, a Bentley, and various other assets. Keezer will turn over a \$2 million home, a Range Rover, a Cadillac Escalade, and a Bentley, among other assets.” See <http://www.ftc.gov/opa/2010/03/cdg.shtm>

Some other FTC cases (this list was distributed by Paul H. Luehr, Asst. Director, Division of Marketing Practices, Federal Trade Commission in email communication to the Cyber-Accountability listserv 8/10/99):

FTC v. Voices for Freedom, Civil No. 91-1542-A (E.D. Va. 1992)
FTC v. Heritage Publishing Co., Civil Action No. LR-C-94-416 (D. Ark. 1994)
FTC v. The Baylis Co., Civil. No. 94-0017-S-LMB (D. Idaho 1994)
FTC v. NCH, Inc., Civil No. CV-S-94-00138-LDG (LRL) (D. Nev. 1994)
FTC v. Publishing Clearing House, Inc. CV-S-94-623-PMP (LRL) (D. Nev. 1994)
FTC v. United Holdings Group, Inc. CV-S-94-331-LDG (RLH) (D. Nev. 1994)
FTC v. Int’l Charity Consultants, CV-S-94-00195-DWH (RL) (D. Nev. 1994)
FTC v. Ideal Concepts, Civil No. 95-8403 TJH (AJWx) (C.D. Cal. 1995).
FTC v. PFR, Civil No. CV-S-95-00074-PMP (LRL) (D. Nev. 1995)
FTC v. Thadow, Inc., Civil Action No. CV-S-95-75-HDM (LRL) (D. Nev. 1995)
FTC v. Global Assistance Network for Charities, CIV-96-2494 PHX RCB(D. Ariz. 1996)
FTC v. FANS, INC., CV-S-96-191-LDG (RJ) (D. Nev. 1996)
FTC v. Leon Saja, d/b/a Southwest Publishing, CIV 97-0666 PHX sm (D. Ariz. 1997)
FTC v. Southwest Marketing Concepts, Inc., Civ. No. H-97-1070 (N.D. Tex. 1997)
FTC v. The Dean Thomas Corp., Civil No. 1:97CV 0129 (N.D. Ind. 1997)
FTC v. Image Sales 7 Consultants, No. 1:97-CV-131 (N.D. Ind. 1997)
FTC v. The Century Corp., Civ. No. 1:97 CV 0130 (N.D. Ind. 1997)
Civic Development Group, Inc. Docket No. C-3810 (final consent June 19, 1998)
FTC v. Omni Advertising, Inc., Civil Action No.: 1:98CV0301 (N.D. Ind. 1998)
FTC v. T.E.M.M. Marketing, Inc., Civil Action No. 1:98CV0300 (N.D. Ind. 1998)
FTC v. Tristate Advertising Unlimited, Inc., 1:98CV0302 (N.D. Ind. 1998)
FTC v. Eight Point Communications, Inc. (E.D. Mich. 1998).
FTC v. Mitchell D. Gold, (C.D. Cal. 1998).

to forbid fundraising activities with costs that exceed some specific proportion of the amounts raised or to require a fundraiser to advise prospective donors of the costs of fundraising activities. More recently, the Court has ruled, though, that calculated dishonesty in fundraising appeals can be prosecuted as fraud.

Three decisions in the 1980s addressed the issue of statutory limits on costs of fundraising. *Village of Schaumburg v. Citizens for a Better Environment* struck down limits based on a fixed ratio imposed by a New York State municipality; *Secretary of State v. Joseph H. Munson Co.* rejected a Maryland statute that imposed more flexible limits; and *Riley v. National Federation of the Blind* found that a North Carolina law requiring “point of solicitation” disclosure of fund-raising costs was unconstitutional as well.³⁰ As a result of these three cases, “the Riley trilogy,” charitable solicitations statutes cannot limit the ability to raise funds to organizations that promise to, or do, limit costs to a certain portion of the funds raised and they cannot require a solicitation to contain a disclosure of the portion of any donation that will be consumed by costs.

In *Madigan, Attorney General of Illinois v. Telemarketing Associates*, however, a unanimous Court confirmed in 2003 that intentionally misleading prospective donors to believe that a significant portion of their contribution would be committed to the cause was not a protected form of speech. As a result, the state could in fact prosecute a “boiler room” operation that used scripts for telephone solicitations that deceived donors about the uses of the proceeds of the appeal.³¹

A related area of long-term concern is, however, nowhere near so completely settled. The National Investigation Bureau on War Charities expressed, in 1918, a desire for “reasonable efficiency in conduct of work, management of institutions, etc.,...no solicitors on commission or other commission methods of raising money...”³² The National Bureau of Economic Research concluded in 1926:

There is a strong popular desire to know what proportion of the money collected by philanthropic organizations is used to pay for the cost of collecting funds and for administrative purposes.

To satisfy this demand is, however, not an easy matter. The financial offices of philanthropic organizations feel that the public expects them to do the impossible—raise money without expense—and hence they are reluctant to reveal the actual costs of money-raising....

In view of the difficulties just described no effort was made to estimate the cost of money raising for more than a single year. Fairly complete estimates covering 1925 were compiled for certain organizations but these were so few in number that...it seems unwise to publish the results.³³

Following the Second World War, with the passage of laws that restricted the proportion of funds raised that could be used for fundraising and administration, the question of how to measure those expenditures took on a greater urgency. With support from the Rockefeller Foundation, the Voluntary Health and Welfare Agencies in the United States commissioned “an exploratory study by an ad hoc citizens committee” of the relationship between governmental and voluntary financing and provision of services of this sort. Among many other observations, the report of this study (published in 1961) reported “Some leaders in the voluntary agency movement are convinced that the best method of maintaining public confidence in voluntary agencies is more thorough

³⁰ These three cases are, of course, widely discussed and analyzed. This brief summary relies on Knowles (1996) pp. 11-12. See also Fremont-Smith (2004) pp. 370-71. Harris (1989) offers a detailed discussion.

³¹ Again, this case has been widely discussed. This brief summary is based on http://www.oyez.org/cases/2000-2009/2002/2002_01_1806. See also Fremont-Smith (2004) p. 372-72 and Peters (2003)..

³² Cutlip (1965) p. 143.

³³ W. J. King, *Trends in Philanthropy* (1928), quoted in Cutlip (1965) p.217.

regulation, by private groups or government, through uniform accounting and financial reporting. The result would be mandatory, standardized disclosure in the public interest of voluntary agency income and expenditures.”³⁴

Responding to this and other calls for more clarity in accounting and financial reporting, the National Health Council, again with support from the Rockefeller Foundation, developed and published *Standards of Accounting and Financial Reporting for Voluntary Health and Social Welfare Organizations* (referred to as the “Black Book”) in 1964. Ten years later, the American Institute of Certified Public Accountants published its first *Health and Welfare Accounting Guide*, which largely paralleled the standards in the earlier Health Council “Black Book”.³⁵

At the same time, the National Health Council supported a campaign, carried out by local affiliates in many parts of the country, to enact statutes or revise existing statutes regulating charitable solicitations. The council’s rationale for such statutes was presented in a publication titled “Viewpoints”.³⁶ These proposals included uniform annual financial reporting based on the “Black Book” Standards. “Viewpoints” also argued against limits on fundraising expenses either as a percentage of contributions or of some other financial measure. Several of the statutes that were enacted during this period did set such limits on the cost of fundraising, though, leading to the cases that were eventually heard, as described above, by the United States Supreme Court.

Another response to the new interest in regulating fundraising in the 1960s was the invigoration of the American Association of Fund Raising Counsel (AAFRC) – a trade association representing many of the firms formed to assist with raising funds for nonprofit organizations.³⁷ The National Health Council’s attention to this question faded during the 1970s, but the AAFRC took up the cause, advocating for more consistency in the regulations imposed by local jurisdictions across the country. The variations summarized earlier (see Table 2) offer a ready explanation for the interest the membership of AAFRC might have in this goal and an indication that there is still work to be done if that objective is to be achieved.

AAFRC circulated several drafts of a proposed “model act” during the 1970s and, in 1984, joined in a broader effort to develop such a model. The project was housed at the National Information Bureau with, support from the Equitable Life Insurance Company.³⁸ *A Model Act Concerning the Solicitation of Funds for Charitable Purposes* was published in 1986 and adopted by the National Association of Attorneys General and the National Association of State Charities Officials.³⁹ The Model Act proposes requiring disclosure to prospective donors when a solicitation is made by a paid solicitor or fundraising firm as well as a requirement that solicitation messages advise prospective donors that financial statements showing program, management and general, and fundraising costs

³⁴ Hamlin (1961) p. 29.

³⁵ Communication from Wilson “Bill” Levis to the author, May 19, 2010.

³⁶ McMahan (1965) and subsequent editions.

³⁷ Cutlip (1965) p. 343.

³⁸ See note 26.

³⁹ National Association of Attorneys General (1986). In October 1986, *Philanthropy Monthly* reprinted the text along with a commentary (“A Summing Up”) by John J. Schwartz (then President of the American Association of Fund-Raising Counsel), Chair of the Private Sector Advisory Group. (A .pdf of the *Philanthropy Monthly* materials is in the possession of the author.) The text of the Model Act is available online at <http://www.nasconet.org/ModelLawforcharitable solicitations.pdf>.

in accordance with generally accepted accounting principles are available from the organization in whose name the solicitation is made.

Intertwined among the many challenges inherent in the regulation of fundraising was (and is) the question of how, in fact, fundraising costs might be measured, whether or not they could be constrained in any way by statutes. There is an apparent simplicity to the archetypal case: charity A hires fundraiser Z to conduct on its behalf a fundraising campaign with a specific goal and undertakes to pay M dollars with the achievement of certain mileposts or upon completion of specified efforts. Such a model is descriptive of the widely publicized “whirlwind campaigns” that characterized the professionalization of fundraising in the second quarter of the 20th century.⁴⁰ Even that apparent simplicity fades rapidly in the light of the range and variety of fundraising activities conducted by nonprofits and their contractors. Large organizations dependent on a broad base of contributors engage in fundraising continuously using many methods, employing, often, many contractors as well as direct employees and volunteers, and fundraising is an integral part of many activities of such organizations whether or not they are conducted by personnel for whom fundraising is the principal or sole focus of their responsibilities. The results of fundraising efforts may not be realized for many years (if at all) and some elements of an organization’s work may be impossible to assign to any one sort of expenditure.⁴¹

The early efforts of the National Information Bureau were organized around endorsing organizations whose operations, including fundraising, were, as noted above, “efficient.” An example, cited by Scott M. Cutlip in *Fund Raising in the United States*, involved the closing down in 1919 of “an undesirable campaign for \$50,000,000 for which national headquarters had already been opened, a quantity of monumental mahogany furniture installed, and an expensive campaign manager hired”.⁴² With an increasing number of state laws capping fundraising expenditures at various percentages of the amounts raised (or of the recipient organizations’ annual expenditures), though, it became more urgent to agree upon a method of measurement of fundraising expenses that recognized the complexity of the task more adequately.

The standard adopted in the National Health Council’s “Black Book” (in 1964) came to be known as the “primary purpose rule.” The rule called upon bookkeepers to classify the expenses of any activity according to its principal goal, thus assigning all the costs of any fundraising campaign to “fundraising” while permitting the costs of activities where fundraising was peripheral to be classified as “program” (or, of course, “management and general”).⁴³ Since the “Black Book” was considered to be generally accepted accounting principles for voluntary health and welfare organizations, this principle of accounting appeared to be required in the preparation of financial reports under the state charitable solicitations statutes. There was, however, relatively little compliance and, as experience with the rule became more widespread, a growing climate of resistance. The American Institute of Certified Public Accountants (AICPA) introduced an alternative in the early 1978, which required “allocation” of the “joint costs” for any activity which included fundraising along with the pursuit of other goals. This AICPA guidance was promulgated in a

⁴⁰ The Model Act focuses on “campaigns”; the word appears to this date in charitable solicitations statutes; see for example Revised Code of Washington 19.09.97(3).

⁴¹ National Health Council (1964) p. 9.

⁴² Cutlip (1965) p. 131, quoting the National Information Bureau *Report 1919-1920*.

⁴³ National Health Council (1964) p. 69.

Statement of Position (identified as SOP 78-10). One of the top priorities for the formation of the NASCO at the end of the decade was to campaign for the preservation of the primary purpose rule and the rejection of SOP 78-10's allocation of joint costs. Throughout the 1980s and '90s the debate over the proper method of accounting for fundraising costs continued, with a new SOP (87-2) that further developed the idea of cost allocation. The third (1988) edition of "The Black Book" explicitly replaced the primary purpose rule with a treatment of joint costs that aligned with SOP 87-2.⁴⁴ In the opinion of many this approach to the allocation of joint costs offered too ample opportunities for mis-identifying costs that properly should have been classified as fundraising. After another decade of drafting, debate and consultation, AICPA issued, over the objections of many, SOP 98-2 under which the allocation (to other classes of expenditure) of any costs connected with a fundraising activity would be permitted only under more limited circumstances.⁴⁵ SOP 98-2 is the standard that is in force today; it is used to classify expenses for reporting to the IRS and to the interested public in Form 990 and when auditors review the financial statements of nonprofit and voluntary agencies.⁴⁶ As such, it guides as well the financial reports made to many of the state charities regulators and hence passed along to interested members of the public.

Beginning in the 1990s and, of course, increasing since, various forms of fundraising on the Internet have become more and more important as sources of support for nonprofits' activities – Google returned "about 5,270,000" pages containing the phrase "donate now" on May 31, 2010. More recently still, the use of text messaging has produced dramatic levels of contributions in response to natural disasters – the American Red Cross is reported to have received \$32,000,000 in such donations within a month of the catastrophic earthquake in January 2010 in Haiti.⁴⁷ These new technologies for fundraising pose significant new challenges to regulators – and, it is reasonable to fear, open significant new opportunities for diversion of charitable resources into unscrupulous hands.

Following its 1999 annual meeting in Charleston, South Carolina, NASCO published "The Charleston Principles" in an attempt to guide both fundraisers and regulators concerning the application of charitable solicitation statutes to online fundraising.⁴⁸ This document re-affirms the requirement that solicitations addressed to the residents of a state, on the analogy of a direct-mail campaign, require prior registration with the charities regulator of that state and financial reporting in the usual way. Recognizing, though, that prospective donors may happen upon a solicitation as the result of an online search or by seeking out the organization's website as a result of a mention

⁴⁴ National Health Council (1988) p. 7.

⁴⁵ American Institute of Certified Public Accountants (1998). The key provision that encourages more frequent classification of expenses to fundraising is "A rebuttable presumption exists that the audience criterion [for excluding costs from the fundraising classification] is not met if the audience includes prior donors or is otherwise selected based on its ability or likelihood to contribute to the entity" (Paragraph .12). .See also Barber (1998).

⁴⁶ Correspondence from Wilson "Bill" Levis to the author, May 25, 2010; Bill Levis staffed NASCO's uniform federal/state Form 990 efforts from 1979 to 1984 and was Vice President for Administration and Special Projects at the National Charities Information Bureau and staffed the "Model Act" project during 1984-86.

⁴⁷ Matt Hamblenn, "Text 'Haiti' earthquake relief effort raises \$32M for Red Cross". *Computerworld* (February 13, 2010). http://www.computerworld.com/s/article/9156678/Text_Haiti_earthquake_relief_effort_raises_32M_for_Red_Cross (Accessed 5/31/10).

⁴⁸ The author was the keynote speaker at this meeting offering a review of the challenges posed to regulation by online fundraising. National Association of State Charities Officials (2001).

in some other medium, the “Principles” suggest that registration and reporting should only be expected when the organization receives contributions from a given state “on a repeated and ongoing basis or a substantial basis through its Web site.”⁴⁹ Importantly, the “Principles” also declare that registration and reporting requirements are not occasioned by simply providing related administrative services to an organization that receives contributions on the Internet.⁵⁰

It is, of course, impossible to know the extent of compliance with the registration and reporting requirements contained in state charitable solicitations statutes. Comparing the numbers of nonprofits that are apparently at work in the nation with the numbers that are registered suggests that there is still some way to go to assure that all nonprofits with significant fundraising activities are in fact included.⁵¹ It also seems likely that there is less than full compliance with the accounting standards that have been adopted by the AICPA and incorporated to a greater or less extent in the requirements for federal and state financial reporting. One suggestive study found that “37 percent of nonprofit organizations with private contributions of \$50,000 or more reported no fundraising or special event costs on their 2000 Internal Revenue Service (IRS) Form 990.”⁵²

Non-governmental oversight of charitable solicitations

As mentioned, there are a variety of non-governmental organizations whose activities include attention to charitable solicitations.⁵³ A brief recap will provide a sense of the character and the scope of these non-state actors:

- The BBB Wise Giving Alliance, a project of the Council of Better Business Bureaus, offers reports on major national fundraising organizations online and through various publications; some member BBBs also offer reports on charities that are active in their areas. Standards 8 and 9 pertain to uses of funds and cap non-program expenses at 35% of total expenses and fundraising expenses at no more than 35% of related contributions.⁵⁴ As mentioned, the BBB Wise Giving Alliance is the result of combining the work of the National Charities Information Bureau with the similar work of the Philanthropic Advisory Service of the Council of Better Business Bureaus in 2001.
- Several state associations of nonprofits offer certification through a program called “Standards of Excellence” which was originally developed by Maryland Nonprofits. In the course of the review leading to certification, a nonprofit must show that it has “On average, over a five (5) year period...revenue from fundraising and other development activities that are [sic] at least three times the amount spent on conducting them....Or is making steady progress” toward meeting that standard or “should be able to justify why a 3:1 ratio is not appropriate.”⁵⁵

⁴⁹ National Association of State Charities Officials (2001) III(B)(b)(2)(ii), page 3.

⁵⁰ National Association of State Charities Officials (2001) III(C)(2), page 5.

⁵¹ A Washington State Senator proposed during the 2010 Session of the Legislature that proper registration with the state charities regulator should be required to establish eligibility for state or municipal contracts. In the end, this proposal was not included in legislation relating to the Charities Program enacted this year.

⁵² Urban Institute (2004) p. 1.

⁵³ Independent Sector (2003) inventories these organizations.

⁵⁴ <http://www.bbb.org/us/Charity-Standards/> (Accessed 5/31/10).

⁵⁵ http://www.standardsforexcellenceinstitute.org/public/html/documents/nationalstandards_000.pdf (Accessed 5/31/10).

- Charity Navigator assigns scores (stars) to charitable organizations for organizational efficiency based on a numerical analysis of financial indicators derived from review of the Form 990. Both fundraising expenses (in proportion to total functional expenses) and the ratio between proceeds and fundraising expenses are factors in the calculation, with the note that “lower is generally better.”⁵⁶

The National Council of Nonprofits and the National Human Services Assembly published in 2005 a review of these and other charity “watchdogs” under the title *Rating the Raters*. Among its cautions about the efficacy of these efforts to rate or grade charitable nonprofit organizations, this report includes the observation that “Evaluators tend to focus on financial measures but overlook program effectiveness” and emphasize low overhead.⁵⁷ Commenting on this approach to rating charitable activities, Ira Kaminow, the founder of Just Tzedakah, posed the thought experiment: “Would you feel comfortable about donating to an organization that honestly and completely reported that it had zero administrative expenses?”⁵⁸

Another non-governmental oversight organization is The Evangelical Council for Financial Accountability. It enlists as members churches and other “missions” (its term for social service agencies operating on a basis of religious conviction) from within the Evangelical community that comply with its standards, which include, as standard 7.7, “Percentage Compensation for Fund-raisers: Compensation of outside fund-raising consultants or a member’s own employees based directly or indirectly on a percentage of charitable contributions raised is not allowed.”⁵⁹ The Council reserves the right to cancel membership, and withdraw permission to display its seal, from any organization found to have violated its standards; it employs auditors and other investigators to conduct examinations should any of its members provoke scrutiny and it conducts active training and reflection sessions throughout the country to assist its members in understanding and complying with the standards.

Efforts to limit fundraising expenditures have appeared in other non-governmental and quasi-governmental contexts as well. Federated campaigns have set upper limits on reported fundraising expenditures in determining eligibility for funding. Some other funders set such limits, or restrict the use of grant funds in ways that bar expenditures for fundraising and more general forms of “overhead.” Until 2006, the Combined Federal Campaign (which facilitates contributions by payroll deduction from employees of the federal government) required documentation of efforts to reduce administrative expenses from organization where the ratio to total expenses was more than 25% if they were to be included in the roster of permitted recipients.⁶⁰ While these and other similar efforts to place limits on expenses may serve to reinforce the public’s concern about the topic, it is doubtful that they are effective in assuring “efficiency” among nonprofit organizations. Some observers report various forms of anecdotal and statistical evidence of “creative bookkeeping” and other distortions of administrative behavior occurring in organizations dependent on support from funders with standards of this sort.⁶¹ “When donors reward charities that report low overhead and

⁵⁶ <http://www.charitynavigator.org/index.cfm/bay/content.view/cpid/48.htm> (Accessed 5/31/10).

⁵⁷ <http://www.councilofnonprofits.org/sites/default/files/Rating-the-Raters.pdf> on page 2. (Accessed 5/31/10).

⁵⁸ <http://www.just-tzedakah.org>

⁵⁹ http://www.ecfa.org/PDF/ECFA_Seven_Standards_of_Responsible_Stewardship.pdf (Accessed 5/31/10). As early as 1904, charity observers in Baltimore, Maryland, expressed a preference for salaried solicitors by suggesting that their work was “less open to criticism” than, presumably, those who worked on some sort of commission basis. (Cutlip (1965) p. 59).

⁶⁰ Communication to the author from Bill Huddleston. June 9, 2010.

⁶¹ Keating et al. (2006) esp. p. 2.

fundraising costs, it encourages nonprofits to understate those costs and, worse, to underspend on those activities.”⁶²

Concluding observations

Regulation of nonprofit organizations in the United States is diffused among a broad array of actors: a majority of states and quite a number of locales regulate charitable solicitations. The Internal Revenue Service (the federal tax administration) and the Federal Trade Commission have jurisdiction over some fundraising activities. In addition, the American Institute of Certified Public Accountants, through its development of related accounting standards, influences the reporting of fundraising expenses which, when “excessive,” are the concern of both the local and the federal regulators. There are also several private nonprofit “watchdog” agencies which examine the fundraising activities of charities and provide advice or commentary to donors and other interested parties based on internally developed standards.

In spite of serious efforts by scholars, associations, government officials and legislatures, though, it cannot be said that the array of influences on the conduct of charitable solicitations in the United States rests securely on a coherent theoretical model of desired public policy. Broadly speaking over the century or so during which policy-oriented attention has been paid to these questions three policy frameworks appear to have shaped, consciously and unconsciously, the developments that led to the present regulatory climate.

First in historical sequence was a framework that might be called “scientific social work” – using the last two words in the late 19th century sense of “work that affects society.” Philanthropists, agency executives and political reformers sought to mobilize private resources to address community ills. From their point of view, the goals were a disciplined effort to identify priorities and a system of mobilizing the generosity of the community at the least cost – a federation of service delivery agencies managing a focused fundraising campaign offered the best hope of achieving both goals. Various initiatives by groups of private citizens aimed at “bringing system and value” to philanthropies have never achieved the level of controls their proponents have sought.⁶³ The U. S. Supreme Court has ruled that controlling the administration of voluntarily contributed resources in these ways is unconstitutional for state officials acting in their official capacity.

As the voices of donors came to be heard more loudly and perhaps more clearly, a concern for protecting their interests provided quite a different framework for the development of policy initiatives. Taken to an extreme, this framework sees both fundraisers and nonprofit organizations as agents for donors, responsible primarily for executing to the maximum extent possible the program conceived and financed by the donors while subject to predictable temptations to drift from, or actively abuse, that objective. The closest the operations of the charities regulation scheme in the United States has come to implementing this framework is seen in the rapid increase in requirements for disclosure (“accountability” and “transparency”) in federal law, state regulations, and the recommendations of advocacy and umbrella groups. The Pension Protection Act of 2006 required prompt provision of a complete copy of an exempt organization’s Form 990 on request and encouraged posting true copies of this form online.⁶⁴ State charities regulators routinely post reports of fundraising “campaigns” and registered nonprofits finances on their websites. Independent Sector (2007) strongly recommends accountability and transparency as ethical practices. And of course the watchdog groups mentioned earlier are unanimous in their preference for clear presentation of the details of program and finances by nonprofit organizations that seek or receive public support.

⁶² Kaminow (2006) p. 4,

⁶³ The quoted phrase is from John D. Rockefeller, Sr., in 1912. Cutlip (1965) p. 68.

⁶⁴ U. S. Congress, Joint Committee on Taxation (2006) p. 329.

The application of the doctrine that fundraising is protected speech leads to the third frame of reference within which the regulation of fundraising has developed. In this view, which might be called in a stretch of the familiar term, the “civil society” framework, the fundraiser and the nonprofit organization are exercising a critical freedom grounded in the fundamental principles of a free society. Within the very broad limits marked by the legal definition of fraud and the practical risks of reputational embarrassment, these actors are encouraged to seek support wherever and however they can, both to increase their chances of accomplishing the goals they have set for themselves and to confer upon donors and other supporters the satisfactions of having made contributions toward those ends.⁶⁵ From this perspective, an important element of the value of nonprofit organizations, and one that deserves to be supported and protected, is the role they play in effecting the visions of a good society held by citizens. This view offers little comfort to those who would control the use of nonprofits’ resources to achieve more focused and evaluated goals.

All three of these frameworks offer robust grounds for condemning outright fraud. None, though, convinces me that the cost, complexity, and arbitrary effects of the current regulatory environment is achieving a fully satisfactory result while making proportionate and appropriate demands on the resources available to protect the public interest in honest, efficient and inspiring mobilization of resources to meet the needs and aspirations of diverse communities and their citizens. The second century of development of fundraising regulation offers plenty of opportunities for creative development of new public policies and new forms of voluntary action.

⁶⁵ Economist Richard Steinberg has articulated this view in a several papers that ask the reader to consider, as an extreme example, the possibility that an organization might spend several multiples of the actual cash receipts on a fundraising campaign that produced the ultimate resource necessary to achieve some universally acclaimed result such as curing cancer or eliminating organized crime. Steinberg (1997; 2007). Tullock (1966) makes a discouragingly persuasive argument that overvaluing donor satisfactions can lead to the perverse result that the highest social utility comes from organizations that spent all their resources on pandering to the wishes of donors and none on program activities of any other sort.

Table 1: Population (2009 est.) of States with and without Charitable Solicitations Regulation

	With Regulation	Without Regulation
Alabama	4,708,708	
Alaska	698,473	
Arizona	6,595,778	
Arkansas	2,889,450	
California	36,961,664	
Colorado	5,024,748	
Connecticut	3,518,288	
Delaware		885,122
District of Columbia	599,657	
Florida	18,537,969	
Georgia	9,829,211	
Hawaii	1,295,178	
Idaho		1,545,801
Illinois	12,910,409	
Indiana		6,423,113
Iowa		3,007,856
Kansas	2,818,747	
Kentucky	4,314,113	
Louisiana	4,492,076	
Maine	1,318,301	
Maryland	5,699,478	
Massachusetts	6,593,587	
Michigan	9,969,727	
Minnesota	5,266,214	
Mississippi	2,951,996	
Missouri	5,987,580	
Montana		974,989
Nebraska		1,796,619
Nevada		2,643,085
New Hampshire	1,324,575	
New Jersey	8,707,739	
New Mexico	2,009,671	
New York	19,541,453	
North Carolina	9,380,884	
North Dakota	646,844	
Ohio	11,542,645	

Table 1: Population (2009 est.) of States with and without Charitable Solicitations Regulation (continued)

Oklahoma	3,687,050	
Oregon	3,825,657	
Pennsylvania	12,604,767	
Rhode Island	1,053,209	
South Carolina	4,561,242	
South Dakota		812,383
Tennessee	6,296,254	
Texas		24,782,302
Utah	2,784,572	
Vermont		621,760
Virginia	7,882,590	
Washington	6,664,195	
West Virginia	1,819,777	
Wisconsin	5,654,774	
Wyoming	544,270	
TOTAL	263,513,520	43,493,030

Sources: Classification of states – <http://www.multistatefiling.org> (accessed May 5, 2010); population estimates -- <http://factfinder.census.gov> GCT-T1 (accessed May 5, 2010).

Table 2. Summary of State Charitable Solicitations Requirements and Exceptions or Exemptions

STATE	Financial report required annually	Exempted Organizations ¹											
		Religious organizations	Educational institutions (* alumni and students only)	Fundraising or receipts less than \$X per year (*when all activities or fundraising done by volunteers)	Governments	Political organizations	Nonprofit or religious hospitals, health care foundations	Fraternal, social, educational, historical civilrights	Civic leagues/organizations (solicit only from members)	Named individual who receives all proceeds	Veterans organizations (* with all volunteer fundraising)	Parent-teachers associations	National organizations with local affiliate
Alabama	a	a	a	\$25K*		a	a	a	a	a	a*		
Alaska ²		a		\$5K*									
Arizona	a				a	a							
Arkansas	a	a	a	\$25K*	a	a	a					a	
California	a	a			a	a	a						
Colorado		a		\$25K									
Connecticut	a	a	a	\$50K*	a		a					a	
n/a Delaware													
District of Columbia ³	a	a	a	\$1.5K*					a				
Florida		a							a				
Georgia	a	a	a	\$25K		a							a
Hawaii	a	a	a	\$25K*	a		a					a	

¹ Requests for exemption must be filed in some states.

² Organizations with a gaming permit.

³ American Red Cross

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n/a Idaho													
Illinois	a	a	a		a		a						
n/a Indiana													
n/a Iowa													
Kansas	a	a	a	\$10K					a				
Kentucky	a	a	a*						a				
Louisiana ⁴	a	a	a										
Maine	a	a	a	\$10K*			a		a	a			
Maryland	a	a ⁵		\$25K					a				
Massachusetts	a	a											
Michigan	a	a	a	\$8K*					a		a		
Minnesota	a	a	a	\$25K*					a				
Mississippi	a		a*	\$4K*					a				
Missouri	a	a	a				a ⁴	a					

⁴ Only requires registration from organizations that retain paid solicitors.

⁵ Unless a paid solicitor is employed.

Table 2: Summary of State Charitable Solicitations Requirements and Exceptions or Exemptions

STATE	Financial report required annually	Exempted Organizations ¹										
		Religious organizations	Educational institutions (* alumni and students only)	Fundraising or receipts less than \$X per year (*when all activities or fundraising done by volunteers)	Governments	Political organizations	Nonprofit or religious hospitals, health care foundations	Fraternal, social, educational, historical civilrights	Civic leagues/organizations (solicit only from members)	Named individual who receives all proceeds	Veterans organizations (* with all volunteer fundraising)	Parent-teachers associations
n/a Montana												
n/a Nebraska												
n/a Nevada												
New Hampshire	a	a										
New Jersey	a	a	a	\$10K								
New Mexico ⁶	a	a	a						a			
New York	a	a	a*	\$25K ⁷			a ⁸			a		
North Carolina ⁹	a		a	\$25K*			a ¹⁰					
North Dakota	a	a	a		a	a			a			

⁶ Requires electronic filing (an exemption may be requested).

⁷ Unless a paid solicitor is employed.

⁸ When soliciting for memberships.

⁹ Noncommercial broadcast stations, qualified community trusts; volunteer fire departments, rescue squads, emergency medical services; YMCAs or YWCAs; nonprofit continuing care facilities, and certain tax exempt nonprofit fire or emergency medical service organizations involved in the sale of goods or services that do not ask for donations.

¹⁰ Nonprofit status not specified.

Table 2: Summary of State Charitable Solicitations Requirements and Exceptions or Exemptions

STATE	Financial report required annually	Exempted Organizations ¹										
		Religious organizations	Educational institutions (* alumni and students only)	Fundraising or receipts less than \$X per year (*when all activities or fundraising done by volunteers)	Governments	Political organizations	Nonprofit or religious hospitals, health care foundations	Fraternal, social, educational, historical civilrights	Civic leagues/organizations (solicit only from members)	Named individual who receives all proceeds	Veterans organizations (* with all volunteer fundraising)	Parent-teachers associations
Ohio ¹¹	a	a	a*	\$25K*					a			
Oklahoma		a	a*	\$10K					a			
Oregon	a	a	a ¹²									
Pennsylvania ¹³	a	a	a	\$25K*			a ⁹			a		
Rhode Island ¹⁴	a	a	a	\$25K*			a		a	a		
South Carolina	a	a	a*	\$20K ¹⁵	a				a	a	a ¹⁶	
n/a South Dakota												
Tennessee ¹⁷		a	a	\$30K							a	

¹¹ All 501(c)(3), (7) or (8) organizations, i.e., public charities, private foundations, social clubs or fraternal beneficiary societies as defined in these Internal Revenue Code sections.

¹² Educational institutions that do not hold property in the state may solicit only from alumni without registration.

¹³ Nonprofit libraries filing an annual fiscal report with the state library system; senior citizen centers and nursing homes that are nonprofit, charitable and tax exempt, and have all fundraising activities carried out by volunteers

¹⁴ Public libraries; public art museums.

¹⁵ Under \$7K no registration required even with professional solicitation.

¹⁶ With a Congressional charter.

¹⁷ Volunteer fire departments, rescue squads or local civil defense organizations.

Table 2: Summary of State Charitable Solicitations Requirements and Exceptions or Exemptions

STATE	Financial report required annually	Exempted Organizations ¹											
		Religious organizations	Educational institutions (* alumni and students only)	Fundraising or receipts less than \$X per year (*when all activities or fundraising done by volunteers)	Governments	Political organizations	Nonprofit or religious hospitals, health care foundations	Fraternal, social, educational, historical civilrights	Civic leagues/organizations (solicit only from members)	Named individual who receives all proceeds	Veterans organizations (* with all volunteer fundraising)	Parent-teachers associations	National organizations with local affiliate
n/a Texas													
Utah ^{16, 18}	a	a	a			a			a	a		a	
n/a Vermont													
Virginia ¹⁹	a		a*	\$5K*			a	a	a		a		a
Washington ²⁰	a	a		\$25K*		a			a	a			
West Virginia	a	a	a	\$10K*			a		a	a			
Wisconsin	a		a	\$5K		a			a	a	a		
n/a Wyoming													

Source: Notes for the Unified Registration Statement. http://www.multistatefiling.org/n_appendix.htm. Accessed 5/24/10.

¹⁸ Educational broadcast media

¹⁹ Civic organizations such as a local service club, volunteer fire or rescue group, or local civic league or association; trade associations, and labor organizations; nonprofit debt counseling agencies licensed by the Virginia State Corporation Commission; 501(c)(3) organizations that solicit solely through grant proposals.

²⁰ Requests for support from organizations with a published procedure for applications are not consider solicitations.

Appendix 1: Prohibited Activities while Engaged in Fundraising: Washington State

Persons and charitable organizations engaged in fundraising in Washington State are prohibited from:

- Including any statement that is false, misleading, or deceptive in a fundraising appeal.
- Suggesting or claiming that a contribution will be tax deductible when an applicable IRS determination letter has not been received.
- Misrepresenting or concealing the identity of the recipient of the funds being raised.
- Suggesting or claiming volunteer status if any sort of compensation is or will be paid.
- Suggesting or claiming employee status with a charitable organization when that is not true.
- Misrepresenting the connection between the organization for which funds are being raised and any governmental unit.
- Representing that tickets to any event will be donated for use by another person unless the tickets are distributed as represented prior to the event.
- Violating any local government regulation applicable to fundraising.
- Suggesting that registration or reporting as required by the Charitable Solicitations Act indicates approval by the state of Washington or any state official.
- Telephoning donors or potential donors before 8 am or after 9 pm.
- Harassing, intimidating or tormenting anyone in connection with a charitable appeal.
- Raising money for or on behalf of an organization that is required to register and has not.
- Making a solicitation that does not comply with provisions of the Charitable Solicitations Act.

Source: RCW 19.09.100 <http://apps.leg.wa.gov/rcw/default.aspx?cite=19.09.100> (Accessed June 8, 2010)

Appendix 2: Firms Providing Registration Services

Coates & Hutchinson, P.C.

P. O. Box 561
Odenton, MD 21113-0561
(410) 672-6339
Theresa Hutchinson
info@awdc.org

Corporation Service Company

2711 Centerville Rd #400
Wilmington, DE 19808
(800) 927-9800 or (302) 636-5400 x3314
Margaret Truluck
mtruluck@cscinfo.com

Copilevitz & Canter

423 W. Eighth St #400
Kansas City, MO 64105
(816) 472-9000
Errol Copilevitz
ecopilevitz@copilevitz-canter.com

Labyrinth, Inc.

5731 Palmer Way, Ste F
Carlsbad, CA 92008
(760)931-2620
Robert Urich
bob@labyrinthinc.com

Montgomery, McCracken, Walker & Rhoads, LLP

123 S. Broad Street
Philadelphia, PA 19109-1030
(215) 772-7314
Karl Emerson
kemerson@mmwr.com

National Charitable Solicitations Registry, LLC

12408 Preserve Way
Reisterstown, MD 21136
(410) 526-7301
Terri Ackerman
charitableregistry@comcast.net

Nonprofit Service Group

200 N. Glebe Rd #315
Arlington, VA 22203-3755
(703) 528-7525
George Miller
gmiller@nonprofitserv.com

Perlman & Perlman

220 Fifth Ave 7th Flr
New York, NY 10001
(212) 889-0575
Seth Perlman
seth@perlmanandperlman.com

Webster, Chamberlain & Bean

1747 Pennsylvania Ave NW #1000
Washington, DC 20006-4604
(202) 785-9500
Chip Watkins
cwatkins@wc-b.com

Source: Association of Direct Response Fundraising Counsel. (03/09) Used by permission.

Appendix 3: Registration Form

Note: The Unified Registration Statement incorporates the data requested by 37 states where registration is required and is accepted in lieu of state-specific forms in those states (additional schedules may also be required); this reproduction of the URS form thus includes more detail than is required by any one state while representing the information that must be presented to at least one state in order to meet registration requirements. [The URS form is reproduced here with the permission of the Multi-State Filer Project; it can be accessed online at <http://www.multistatefiling.org>.]

Unified Registration Statement (URS) for Charitable Organizations© (v. 4.0)

Initial registration Renewal/Update

This URS covers the reporting year which ended (day/month/year)

Filer EIN

State

State ID

1. Organization's legal name

If changed since prior filings, previous name used

All other name(s) used

2. (A) Street address

City County

State Zip Code

(B) Mailing address (if different)

City County

State Zip Code

3. Telephone number(s) Fax number(s)

E-mail Web site

4. Names, addresses (street & P.O.), telephone numbers of other offices/chapters/branches/affiliates (*attach list*).

5. Date incorporated

State of incorporation

Fiscal year end: day/month

6. If not incorporated, type of organization, state, and date established

7. Has organization or any of its officers, directors, employees or fund raisers:

A. Been enjoined or otherwise prohibited by a government agency/court from soliciting? Yes No

B. Had its registration denied or revoked? Yes No

C. Been the subject of a proceeding regarding any solicitation or registration? Yes No

D. Entered into a voluntary agreement of compliance with any government agency or in a case before a court or administrative agency? Yes No

E. Applied for registration or exemption from registration (but not yet completed or obtained)? Yes No

F. Registered with or obtained exemption from any state or agency? Yes No

G. Solicited funds in any state? Yes No

If "yes" to 7A, B, C, D, E, *attach explanation*.

Appendix 3: Unified Registration Form

If “yes” to 7F & G, *attach list* of states where registered, exempted, or where it solicited, including registering agency, dates of registration, registration numbers, any other names under which the organization was/is registered, and the dates and type (mail, telephone, door to door, special events, etc.) of the solicitation conducted.

8. Has the organization applied for or been granted IRS tax exempt status? Yes No
If yes, date of application OR date of determination letter .
If granted, exempt under 501(c) . Are contributions to the organization tax deductible? Yes No

9. Has tax exempt status ever been denied, revoked, or modified? Yes No

10. Indicate all methods of solicitations:
Mail Telephone Personal Contact Radio/TV Appeals
Special Events Newspaper/Magazine Ads Other(s) (specify)

11. List the NTEE code(s) that best describes your organization , ,

12. Describe the purposes and programs of the organization and those for which funds are solicited (*attach separate sheet if necessary*).

13. List the names, titles, addresses, (street & P.O.), and telephone numbers of officers, directors, trustees, and the principal salaried executives of organization (*attach separate sheet*).

14. (A) (1) Are any of the organization’s officers, directors, trustees or employees related by blood, marriage, or adoption to:(i) any other officer, director, trustee or employee OR (ii) any officer, agent, or employee of any fundraising professional firm under contract to the organization OR (iii) any officer, agent, or employee of a supplier or vendor firm providing goods or services to the organization? Yes No

(2) Does the organization or any of its officers, directors, employees, or anyone holding a financial interest in the organization have a financial interest in a business described in (ii) or (iii) above OR serve as an officer, director, partner or employee of a business described in (ii) or (iii) above? Yes No
(If yes to any part of 14A, *attach sheet* which specifies the relationship and provides the names, businesses, and addresses of the related parties).

(B) Have any of the organization’s officers, directors, or principal executives been convicted of a misdemeanor or felony? (*If yes, attach a complete explanation.*) Yes No

15. *Attach separate sheet listing names and addresses (street & P.O.) for all below:*
Individual(s) responsible for custody of funds.
Individual(s) responsible for distribution of funds.
Individual(s) responsible for fund raising.
Individual(s) responsible for custody of financial records.
Individual(s) authorized to sign checks.
Bank(s) in which registrant’s funds are deposited (*include account number and bank phone number*).

16. Name, address (street & P.O.), and telephone number of accountant/auditor.
Method of accounting

17. Name, address (street & P.O.), and telephone number of person authorized to receive service of process. *This is a state specific item. See instructions.*

18. (A) Does the organization receive financial support from other nonprofit organizations (foundations, public charities, combined campaigns, etc.)? Yes No

(B) Does the organization share revenue or governance with any other non-profit organization? Yes No

Appendix 3: Unified Registration Form

(C) Does any other person or organization own a 10% or greater interest in your organization OR does your organization own a 10% or greater interest in any other organization? Yes No
(If “yes” to A, B or C, *attach an explanation* including name of person or organization, address, relationship to your organization, and type of organization.)

19. Does the organization use volunteers to solicit directly? Yes No
Does the organization use professionals to solicit directly? Yes No

20. If your organization contracts with or otherwise engages the services of any outside fundraising professional (such as a “professional fundraiser,” “paid solicitor,” “fund raising counsel,” or “commercial co-venturer”), *attach list* including their names, addresses (street & P.O.), telephone numbers, and location of offices used by them to perform work on behalf of your organization. Each entry *must include* a simple statement of services provided, description of compensation arrangement, dates of contract, date of campaign/event, whether the professional solicits on your behalf, and whether the professional at any time has custody or control of donations.

21. Amount paid to PFR/PS/FRC during previous year: \$

22. (A) Total contributions: \$
(B) Program service expenses: \$
(C) Management & general expenses: \$
(D) Fundraising expenses: \$
(E) Total expenses: \$

Under penalty of perjury, we certify that the above information and the information contained in any attachments or supplement is true, correct, and complete.

Sworn to before me on (or signed on)
Notary public (if required)

Consult the state-by-state appendix to the URS to determine whether supporting documents, supplementary state forms or fees must accompany this form. Before submitting your registration, *make sure you have attached or included everything required by each state to the respective copy of the URS.* Attachments may be prepared as one continuous document or as separate pages for each item requiring elaboration. In either case, please number the response to correspond with the URS item number.

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Source: Multi-State Filer Project – http://www.multistatefiling.org/urs_webv40.pdf (Accessed 6/11/10)

Works Cited

- American Institute of Certified Public Accountants. (1998). *Statement of Position 98-2: Accounting for Costs of Activities of Not-for-Profit Organizations and State and Local Governmental Entities That Include Fund Raising*.
- Barber, Putnam. (1998). "AICPA SOP 98-2 and its Impact on Financial Reporting" (an entry in the Nonprofit FAQ). <http://www.idealists.org/if/i/en/faq/225-211/28-64> (accessed 5/26/10).
- Burlingame, Dwight F. (1997). *Critical Issues in Fund Raising*. New York: John Wiley & Sons, Inc.
- Cutlip, Scott M. (1965). *Fundraising in the United States*. Rutgers University Press. (Revised edition: Transaction Publishers Rutgers University. 1990.)
- Emerson, Karl. (2001). "State Charitable Solicitations Statutes". *Exempt Organizations Continuing Professional Education Technical Instruction 2001*. Pp. 155-67. Washington: Internal Revenue Service. <http://www.irs.gov/pub/irs-tege/eotopic01.pdf>. (Accessed 5/23/10.)
- Fremont-Smith, Marion R. (2006). *Governing Nonprofit Organizations: Federal and State Law and Regulation*. Cambridge, Massachusetts: Harvard University Press.
- Hamlin, Robert H., study director. (1961). *Voluntary Health and Welfare Organizations in the United States: An Exploratory Study by and Ad Hoc Citizens Committee*. New York: The Schoolmasters' Press. ("The Committee came together at the invitation of the Rockefeller Foundation.")
- Harris, Ellen, Lynn S. Holley and Christopher J. McCaffrey. (1989). "Fundraising into the 1990s: State Regulation of Charitable Solicitation after *Riley*". *University of San Francisco Law Review*, 24. Pp. 571-652.
- Hopkins, Bruce M. (1997). "Government Regulation and Charitable Fund Raising: Worthwhile Protection of Unreasonable Burden?" Ch. 13 of Burlingame (1997). Pp. 211-33.
- Independent Sector. (2003). Compendium of standards, codes and principles of nonprofit and philanthropic organizations. http://www.independentsector.org/compendium_of_standards?s=compendium. (Accessed 6/15/10.)
- . (2007). *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*. Washington, DC: Independent Sector. http://www.independentsector.org/uploads/Accountability_Documents/Principles_for_Good_Governance_and_Ethical_Practice.pdf. (Accessed 5/23/10.)
- Irvin, Renée A. (2005). "State Regulation of Nonprofit Organizations: Accountability Regardless of Outcome". *Nonprofit and Voluntary Sector Quarterly*, 34 (2). Pp. 161-178.
- Kaminow, Ira. (2006). *Smart Tzedakah: How to Evaluate Charities Before You Give*. Tzedakah, Inc. <http://www.just-tzedakah.org/SmartTzedakah.pdf>
- Keating, Elizabeth K., Linda M. Parsons, and Andrea A. Roberts. (2006). "Misreporting Fundraising: How Do Nonprofit Organizations Account For Telemarketing Campaigns?" (Working Paper #37). Cambridge, Massachusetts, Hauser Center for Nonprofit Organizations, Harvard University. http://www.hks.harvard.edu/hauser/PDF_XLS/workingpapers/workingpaper_37.pdf. (Accessed 5/23/10.)
- Knowles, Terry M. (1996). "A Brief History of Charitable Regulation". *New Hampshire Bar Journal*, v. 37, no. 4 (December). Pp. 8-13.

- McMahon, Michael E. (1965) *Viewpoints*. New York: National Health Council. Several editions published into the 1970s.
- National Association of Attorneys General (1986), Committee on Trusts and Solicitations and National Association of State Charities Officials in Consultation with the Private Sector Advisory Group. *A Model Act Concerning the Solicitation of Funds for Charitable Purpose*. Reprinted with additional materials in *Philanthropy Monthly* (October).
- National Association of State Charities Officials. (2001). *The Charleston Principles*. [http://www.nasconet.org/Charleston Principles, Final.pdf](http://www.nasconet.org/CharlestonPrinciples_Final.pdf). (Accessed 6/15/10.)
- National Health Council (1964) and National Social Welfare Assembly. *Standards of Accounting and Financial Reporting for Voluntary Health and Social Welfare Organizations*.
- National Health Council (1988), National Assembly of National Voluntary Health and Social Welfare Organizations, and United Way of America. *Standards of Accounting and Financial Reporting for Voluntary Health and Social Welfare Organizations* Third Edition. New York: National Health Council.
- New, Anne L. (1983). *Service for Givers: The Story of the National Information Bureau*. New York: The National Information Bureau, Inc. ("The preparation and publication of this history were made possible by a grant from the Geraldine R. Dodge Foundation, Incorporated.")
- Peters, Geoffrey W. (2003). "Letter to Amicus Curiae supporters [in the case Madigan v. Telemarketing Associates before the U.S. Supreme Court]". <http://www.gpeters.net/supremecourt.html> (accessed 5/20/10).
- Steinberg, Richard. (1997). "On the Regulation of Fund Raising." Ch. 14 of Burlingame (1997). Pp. 234-44.
- . (2007). Letter to Commissioner Steven Miller, Tax Exempt and Government Entities, Internal Revenue Service. Copy in possession of the author.
- Tulock, Gordon. (1966) "Information Without Profit." *Public Choice* 1(1) (December). Pp. 141-59.
- United States Congress, Joint Committee on Taxation. (2006). *Technical Explanation of H.R.4, The "Pension Protection Act of 2006"*. <http://www.dol.gov/ebsa/pdf/x-38-06.pdf>. (Accessed 5/23/10.)
- Urban Institute. (2004). "What We Know about Overhead Costs in the Nonprofit Sector" (Issue Brief #1, Nonprofit Overhead Cost Project; in association with the Center on Philanthropy, Indiana University). Washington, DC: The Urban Institute.

Additional References

- American Institute of Certified Public Accountants. (1974[[[?]]]). *Health and Welfare Accounting Guide*.
- American Association of Fundraising Counsel Trust for Philanthropy.(2003). "GivingUSA update: Annual survey of state laws regulating charitable solicitations as of January 1, 2003". (Issue 1). Indianapolis, IN.
- Baldwin, Robert and Julia Black. (2008). "Really Responsive Regulation," *Modern Law Review*, 7, 1: 59-94. London: Blackwell Publishers.
- Barber, Putnam. (2005). "What About Calculating Fund Raising Ratios?" (an entry in the Nonprofit FAQ). <http://www.idealists.org/if/i/en/faq/142-154/74-89>. (Accessed 6/15/10.)

- . (2010). 'Soliciting for Charitable Contributions in Washington – An Overview'. Nancy Bell Evans Center on Nonprofits and Philanthropy, Evans School of Public Affairs, University of Washington. <http://evans.washington.edu/files/soliciting-for-charity-in-washington.pdf> (Accessed 5/26/10.)
- Bograd, Harriet. (1999), 'How is fundraising regulated in the United States,' Idealist.org, <http://www.idealists.org/if/i/en/faq/341-115/68-62>. (Accessed 6/15/10.)
- Breen, Oonagh. (2009). 'Regulating Charitable Solicitation Practices – The Search for a Hybrid Solution,' *Financial Accountability and Management*, 25 (1):115-143.
- Brody, Evelyn. (2002). 'Enforcement: Legal Standing and Private Remedies,' in *Accountability: A Challenge for Charities and Fundraisers* (Putnam Barber, ed.), New Directions for Philanthropic Fundraising, 31. Pp. 7-21. San Francisco: Jossey-Bass.
- Charities Bureau, New York State Department of Law. (2009). *Pennies for Charity: Where Your Money Goes. Telemarketing by Professional Fundraisers*. http://home.oag.state.ny.us/bureaus/charities2/pdfs/2009_Pennies.pdf. (Accessed 5/26/10.)
- Fleischman, Joel L. (1999). "Public trust in not-for-profit organizations and the need for regulatory reform." In C. T. Clotfelter & T. Ehrlich (Eds.), *Philanthropy and the Nonprofit Sector in a Changing America*. Pp. 172-197. Bloomington: Indiana University Press.
- Herman, Robert D. (2008) "Regulation in the Nonprofit Sector." Ch. 14 in in Janice Gow Pettey, ed., *Ethical Fundraising: A Guide for Nonprofit Boards and Fundraisers*. Hoboken, NJ: Wiley Publishers.
- Hopkins, Bruce R. (2009). *The Law of Fundraising*. Hoboken, NJ: Wiley Publishers.
- Kelly, Katherine S. (1998). *Effective Fund-Raising Management*. Lawrence Erlbaum Associates, Inc. Publishing (acquired by Taylor & Francis, UK, in 2006).
- Moore, Dan. (2001). "On accountability: A state charity official's perspective." in *Accountability: A Challenge for Charities and Fundraisers* (Putnam Barber, ed.), New Directions for Philanthropic Fundraising, 31.Pp. 103-119. San Francisco: Jossey-Bass.
- National Federation of Nonprofits (n.d., 1999?), "How to Comply with the American Institute of Certified Public Accountants' Statement of Position SOP 98-2". Booklet (.pdf file in author's possession).
- Perlman, S. (2001). "State regulation of fund raising". In J.M. Greenfield (Ed.), *The Nonprofit Handbook: Fund raising* (3rd ed.). Pp. 1082-1100). New York: John Wiley.
- and Betsy Hills Bush. (1996). *Fund-Raising Regulation: A State-by-State Handbook of Registration Forms, Requirements, and Procedures*. New York: John Wiley. (There is a 2000 supplement.)
- Siegel, Jack. (2010). "Have A Question? Then Open Your Mouth: Federal Court Strikes Down Texas Charitable Solicitation Statute". Charity Governance Consulting LLC. http://www.charitygovernance.com/charity_governance/2010/02/have-a-question-then-open-your-mouth.html. (Accessed 6/15/10.)
- Swords, Peter, and Harriet Bograd. (1996). "Accountability in the Nonprofit Sector: What Problems Are Addressed by State Regulators?" Nonprofit Coordinated Committee of the City of New York. <http://www.idealists.org/media/pdf/FAQ/Bograd-Swords-96.pdf>. (Accessed 6/15/10.)