

**Charitable Solicitation with the Nonprofit Sector:  
Paving the Regulatory Landscape for Future Success  
Policy In-depth: 07-30-2008**

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Topic Area: Nonprofits

# **Charitable solicitation within the nonprofit sector: Paving the regulatory landscape for future success**

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## **Introduction**

The nonprofit sector holds an integral position in the social, economic and political landscapes of the United States. The National Center for Charitable Statistics reports that 904,313 public charities were accepted as 501(c)(3) organizations by the Internal Revenue Service in 2006.<sup>1</sup> These charitable organizations<sup>2</sup> provide services in areas ranging from the arts, humanities, and education to healthcare, the environment, and social services.

The primary purpose of 501(c)(3) nonprofits, unlike private companies, is not to financially benefit the private interests of any person.<sup>3</sup> Rather, the goal is to improve some part of society without a profit motive. Of course, regardless of the mission that the nonprofit aims to achieve, program services could not be performed without monetary support. Individual private contributions, service fees, commercial activity, corporate and private foundation grants, government grants and commercial activities are some of the various revenue sources available to nonprofit organizations. Private foundation grants are a significant source of revenue in the

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<sup>1</sup> National Center for Charitable Statistics, <http://nccsdataweb.urban.org/PubApps/profile1.php?state=US>.

<sup>2</sup> The terms 501(c)(3) nonprofit, charitable organization and public charity are defined here as the same terms. 26 U.S.C. § 501(c)(3) (2006) defines tax-exempt 501(c)(3) nonprofit organizations as “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.” Further, Utah Code Ann. § 13-22-2(A) defines a “charitable organization” as “a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization.”

<sup>3</sup> 26 U.S.C. § 501(c)(3) (2006).

nonprofit sector, totaling over \$30 billion in 2005 and 2006.<sup>4</sup> Also, an increasingly popular fundraising tool is the use of commercial co-venturers, which can be defined as “persons who, for profit, conduct fundraising activities or provide goods or services advertised in conjunction with the name of a charity or of a charitable purpose.”<sup>5</sup> Nonprofits are utilizing more and more of these strategies to diversify their funding in the increasingly competitive sector. However, the most significant revenue source in the nonprofit sector continues to be private charitable contributions.<sup>6</sup>

Hundreds of billions of dollars in private charitable contributions filter to nonprofits each year. The GivingUSA Foundation, which is the primary source of philanthropy research, reports \$260.28 billion in total charitable giving in 2005 and an even more impressive \$295.02 billion in 2006. Of these donations, individuals gave 75-76%, or \$199.07 billion in 2005 and \$222.89 billion in 2006. In the form of final bequests, individuals gave another \$17.44 billion (6.7%) in 2005 and \$22.91 billion (7.8%) in 2006. Lastly, private corporations contributed \$13.7 billion (5.3%) in 2005 and \$12.72 billion (4.3%) in 2006.<sup>7</sup> These significant amounts of money comprised 2.0% of the U.S. Gross Domestic Product of \$12.43 trillion in 2005, and 2.2% of the \$13.19 trillion GDP in 2006.<sup>8</sup>

Unfortunately, according to the Federal Trade Commission, 1% of all charitable giving is misused or collected using fraudulent means.<sup>9</sup> By FTC estimates, in 2005 and 2006 \$2.6 to \$3 billion of total charitable donations were not spent as the donor expected, or were received using fraudulent practices. In a 2004 report, the FTC considered the growth of fraud alarming enough

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<sup>4</sup> GivingUSA, <http://www.givingusa.org/>.

<sup>5</sup> Fremont-Smith, 373.

<sup>6</sup> Froelich, 182.

<sup>7</sup> Ibid.

<sup>8</sup> GDP totals from the Bureau of Economic Analysis, <http://www.bea.gov/national/xls/gdplev.xls>.

<sup>9</sup> “The Charleston Principles,” 7.

that the following conclusion was made, “the large number of participants who described a fraudulent charitable solicitation may suggest that [...] fraudulent charitable solicitations may be a significant problem.”<sup>10</sup> In a 2007 follow-up report by the FTC, the commission surveyed over 3,800 random participants. The FTC revised the consumer survey used previously to include two specific questions on charitable fraud to further investigate the growing problem.<sup>11</sup>

In light of these facts, the need for regulatory mechanisms should be clear. Such mechanisms are necessary to deter the misuse of funds, to protect organizations and the sector from legitimacy threats and negative public opinions, to hold organizations accountable, to ensure professional ethics, and to protect the public interest. Although the Federal Trade Commission is the federal government’s primary consumer protection agency, state governments have assumed the role of oversight of charities through registration and reporting. State regulations on charitable giving are codified in a variety of Charitable Solicitation Acts.

This paper will examine the state regulatory mechanisms in place for nonprofits that solicit private charitable donations. Although these state statutes regulate the registration and reporting of fundraising professionals and *all* organizations that solicit from the public for any charitable purposes—whether a tax-exempt nonprofit or not—the focus of this research paper is on registration and reporting of 501(c)(3) nonprofit organizations only. An examination of the implications on fundraising professionals, consultant firms and other tax-exempt organizations would be an excellent topic for future research.

In order to provide a thorough analysis of state regulatory mechanisms, this paper will present a detailed history of legislative measures and significant case law at the state and federal

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<sup>10</sup> Federal Trade Commission, 42 (2004).

<sup>11</sup> Federal Trade Commission, 66-67 (2007).

levels of government. In addition, it will explore how the advents of the Unified Registration Statement and the Internet in the last decade have changed the work of state charity officials and how they must navigate the regulatory landscape. To examine the efficacy of regulatory mechanisms administered by state statutes, this paper will also provide a statistical analysis of charitable deductions on individual tax returns in comparison to individual Adjusted Gross Income in each state. Finally, this paper will conclude with recommendations aimed at achieving a more efficient and effective regulatory system.

### **State Charitable Solicitation Statutes**

Before the 1950s, municipal and town governments generally regulated charitable solicitations. Following World War II, however, the country experienced a rash of fraudulent charities that local governments were unable to manage. Government officials had to quickly rethink the current strategies in place. It was not long before state legislators recognized that the duty was theirs, because the “protection of consumers from fraud...is a state police power and is closer to the heart of state...government concerns.”<sup>12</sup> By the 1960s, twenty-six states had enacted charitable solicitations statutes.<sup>13</sup>

Creating legislation to both ensure accountability within local nonprofit communities and protect consumers was not an easy task. To assist state charity officials, two professional organizations joined forces in the late 1980s to create a model charitable solicitation act on which legislators could rely. In 1986, after almost three years of effort, the National Association of Attorneys General (NAAG) and the National Association of State Charity Officials (NASCO) released “A Model Act Concerning the Solicitation of Funds for Charitable Purposes.” Currently,

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<sup>12</sup> Liazos, 1398.

<sup>13</sup> Fremont-Smith, 379.

thirty-eight states and the District of Columbia have codified laws<sup>14</sup> reflecting the main requirements of the NAAG/NASCO model: registration of 501(c)(3) nonprofits fundraising within the state; annual financial reporting of these registered organizations; registration of professional fundraisers, solicitors, consultants and counsels who are fundraising within the state; and annual financial reporting of these registered professionals. None of the state statutes include 501(c)(3) churches or church-affiliated organizations in the registration and reporting requirements.<sup>15</sup> Further 501(c)(3) exceptions exist on a state by state basis as well.

In states where such laws have been enacted, various state officials may be responsible for overseeing the required registration, reporting, and enforcement. However, most commonly offices of Attorney General assume all three of these responsibilities. In sixteen states the Attorney General is solely responsible for the oversight of the relevant nonprofits and professionals. Meanwhile, in fifteen states the Secretary of State is responsible for registration and reporting, while the Attorney General is in charge of the investigation and enforcement of consumer complaints and other reported abuses. Eight states charge the Consumer Protection agency or division with registration and reporting duties, but in five of those eight states the Attorney General manages enforcement duties.<sup>16</sup> The basic duties to be fulfilled by these state officials are: first, to protect donors from fraud; second, to ensure that restricted funds are utilized as intended by donors; and third, to guarantee that organizations fulfill their fiduciary responsibilities.<sup>17</sup>

Among the states with regulatory laws, there are also variances regarding what organizations are required to submit with their initial registration applications and annual reports.

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<sup>14</sup> The Multi-State Filer Project, Inc., <http://www.multistatefiling.org/>.

<sup>15</sup> Fremont-Smith, 374.

<sup>16</sup> See Table 1 in the Appendix.

<sup>17</sup> Moore, 105-106.

Some of the various categories of requirements include: IRS 501(c)(3) determination letters, fundraising contracts, bylaws, IRS 990 forms, audit paperwork, notarized signatures, and fees. Within these categories, one finds even more differences among the states. For example, every state maintains a different fee structure. Nineteen states charge only initial registration fees, which typically fall under \$50.00 but in some cases are as high as \$100.00 (as in the state of Utah). Five of these nineteen states also impose fees (ranging from \$10.00 to \$75.00) to be collected with subsequent annual reports. Furthermore, eleven states maintain an initial registration fee scale based on the annual revenue of the organization. These states typically charge as little as \$10.00 for organizations with revenue under \$100,000 per year; however, for organizations with revenue exceeding \$1 Million per year, these fees may reach as high as \$425.00.<sup>18</sup>

To present a more complete picture of the regulatory landscape, it is also necessary to briefly examine those states that have no statutory regulations in place for 501(c)(3) organizations that solicit private donations. Currently, nine states have no registration requirements in statute. At the far end of the spectrum are Delaware, Wyoming, Iowa, Idaho, Nevada and Nebraska. Although each of these states has legislation in place governing certain aspects of their nonprofit sectors,<sup>19</sup> none have any registration or reporting requirements for charitable organizations engaged in fundraising.

The three remaining states in this group (Indiana, Vermont, and South Dakota) have enacted a form of charitable solicitation statutes, but these do not govern nonprofit organizations.

Indiana's Professional Fundraiser Consultant and Solicitor Registration Act requires only

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<sup>18</sup> See Table 2 in the Appendix.

<sup>19</sup> Delaware Uniform Unincorporated Nonprofit Association Act; Wyoming Nonprofit Corporation Act; Iowa Nonprofit Corporation Act; Idaho Charitable Solicitation Act; Nevada Nonprofit Corporations Act; Nebraska Nonprofit Corporation Act.

professional solicitors to register with the Attorney General's Consumer Protection Division. Indiana has no requirement for charitable organizations soliciting donations to register or report their fundraising campaigns to the state if they are using their own bona fide employees or volunteers.<sup>20</sup> Similarly, Vermont's Charitable Solicitations Law regulates only paid fundraisers who solicit contributions on behalf of charitable organizations, requiring them to register with the Attorney General's office prior to starting any fundraising campaign.<sup>21</sup> Meanwhile, South Dakota has a Telephone Solicitation Act that regulates professional solicitors who work on behalf of charitable organizations via telemarketing. These professional solicitors must register with the state's Division of Consumer Protection.<sup>22</sup>

It is also important to note that two of the above nine states previously had legislation regulating nonprofit fundraising. At one time, South Dakota had a Charitable and Professional Solicitation of Contributions Act<sup>23</sup> and Nebraska had an Illegal Solicitation of Funds Act<sup>24</sup> on the books. However, South Dakota's statute was repealed by the legislature in 1984, and Nebraska's statute was repealed in 1996 due to a State Supreme Court ruling.

To complete the overall regulatory picture in the United States, there remain three states with an interesting hybrid of legislation regarding fundraising. First, Montana state law does not require charities operating in the state to register with the Attorney General's office, but it does require nonprofits to file an annual financial report with the Secretary of State's office.<sup>25</sup> Under Texas law, charities or nonprofit organizations are not required to register with the state, but are required to register with the Secretary of State if they solicit donations for law enforcement,

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<sup>20</sup> Ind. Code § 23-7-8-1 (1983).

<sup>21</sup> Vt. Stat. Ann. § 2472 (1989).

<sup>22</sup> S.D. Codified Laws § 37-30-3 (1990).

<sup>23</sup> S.D. Codified Laws § 37-27, et. seq. (Repealed by SL 1984, ch 260, §§ 1-4).

<sup>24</sup> Neb. Rev. Stat. § 28-1440, et. seq. (1989).

<sup>25</sup> Mont. Stat. § 35-2-904 (1991).

public safety or veterans' causes.<sup>26</sup> Lastly, Hawaii has a Charitable Solicitation Act that regulates only professional fundraisers who solicit contributions on behalf of charitable organizations.<sup>27</sup> Interestingly, however, in February 2008 the Hawaii legislature introduced two bills to further regulate nonprofits. SB2968 and its companion HB3046, known as the Charitable Giving Protection Act of 2008, seek to amend the existing statute with registration requirements for charitable organizations regulated under the Attorney General's office. As of April 2008, these acts have not been released from committee.

## Case Law

In order to understand the evolution of state charitable solicitation laws, it is necessary to review the relevant case law. The original statutes enacted from the 1960s to the late 1970s contained several provisions: registration and reporting requirements; public disclosure requirements; and limits on fundraising costs.<sup>28</sup> Of these, one provision has continually been challenged in court: the limitation of the amount of money that charities can spend on fundraising activities.<sup>29</sup>

In 1980, a case came before the Supreme Court that would set the precedent. *Village of Schaumburg v. Citizens for a Better Environment*<sup>30</sup> involved a small suburban community in Illinois, which in 1974 had codified "An Ordinance Regulating Soliciting by Charitable Organizations." Part of this ordinance required organizations to apply for a permit to solicit in the Village, but permission would only be granted if it could be proved that "at least seventy-five

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<sup>26</sup> Tex. BC. Code § 303.001 et. seq. (2007); Tex. Occ. Code § 1803.001 et. seq. (1999); Tex. Occ. Code § 1804.001 et. seq. (1999).

<sup>27</sup> Haw. Rev. Stat. § 467B-1.5 – § 467B-2.5 (2004).

<sup>28</sup> Liazos, 1384.

<sup>29</sup> Fremont-Smith, 370.

<sup>30</sup> 444 U.S. 620, 622 (1980).

per cent of the proceeds of such solicitations [would] be used directly for the charitable purpose of the organization."<sup>31</sup> Costs such as the salaries of fundraising staff and administrative overhead had to be included in the remaining twenty-five percent of solicited funds. Citizens for a Better Environment was an organization in the area that had been granted a 501(c)(3) letter by the IRS and had completed the appropriate registration with the Illinois Attorney General's office . However, the organization was denied a permit to solicit door-to-door in the Village because they could not prove that seventy-five percent of the funds received would be used for their environmental programs. The organization sued the Village claiming that the ordinance violated the First and Fourteenth Amendments of the U.S. Constitution. After making its way through the District and Appellate courts, the Supreme Court finally ruled that the ordinance was unconstitutional because the seventy-five percent requirement served no legitimate government interest. Justice White aptly wrote, "There is no indication that organizations devoting more than one-quarter of their funds to salaries and administrative expenses are any more likely to employ solicitors who would be a threat to public safety than are other charitable organizations."<sup>32</sup> Consequently, a new precedent was set protecting charitable solicitation as a First Amendment right.

Following this finding, many states amended their laws to remove limitations on the use of solicited funds.<sup>33</sup> Other states simply tried to skirt the *Village of Schaumburg* ruling by adding a provision to allow organizations to prove that their inability to meet standards was reasonable. In Maryland, for example, legislators added a waiver provision to their state law stating that organizations that were unable to meet their twenty-five percent requirement could petition the

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid, 632.

<sup>33</sup> Liazos, 1385.

Secretary of State to waive the limitation if they could prove it would hinder their fundraising efforts.<sup>34</sup>

However, despite the attempt to evade *Village of Schaumburg*, Maryland's requirement soon came before the Supreme Court in the case of *Secretary of State of Maryland v. J.S. Munson Co*<sup>35</sup>. The issue in this case is whether the ability to seek a waiver of fundraising cost limitations also violates any Constitutional rights. Ultimately, the Court held that waivers do in fact violate free speech rights under the First Amendment because "solicitation is characteristically intertwined with informative and perhaps persuasive speech...[and] without solicitation the flow of such information and advocacy would likely cease."<sup>36</sup> Thus, by 1984 states had completely lost the ability to limit charitable solicitations on the basis of percentage limits. Such provisions clearly were not narrowly tailored to meet a legitimate government interest of consumer protection from fraud.

A third seminal court decision came in 1988. This case followed the previously mentioned 1986 release of NAAG and NASCO's model Charitable Solicitation Act, which was designed to help guide state legislators. The case of *Riley v. National Federation of the Blind*<sup>37</sup> arose out of the North Carolina Charitable Solicitations Act, which defined the fees that a charitable organization could reasonably pay a professional fundraiser according to a three-tiered schedule. Organizations were allowed to rebut the schedule by showing that a higher fee paid to a solicitor was necessary based on "the dissemination of information or advocacy on public issues directed by the charity, or because otherwise the charity's ability to raise money or

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<sup>34</sup> 467 U.S. 947, 949 (1984).

<sup>35</sup> 467 U.S. 947.

<sup>36</sup> 467 U.S. 947, 959-960.

<sup>37</sup> 487 U.S. 781, 785 (1988).

communicate would be significantly diminished.”<sup>38</sup> The Act also required that fundraisers disclose the percentage of donations that would be turned over to the charitable organization and the percentage that would be retained for fundraising costs.<sup>39</sup> Lastly, the Act stated that, unlike professional fundraisers, volunteer or nonprofessional fundraisers were not required to register prior to soliciting.<sup>40</sup>

In this case, the Supreme Court opinion by Justice Brennan again held that these provisions unconstitutionally infringed upon freedom of speech. Notably, this decision directly affected section 6 of the NAAG and NASCO model Act, which stated that only professional fundraisers must register prior to soliciting,<sup>41</sup> and that solicitors must disclose the exact percentage of the solicitation that will go towards their professional fees.<sup>42</sup> Because so many states had already used this model for their own statutes, twenty-three states were affected by this decision.

Following *Riley*, the Supreme Court was silent on the issue of charitable solicitations for fifteen years. Then, in 2003, the case of *Illinois ex rel. Madigan, Attorney General of Illinois v. Telemarketing Associates, Inc., et al.*<sup>43</sup> came before the Court. The dispute dated back to 1997, when the Illinois Attorney General’s office charged the professional fundraising firm, Telemarketing Associates, with fraud by misleading donors during a campaign for the nonprofit organization VietNow. In the opinion delivered by Justice Ginsberg, the Court unanimously held that, “states may maintain fraud actions when fundraisers make false or misleading representations designed to deceive donors about how their donations will be used.”<sup>44</sup>

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<sup>38</sup> Ibid, 786.

<sup>39</sup> Ibid, 787.

<sup>40</sup> Ibid.

<sup>41</sup> “A Model Act,” 13.

<sup>42</sup> Ibid, 16.

<sup>43</sup> 538 U.S. 600, 8-9 (2003).

<sup>44</sup> Ibid, 8-21.

Although the legitimacy of the nonprofit organization itself was never called into question, the decision of the Court still sets a critical precedent for the nonprofit sector because charitable organizations often employ professional fundraising firms such as the one at fault in this case.

Overall, the four cases discussed above provide a clear set of rules for state charity officials. State governments do have the right to protect the public and prevent fraud through registration and reporting requirements for nonprofit organizations. However, statutes or ordinances containing any measures of fundraising costs or fees paid to solicitors are not constitutional because these limitations do not serve the legitimate government interest in protecting consumers. High fundraising costs and disclosing the fundraiser's fee when contacting a donor are both insufficient evidence of fraud. Nevertheless, states can still protect their citizens by "vigorously [enforcing] . . . antifraud laws to prohibit professional fundraisers from obtaining money on false pretenses or by making false statements."<sup>45</sup> The *Madigan* decision was undoubtedly a refreshing change in precedent for state charity officials who had seen many years of Court imposed limitations on their abilities to enforce regulations. In the five years following *Madigan*, state charity officials have heightened their scrutiny of fundraising firms employed by nonprofit organizations and pursued more fraud claims.

### **Unified Registration Statement**

Clearly, the regulatory landscape faced by nonprofit organizations is large and varied. The statutes and case law also reveal that, in 2008, many states are still not on the same page. While small organizations with localized constituencies are not heavily burdened, many organizations that seek funding in more than one state have the difficult task of navigating and understanding multiple registration and reporting requirements. The burden on state charity

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<sup>45</sup> 487 U.S. 781, 800.

officials is clear as well—offices of Attorney General or other designated state officials must sort through mountains of paperwork, including registration applications, financial reports and a variety of other documents required by state legislators.

Surprisingly, it has taken nearly thirty years since the first wave of state Charitable Solicitations Acts for a unified system to be developed. In 1998, NAAG and NASCO, the same two organizations that released the Model Act for state charity officials, released the Unified Registration Statement (URS) under their concerted effort, known as the Multi-state Filer Project. The URS, which has thus far been the most successful venture by the Multi-state Filer Project, is an effort to consolidate the information and data requirements of all states requiring registration and reporting for charitable organizations. In other words, the URS format is a compilation of the information required by most states. It is intended to “standardize, simplify, and economize compliance under the states' solicitation laws.”<sup>46</sup>

The URS is an alternative to the state specific forms and requirements. It is comprised of a three page application with instructions that can be downloaded online at [http://www.multistatefiling.org/c\\_statement.htm](http://www.multistatefiling.org/c_statement.htm) by all nonprofit organizations. The form requires basic information, such as federal tax ID number (EIN), state business ID number, IRS 501(c)(3) determination, incorporation information, organization name and contact information, board member names and titles, and current fiscal figures. Beyond those basics, the URS also requires specifics on previous state registrations that have been obtained. If the organization or any fundraising firm employed by the organization has been the subject of a fraud investigation, or has had any state registration suspended or revoked, all details must be provided on a separate page. In addition, methods of solicitation and the purpose of donated funds must be fully

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<sup>46</sup> The Multi-State Filer Project, Inc., [http://www.multistatefiling.org/b\\_introduction1.htm](http://www.multistatefiling.org/b_introduction1.htm).

described on the application. Overall, the application is not lengthy and should only take the average organization a few hours to complete.

Of course, because all state governments still have regulatory authority over nonprofits physically present in their state and those soliciting donations in their state, state legislators may or may not choose to accept the URS as an alternative to their current forms. If legislators choose to amend their state laws to accept the URS as an alternative, they can also require supplementary documents in addition to the URS application. Since its introduction to state charity officials in 1998, thirty-five states and the District of Columbia have currently accepted the URS as a method of registration. This means that only three states that require registration and reporting do not currently accept the URS: Oklahoma, Florida and Colorado.

All thirty-five states and the District of Columbia require some sort of supplemental documents: 97% require the previous year's Form 990; 86% require a copy of the IRS determination letter; 69% require a copy of the certificate of incorporation; and 64% require the previous year's financial audit documents.<sup>47</sup> Still further complicating the URS, 25% of the states who have amended URS acceptance into their laws still require supplemental application forms. These states include Arkansas, California, Georgia, Mississippi, North Dakota, Tennessee, Utah, West Virginia and Wisconsin.

The success of the URS in the ten short years since its introduction clearly indicates a strong desire among the nonprofit community and state charity officials for a standardized form of registration. Only one state—Oklahoma—has ever discontinued URS compliance.<sup>48</sup> Oklahoma's Solicitation of Charitable Contributions Act<sup>49</sup> was enacted in 1959 and requires registration of all nonprofit organizations. The Secretary of State of Oklahoma was one of the

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<sup>47</sup> See Table 3 in the Appendix.

<sup>48</sup> Oklahoma discontinued URS compliance in 2004.

<sup>49</sup> Okla. Stat. § 18-552.3 (1959).

first state charity officials to choose to cooperate with the URS, and the state's reasons for opting out in 2004 are unclear. Nevertheless, several more states have signed on to the URS despite Oklahoma's quick departure, the most recent of which was Alaska in 2007.

Given the success of the URS, the leading professional associations on state charity regulation, the NAAG and NASCO, have continued to encourage state charity officials to use the URS in recent years, stating that "[t]he burden of compliance by charitable organizations...should be kept reasonable...The acceptance and use of the Unified Registration Statement for charitable organizations by state charity offices [is] strongly encouraged."<sup>50</sup>

### **Internet Fundraising Implications**

According to the Association of Fundraising Professionals' 2006 Report, online fundraising has been growing at a significant pace, from 31.5% of charities using e-philanthropy in 2002 to 45.4% in 2006.<sup>51</sup> Moreover, 87.7% of those charities using online fundraising tools state they had earned more money with e-philanthropy in 2006 than in the previous year. One-hundred percent of charitable organizations using online fundraising in the Rocky Mountain states earned more in 2006 than in 2005. Seventy percent of charities using online fundraising nationwide reported that 20 to 30% of their budgets in 2006 came from online gifts. New England states performed best in the nation with 19% of organizations reporting that 70 to 90% of their annual budgets were comprised of online gifts. These numbers represent huge increases over 2004 and 2005, in which 53% of organizations nationwide reported that online donations accounted for only 1 to 10% of their budgets.

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<sup>50</sup> "The Charleston Principles," 5-6.

<sup>51</sup> Association of Fundraising Professionals, 29.

In 2006, organizations with annual budgets less than \$250,000 were still the least likely to use online fundraising strategies. Those organizations benefiting the most from the Internet had annual budgets between \$500,000 and \$1 million, with 22% of these reporting that online fundraising comprised 70 to 90% of their earnings.<sup>52</sup> Although these numbers indicate that the Internet has been a positive development for the nonprofit sector, “e-philanthropy” has also introduced complications regarding state registration, regulation of reporting, and enforcement.

Before the Internet, only organizations with very large budgets could afford to launch fundraising campaigns extending outside of their local jurisdictions or, what’s more, outside of their own states. Furthermore, only large organizations could afford to pay multi-state registration and reporting fees. Consequently, small organizations usually never had to deal with the process of multi-state registration. However, in recent years, Internet and e-mail fundraising have become increasingly economical and effective strategies for small charities to solicit more effectively from a larger population of sources. As a result, for the first time ever, many small organizations must complete numerous state applications—resulting in increased man-hours and administrative costs that can be prohibitively expensive.<sup>53</sup> Of course, at the same time, increasing numbers of registering charities also means a significantly larger workload for state charity officials to process. In 2002, one researcher speculated that, “If only 10 percent of charities maintain a Web site [sic] that ‘passively’ asks for donations, the typical state will see an increase from 1,500 to 62,000 in the number of charities which must register.”<sup>54</sup>

Even more troublesome is the fact that “the Internet transcends local, national, and international borders, thus making jurisdiction impossible to establish.”<sup>55</sup> Indeed, there has been

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<sup>52</sup> Ibid, 30-32.

<sup>53</sup> Johnston, 50. Hart, 268.

<sup>54</sup> Warwick, 49.

<sup>55</sup> Ibid.

a general lack of consensus among state charity officials and the nonprofit community regarding the application of existing state charitable solicitation statutes to the borderless Internet. In the absence of any defined rules for many years, state charity officials have adopted the “if we can see it” doctrine. Simply put, state charity officials have held to the idea that if an organization has a website, it must register in all states because the website is viewable to anyone with Internet access. State officials have also assumed under this doctrine that a solicitation has occurred by merely presenting a charitable request; whether a donation is actually received does not change the need to register.<sup>56</sup> Obviously, the jurisdictional limits of states on the Worldwide Web must be more clearly defined.

One recent Federal Court decision has helped to define regulatory boundaries for state officials. In 1996, *United States v. Thomas*<sup>57</sup> was heard before the Third Circuit Court of Appeals. This case involved the transmission of obscene materials via the Internet from the state of California to the state of Tennessee. The Court found that the Internet is a means of interstate commerce and that the transmittal of any data via the Internet constitutes contact between two states. The defendants in this case were found guilty of transmitting obscene material and were subject to the laws of Tennessee as well as those of their resident state. With regards to Internet fundraising by charitable organizations, the implications of *Thomas* are clear: “where users download Web pages residing in foreign jurisdictions...will constitute sufficient contact to subject the organization to the jurisdiction of the foreign state or states and therefore to the foreign charitable solicitation regime.”<sup>58</sup>

Following the *Thomas* decision, the National Association of State Charities Officials (NASCO) and the National Association of Attorneys General (NAAG) again put their heads

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<sup>56</sup> Moore, 109-110.

<sup>57</sup> 74 F.3d 701 (6<sup>th</sup> Cir. 1996).

<sup>58</sup> Hart, 269.

together to help guide state officials in the implementation of their individual Internet regulation statutes. In 2001, the two professional organizations published “The Charleston Principles: Guidelines on Charitable Solicitations Using the Internet.” Although the Principles outlined in this publication are not in any way statutory, they are founded on the *Thomas* decision and are intended to provide guidance on critical questions being asked by state charity officials: Who should have to register where? Does the use of a website have to mean nationwide registration? Does the state in which the public charity resides immediately have jurisdiction?

In general, the Principles state, “An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state.”<sup>59</sup> If an organization *actively* solicits via an Internet website to residents of a certain state, or if the organization receives contributions within the state “on a repeated and ongoing basis,” then it must register within that state.<sup>60</sup> State charity officials must quantify for themselves what they will consider “repeated and ongoing” in terms of the actual number of contributors and the total dollar amount of contributions received in a fiscal year. Furthermore, e-mail solicitations will be treated the same as mail or telephone solicitations, and registration will be required when a state’s residents are solicited via e-mail.<sup>61</sup> Also, organizations that invite further “offline” activity to residents of a certain state via a website must register within that state.<sup>62</sup>

Following *Thomas*, nonprofit organizations and the fundraisers that they employ should assume that state statutes do apply to Internet and e-mail fundraising. The Principles further emphasize the need for nonprofits to be thorough in their multi-state registration. Although the NAAG and NASCO could not predict the future when writing the Principles, they

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<sup>59</sup> “The Charleston Principles,” 3.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*,4.

<sup>62</sup> *Ibid.*,3.

aply wrote the following provision that was later substantiated by the Supreme Court's *Madigan* decision is 2003: "states will enforce the law against any entity whose Internet solicitations mislead or defraud persons physically located within a particular state, without regard to whether that entity is domiciled in the state or is required to register in that state pursuant to these Principles."<sup>63</sup>

### **Case Study: Utah**

In the context of this paper, a case study of Utah has been prepared to further illustrate the issue of regulating nonprofit charitable solicitations. According to the NCCS, there were 5,258 501(c)(3) public charities in Utah in 2006.<sup>64</sup> The statute that governs the fundraising efforts of these five-thousand nonprofits is the Utah Charitable Solicitation Act, enacted in 1987.<sup>65</sup> This statute is structured much differently than the NAAG/NASCO model Act; however, it contains all of the same components. Registration with the Division of Consumer Protection within the Department of Commerce is required annually for all nonprofit organizations fundraising in Utah. Annual financial reports filed with the Division are also required. According to the most recent list released by the Division on July 14, 2008, Utah had 2,118 organizations registered in accordance with Utah's statute.<sup>66</sup> This number had dropped from the previous list released in March 2008, in which 2,452 organizations were registered.<sup>67</sup> Readers should keep in mind that these numbers consist of organizations that reside within and outside of the state's borders.

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<sup>63</sup> Ibid.

<sup>64</sup> National Center for Charitable Statistics, <http://nccs.urban.org/statistics/profiles.cfm>.

<sup>65</sup> Utah Code Ann. §13-22-1 et. seq.

<sup>66</sup> Division of Consumer Protection, <http://www.dcp.utah.gov/lists/charities-registered.pdf> (26 July 2008).

<sup>67</sup> Division of Consumer Protection, <http://www.dcp.utah.gov/education/charities-registered.pdf>. This URL has been removed from the Division's website following the release of the July 2008 report.

Like all of the states with solicitation statutes, Utah's Act has been amended several times since 1987. Most notably, in 1994 the legislature amended § 13-22-3—Investigative and enforcement powers. In this section, the Director of the Division of Consumer Protection is given the power to pursue fines and criminal litigation against any nonprofit organization or professional fundraiser to which she obtains evidence or complaints of fraudulent practices. This section, although never actually challenged in the state of Utah, is espoused by the U.S. Supreme Court's *Madigan* decision. The legislature also amended § 13-22-6 and § 13-22-9 in 2001, henceforth requiring all organizations to report the "percentage of the contributions collected as a result of the solicitation...projected to remain available for application to the charitable purposes declared in the application, including a satisfactory statement of the factual basis for the projected percentage." This program cost percentile is published on a registered charities list that is available to the public on the Division's website.

Utah's Charitable Organization Permit Application Form is nine pages in length.<sup>68</sup> The application and supplementary documents are the same for initial and renewal applications. The application includes the following primary elements: organization contact information; incorporation or other status; names and residence addresses of the officers and directors of the organization; the purpose of the solicitation and use of the contributions to be solicited; the method of solicitation; figures on fundraising costs; budgetary figures; contractual agreements with any fundraisers; and disclosure of any injunction, judgment, or administrative orders. In 2002, Utah became a cooperating URS state by accepting the URS application in lieu of the state permit. In 2005, Utah began to require one supplemental form for organizations filing the URS. The supplemental form is three pages in length and contains several of the permit

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<sup>68</sup> Division of Consumer Protection, <http://www.dcp.utah.gov/downloads/permitapps/charitableorganization.pdf>.

application questions that are not part of the URS, including the percentage of contributions used for charitable purposes that is published on the Division's registered charities list.<sup>69</sup>

In the arena of Internet regulation, Utah's Act holds that any organizations *not* registered with the Division "may not knowingly solicit, request, promote, advertise, or sponsor a charitable solicitation if the charitable solicitation: (i) originates in Utah; (ii) is received in Utah; or (iii) is caused to be made through business operations in Utah."<sup>70</sup> Pursuant to this section, it would seem that Utah requires any organization that solicits gifts from Utah residents to register within the state via the two accepted methods. Indeed, Utah's Division of Consumer Protection does require organizations that have received gifts from within the state via the Internet to register. The obvious problem for Utah officials inherent in this provision is that there is no way to know if Utah residents are donating to charities in other states unless a consumer complains of fraud or misuse of funds. Undoubtedly, it would be impossible for Utah's Division of Consumer Protection to track the registration and annual reporting of every public charity that has accepted gifts from within the state. Literally speaking, this is the crux of the problem currently facing officials and nonprofits in all states.

A significant Utah court case in 2000 clarifies the issue of multi-state registration for nonprofits and fundraisers soliciting in Utah via the Internet. *American Target Advertising v. Giani*<sup>71</sup> involved a Virginia fundraising firm that was working for a Washington D.C. nonprofit called Judicial Watch, Inc. The organization sought to solicit from Utah residents via a direct postal mail campaign conducted by American Target. Under the Utah Charitable Solicitations Act § 13-22-2, American Target must register with the state and obtain a permit. However, American Target did not comply with the Utah Code and the Attorney General's office barred

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<sup>69</sup> Division of Consumer Protection, <http://www.dcp.utah.gov/downloads/permitapps/urssupplement.pdf>.

<sup>70</sup> Utah Code Ann. § 13-22-5 (1987).

<sup>71</sup> 199 F.3d 1241 (10<sup>th</sup> Cir. 2000).

Judicial Watch from mailing in Utah. American Target claimed that the Utah Act violated their First and Fourteenth Amendment rights.

The Tenth Circuit Court of Appeals looked to the seminal *Village of Schaumburg* case for guidance in the *American Target* case. The Court subjected the Utah statute to intermediate scrutiny, meaning “the State must demonstrate that the Act serves a substantial governmental interest and is ‘narrowly drawn’ to serve that interest without unnecessarily interfering with First Amendment freedoms.”<sup>72</sup> The Court found that Utah’s interest in protecting the nonprofit sector and the public from fraud satisfies a narrowly tailored regulation and the statute serves a substantial government interest.<sup>73</sup> The Court further held that out-of-state charities and fundraisers, like American Target and Judicial Watch, must register in Utah when they have purposefully directed their efforts toward residents of the state.<sup>74</sup> Therefore, in accordance with this 2000 decision, it seems clear that Utah officials may only legally assert “regulatory jurisdiction”<sup>75</sup> over charitable organizations with websites that directly target Utahns.

### **The Effectiveness of Regulation – An Original Analysis**

News coverage regarding the government regulation of the nonprofit sector is abundant. For example, in March of 2008, the newly founded Jackpot Rewards Charitable Foundation, an arm of Jackpot Rewards, Inc., was fined heavily for “forgetting” to register with the Massachusetts Attorney General’s office.<sup>76</sup> In Ohio in 2006, the nonprofit sector was in an uproar over proposed regulatory changes to make registration requirements more stringent. Nonprofit representatives spoke out vehemently against the changes on the basis that charities

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<sup>72</sup> Ibid, ¶8; supra *Village of Schaumburg*, 444 U.S . 620, 636-37.

<sup>73</sup> Ibid, ¶9; supra *Riley*, [487 U.S. 781](#), 792.

<sup>74</sup> Ibid, ¶43.

<sup>75</sup> Ibid, ¶44.

<sup>76</sup> Johnson, E3.

would be unduly burdened. This strong response caused the Attorney General of Ohio to revise the proposed rules in order to appease the nonprofit sector.<sup>77</sup> In yet another highly publicized story, the nonprofit sector was frequently in the local news in New York in 2004. The state's Attorney General, Eliot Spitzer, cracked down on charities and found that over 12,000 charities had not renewed their annual registration and/or filed the required financial reports. The fines that ensued brought in over half a million dollars for the Attorney General's office.<sup>78</sup> Finally, in another example, one news article in late 2007 rebuked the National Association of State Charity Officials for not forging the way for registration regulation and enforcement reforms in all states. One fundraiser commented that "[s]tate government officials rob donors by knowingly diverting untold millions of dollars of contributions from their intended purposes under a cumbersome, outdated multistate licensing scheme."<sup>79</sup>

In light of the panoply of state requirements, case law, and media coverage, it seems logical that there must be some measurable effect on charitable giving and incidences of fraud in the absence of regulation. Researchers might expect to find a difference in public perception in unregulated states. Of course, the nonprofit sector in all states around the country will have ups and downs in the eyes of the public, and large events like 9/11 and Hurricane Katrina have temporarily marred the sector's image by drawing attention to illegitimate organizations and people that seek to profit in times of need.<sup>80</sup> But overall, despite such events and the resulting blows to the nonprofit sector, public opinion of charitable organizations and government regulation of the sector is by and large positive and stable.<sup>81</sup>

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<sup>77</sup> Mortland, 3.

<sup>78</sup> Strom, 6.

<sup>79</sup> Williams, 25.

<sup>80</sup> House Subcommittee on Oversight and Investigations, Hearing, 1.

<sup>81</sup> "Policy Brief: Reform Watch #6," 2. "Policy Brief: Reform Watch #7," 3-4.

In 2005, Renee A. Irvin conducted a small study of only six states to determine if state registration requirements in those states had any measurable statistical effect on fraud and charitable giving. His analysis consisted of IRS data on charitable contribution deductions in correlation with adjusted gross income on individual tax returns in 1996 and 2000. Although the overall validity of Irvin's study is somewhat questionable given the limited amount of data that he compiled, one finding was very significant. As mentioned previously, one of the six states analyzed in this study, Nebraska, had repealed its charitable solicitation statute in 1996. Proponents of state regulation would likely expect to see a direct causal relationship between the repeal of Nebraska's law and a rise in fraudulent activity. A rise in charitable fraud would in turn contribute to a decrease in public trust and a reduction in charitable deductions by citizens of the state by the year 2000. Quite the contrary, according to Irvin's data, the average charitable contribution by individuals actually increased from 1.9% to 2.5% of annual adjusted gross income in the four years with no state government oversight.<sup>82</sup>

To further analyze the possibility of a direct relationship between state solicitation laws and individual charitable donations, this paper will use Irvin's research model as the basis for a more extensive and current analysis. This analysis is based on the following data compiled by the IRS for 2005 (the most recent published tax year)<sup>83</sup>: the total dollar amount of charitable deductions and the total dollar amount of adjusted gross incomes on individual tax returns for all fifty states and the District of Columbia. To determine a statistical average, the total charitable deductions have been divided by the total adjusted gross incomes, thus arriving at an average charitable contribution per individual income tax return as a percentage of adjusted gross income in each state and the country as a whole.

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<sup>82</sup> Irvin, 170-171.

<sup>83</sup> Refer to Table 4 in Appendix for all averages.

Results of this statistical analysis indicated that the national average for 2005 was 2.47%. The two most heavily regulated states in the nation, California and New York,<sup>84</sup> remained just above the national average at 2.52% and 2.85%. Meanwhile, the leading state in the country, Utah, maintained an amazing 5.09% average. However, Utah's average tends to be abnormally high because of the majority population of members of the Church of Jesus Christ of Latter-day Saints in the state. This disproportionate amount of people, who are required to contribute 5 to 10% of their incomes to the Church via tithing, skew the percentile average for the State of Utah. Thus, Utah should be considered a statistical outlier. The nine unregulated states previously mentioned in this paper ranged from 1.68% in Vermont to 3.09% in Idaho. The average for these nine states was just barely below the national average at 2.41%. After removing the two obvious statistical outliers, Vermont and Idaho, the average remains fixed at 2.41%.

Based on this data, it is plausible that there is no direct causal relationship between state charity official's oversight and resident citizens' willingness to donate to charities in their home states. Based on the apparent public willingness to donate money to tax-exempt organizations, one may also infer that this data reveals no significant difference in the incidence of fraud in states that are regulated by solicitation statutes and those states that are unregulated. Of course, there are undoubtedly other variables that have not been examined in this paper which may affect these statistical relationships. To arrive at more conclusive results, an in depth study of the number of cases investigated and found fraudulent by state charity officials in a significant statistical pool of states would be needed.

Adding qualitative support to the plausible findings above is the fact that many of the state charity officials responsible for enforcing solicitation laws have voiced uncertainty about the ability of these laws to deter fraud. Several surveys of offices of Attorney General around the

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<sup>84</sup> Foundation & Endowment Money Management, 16.

country have revealed that the number one trigger of charitable fraud investigations is by consumer complaints, *not* by processing or reviewing applications and financial reports that the organizations are required to file.<sup>85</sup> However, statistical data on the number of public complaints received in states with registration and reporting requirements and those states without the requirements would need to be compiled to reach any substantive conclusion.

Nevertheless, despite the lack of evidence to discount or support their efficacy, organizations legally must comply with these state statutes. Indeed, many organizations must still bear the annual financial burden of registration and reporting fees in many states. The average annual cost for home state registration is only \$366.<sup>86</sup> But nationwide fees to be in compliance with all states regulating solicitation are as high as \$3000 annually.<sup>87</sup> In addition to these fees are issues of labor and man-hours required to complete all of the applications and required documents. Companies exist that will complete the necessary preparation work and filing for charitable organizations, but the average cost of these services for nationwide filing is \$5000.<sup>88</sup>

## **Recommendations and Conclusion**

In 2000, the U.S. Congress sought to solve some of the regulatory problems discussed above. The Joint Committee on Taxation proposed changes to part of the IRS Code to encourage better participation between the IRS and state charity officials. This committee recommended that the IRS should be more open to providing information to state regulators to assist in

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<sup>85</sup> Irvin, 171.

<sup>86</sup> Ibid, 168.

<sup>87</sup> Ibid, 169; Copilevitz, 43.

<sup>88</sup> Ibid.

registering and regulating organizations.<sup>89</sup> Unfortunately, no legislation resulted from this hearing.

Later, in 2005, Congress revisited the issue. The Panel on the Nonprofit Sector was convened to issue a report of recommendations to Congress to improve the effectiveness and efficiency of regulation and enforcement. The sixty page report proposed the following: increased resources to the IRS for oversight and enforcement of charitable organizations; federal funding and matched funding to all states that adopt uniform state filing requirements; and (as the Committee in 2000 had proposed) the amendment of federal tax laws to allow state charities officials to access IRS information.<sup>90</sup> Based on the recommendations in this report, the U.S. Senate Finance Committee convened to introduce new legislation on the issue, stating that “[w]e can have a responsible set of reforms that Congress can put forward to further tighten up the accounting, as well as the management of our nonprofit sector, without imposing undue burdens on that sector.”<sup>91</sup> Unfortunately, as with the 2000 congressional committee, no legislation ever resulted from this hearing.

Despite this lack of legislative action, some advances have still been made over the years to improve registration and reporting (e.g., the URS). Nonprofit professional associations like the NAAG and NASCO have made extensive efforts to develop new approaches like the URS (discussed previously). Thus, the question begs to be answered, what do nonprofit professionals believe federal and state legislators should do to improve oversight of solicitation?

Many answers to this question have been suggested, including: (1) establish a nonprofit policing group of charity professionals in each state to investigate consumer complaints and turn

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<sup>89</sup> Senate Joint Committee on Taxation, Hearing, 104-105.

<sup>90</sup> Senate Subcommittee on Social Security and Family Policy, Hearing, 24.

<sup>91</sup> *Ibid*, 6-7.

fraudulent organizations in to state authorities when needed<sup>92</sup>; (2) replace the current state charity officials with state charity boards to police solicitations<sup>93</sup>; and (3) establish a national database with electronic registration abilities via the Internet that would allow a public charity to register in any or all states with the click of a button.<sup>94</sup>

Of these various recommendations, the first in particular has been touted for several decades. Indeed, it has commonly been suggested that the Federal government should assume all regulatory oversight in the form of an agency similar to the Securities and Exchange Commission (SEC) or the FTC.<sup>95</sup> The FTC has only occasionally pursued fraudulent organizations and only with the help of state charity officials.<sup>96</sup> As early as 1973, the Commission on Private Philanthropy and Public Needs, commonly known as the Filer Commission on behalf of its chairman John H. Filer, advocated a system of complete federal regulation to improve oversight of interstate charitable solicitations and ease the process between state governments.<sup>97</sup> Since the Filer Commission first proposed this alternative, only one piece of legislation has been introduced to actually create or delegate this oversight authority to the federal government. In 1990, the Fair Fundraising Act was introduced to a House committee, but the bill never made it to the floor for a vote.<sup>98</sup>

The only legislation that has ever given any supervisory duties over charitable solicitations to the federal government was an addendum to the USA PATRIOT Act in 2001. This Act broadened FTC powers by amending the Telemarketing and Consumer Fraud Abuse Prevention Act to contain "a requirement that any person engaged in telemarketing for the

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<sup>92</sup> Moore, 113; Strom, F1.

<sup>93</sup> Fremont-Smith, 375.

<sup>94</sup> Liazos, 1405.

<sup>95</sup> Moore, 112; Liazos, 1388-1389; Strom, F1.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> 101<sup>st</sup> Congress, HR 3964.

solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.”<sup>99</sup>

Ultimately, the likelihood that any strategy for broad or total federal oversight would gain enough support to produce legislation is small. This is because state governments would not easily accept a reformation that infringes on their sovereignty, believing instead that the “protection of consumers from fraud...falls under state police powers and is a compelling local interest.”<sup>100</sup>

Hence, it must be proposed that new federal legislation is not the answer to a better regulatory system. There are already sufficient rules in place, and charity officials already have the necessary authority to track, investigate, and enforce those rules. The most realistic and preferable alternative is the acceptance of a system of unified registration by all states with charitable solicitation statutes. Although the URS has been an excellent starting point, any serious effort at standardized registration should be networked online to ease paperwork for charity officials and nonprofits. Investing in a standardized online registry would require funding support from federal and state governments to comply, but state charity official’s offices should not need to marshal any additional resources for the effort. Furthermore, if federal legislators would amend the Internal Revenue Service Code § 6103, “Confidentiality and Disclosure of Returns and Return Information,”<sup>101</sup> to allow the IRS to share its 501(c)(3) and

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<sup>99</sup> 15 U.S.C. § 6102.a.3.D (2007).

<sup>100</sup> Liazos, 1396 and 1398.

<sup>101</sup> 26 U.S.C. § 6103.a, et. seq. (1986).

Form 990 information with state charity officials, the central database could cooperate with the existing IRS network.

It is important to note that there are resources for members of the public to get financial information from 501(c)(3) organizations. The Internal Revenue Service Code § 6104.d requires that section 501 organizations disclose their applications for tax-exemption and notice of exempt status for public inspection within thirty days upon request.<sup>102</sup> Charitable organizations that are required to file an annual Form 990 with the IRS<sup>103</sup> must disclose copies of the three most recent tax forms upon the request of any individual as well.<sup>104</sup> In recent years, organizations like GuideStar have furthered the mission of nonprofit sector financial transparency for the public. GuideStar.org currently publishes the Forms 990 of over 1.7 million organizations in its online database.<sup>105</sup> However, state charity officials do not utilize databases such as GuideStar.org to assist the application process because that would require searching the website for each public charity as it registers. Thus, printed Form 990s and other financial reports required by some states must be submitted by the nonprofit organizations.

In most states, charity officials are severely overburdened with documents in the paper-based system. As late as 1995, there were fewer than one hundred attorneys *nationwide* assigned with charitable solicitation compliance.<sup>106</sup> Currently the New York Attorney General's Charity Bureau employs between twenty to thirty full and part-time lawyers at any given time. This small group is responsible for overseeing the registration, reporting, investigating, enforcing and litigating of almost fifty thousand nonprofit organizations in the state. California employs the

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<sup>102</sup> 26 U.S.C. § 6104.d (1999).

<sup>103</sup> Pursuant to 26 U.S.C. § 6033.a.2, there are charitable organizations that are not required to file annual 990 returns, including churches, church-affiliated organizations, religious orders, and small charities with annual gross receipts under \$25,000.

<sup>104</sup> 26 U.S.C. § 6104.d (1999).

<sup>105</sup> GuideStar, <http://www.guidestar.org/about/index.jsp?source=dnabout>.

<sup>106</sup> Kelly, 292.

same number of attorneys for public charity regulation responsible for almost ninety thousand nonprofits. Meanwhile, some smaller states—like Virginia, which employs less than ten attorneys for the entire Attorney General’s office—do not have the luxury of a charities division.<sup>107</sup> It is common to hear Attorney Generals and Secretaries of State commenting in the media that the manpower to handle investigation and enforcement of actual fraudulent abuses is not feasible and that fraud cases are often turned away. Indeed, with regard to charitable solicitation laws, offices of Attorney General spend about two-thirds of their time on tracking registration alone, and only sixteen percent of their time on actually enforcing abuses.<sup>108</sup>

Given the current lack of regulatory efficacy, it is clear that the initial monetary investment required to build a unified sharing network and the staff to maintain it will be more cost effective in the long run. Under the current system, the labor costs for state charity officials to track registration and financial reports more than negate the administrative fees that organizations pay these state offices. By contrast, the logistics for a unified registration database and a shared network with the IRS are considerably more financially feasible. In fact, there are database models that could be easily mirrored, such as GuideStar.org and the IRS e-file system. The administrative costs that would no longer be necessary for state governments to simply track charities could then be redirected into investigation, enforcement, and litigation against fraud in the sector.<sup>109</sup> Electronic filing would streamline the entire process for charities as well. Thus, by cutting the administrative costs necessary for nonprofits to comply with state statutes, organizations will be able to redirect those funds back into their central charitable programs to better serve their local communities.

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<sup>107</sup> Strom, F1.

<sup>108</sup> Moore, 112.

<sup>109</sup> Moore, 117.

## Appendix

**Table 1:  
State Officials Responsible for Charitable Solicitation Laws**

Alabama	Attorney General
Alaska	Attorney General
Arizona	Sec. of State; Attorney General
Arkansas	Attorney General
California	Attorney General
Colorado	Sec. of State
Connecticut	Dept. of Consumer Protection
Delaware	None
District of Columbia	Mayor and Council of District
Florida	Dept. of Agriculture and Consumer Services
Georgia	Sec. of State
Hawaii†	Dept. of Commerce and Consumer Affairs
Idaho	None
Illinois	Attorney General
Indiana	None
Iowa	None
Kansas	Sec. of State; Attorney General; District Attorney
Kentucky	Attorney General
Louisiana*	Attorney General; District Attorney
Maine	Commissioner of Business Regulation; Attorney General
Maryland	Sec. of State; Attorney General
Massachusetts	Attorney General (Division of Public Charities)
Michigan	Attorney General
Minnesota	Attorney General
Mississippi	Sec. of State; Attorney General; District Attorney; County Prosecuting Attorneys
Missouri	Attorney General
Montana	None
Nebraska	None
Nevada	None
New Hampshire	Attorney General
New Jersey	Attorney General
New Mexico	Attorney General
New York	Attorney General
North Carolina	Sec. of State; Attorney General
North Dakota	Sec. of State; Attorney General; State Attorney
Ohio	Attorney General
Oklahoma	Sec. of State; Attorney General; District Attorney
Oregon	Attorney General
Pennsylvania	Sec. of State; Attorney General; District Attorney
Rhode Island	Dept. of Business Regulation; Attorney General
South Carolina	Sec. of State
South Dakota	None

Tennessee	Sec. of State; Attorney General
Texas‡	Sec. of State; Attorney General
Utah	Division of Consumer Protection of Dept. of Commerce
Vermont	None
Virginia	Commissioner of Agriculture and Consumer Services; Attorney General; Commonwealth, City, County or Town Attorney
Washington	Sec. of State; Attorney General
West Virginia	Sec. of State; Attorney General
Wisconsin	Dept. of Regulation and Licensing; Attorney General
Wyoming	None

\*Only organizations employing professional solicitors must register

†Only professional solicitors working for charities must register

‡Only organizations that solicit donations for law enforcement, public safety or veterans causes must register

Notes: Information compiled from the Multi-State Filer Project Appendix of Cooperating States, [http://www.multistatefiling.org/n\\_appendix.htm](http://www.multistatefiling.org/n_appendix.htm).

**Table is original and was not acquired from any source.**

**Table 2:  
State Registration Fees**

Alabama	\$25.00	initial registration fee only
Alaska	\$40.00	initial registration fee only
Arizona	None	
Arkansas	None	
California	\$25.00	initial registration and annually
Colorado	\$10.00	initial registration fee only
Connecticut	\$50.00	initial registration fee only
Delaware	None	
District of Columbia	\$80.00	initial registration fee only
Florida	\$10.00-\$400.00	initial, dependent on annual revenue
Georgia	\$25.00 and \$10.00	initial and annual renewal
Hawaii†	\$250.00	initial registration fee only
Idaho	None	
Illinois	\$15.00	initial registration fee only
Indiana	None	
Iowa	None	
Kansas	\$35.00	initial registration fee only
Kentucky	None	
Louisiana*	\$25.00	initial registration fee only
Maine	\$100.00 and \$25.00	initial and annual renewal

Maryland	\$50.00-\$200.00	initial, dependent on annual revenue
Massachusetts	\$50.00	initial registration fee only
Michigan	None	
Minnesota	\$25.00	initial registration fee only
Mississippi	\$50.00	initial registration fee only
Missouri	\$15.00	initial registration fee only
Montana	None	
Nebraska	None	
Nevada	None	
New Hampshire	\$25.00 and \$75.00	initial and annual renewal
New Jersey	60-250	initial, dependent on annual revenue
New Mexico	None	
New York	\$39,746.00	initial, dependent on annual revenue
North Carolina	50-200	initial, dependent on annual revenue
North Dakota	\$25.00 and \$10.00	initial and annual renewal
Ohio	\$50.00-\$200.00	initial, dependent on annual revenue
Oklahoma	\$15.00	initial registration fee only
Oregon	\$10.00-\$200.00 and % requirement	initial, dependent on annual revenue
Pennsylvania	\$15.00-\$250.00	initial, dependent on annual revenue
Rhode Island	\$75.00	initial registration fee only
South Carolina	\$50.00	initial registration fee only
South Dakota	None	
Tennessee	\$50.00-\$300.00	initial, dependent on annual revenue
Texas‡	\$50.00	initial registration fee only
Utah	\$100.00	initial and annual renewal
Vermont	None	
Virginia	\$100.00 + \$30.00-\$325.00	initial, dependent on annual revenue
Washington	\$20.00 and \$10.00	initial and annual renewal
West Virginia	\$15.00-\$50.00	initial, dependent on annual revenue
Wisconsin	\$15.00	initial registration fee only
Wyoming	None	

\*Only organizations employing professional solicitors must register

†Only professional solicitors working for charities must register

‡Only organizations that solicit donations for law enforcement, public safety or veterans causes must register

Notes: Information compiled from the Multi-State Filer Project Appendix of Cooperating States, [http://www.multistatefiling.org/n\\_appendix.htm](http://www.multistatefiling.org/n_appendix.htm).

**Table is original and was not acquired from any source.**

**Table 3:  
Checklist for Initial URS Registrations**

	Fee	State Forms	IRS Ltrr	FR Contracts	Bylaws	Inc Ltrr	990	Audit	Notarized
Alabama	X		X		X	X			X
Alaska	X			X			X	X	
Arizona			X				X		X
Arkansas		X	X	X			X	X	X
California	X	X	X		X	X	X	X	
Connecticut	X						X	X	
D.C.	X	X	X	X	X	X	X		X
Georgia	X	X	X				X	X	X
Illinois	X		X	X	X	X	X	X	
Kansas	X		X			X	X	X	
Kentucky							X		X
Louisiana	X			X	X	X	X	X	
Maine	X		X				X	X	X
Maryland	X		X	X	X	X	X	X	
Massachusetts	X		X		X	X	X	X	
Michigan			X	X	X	X	X	X	
Minnesota	X		X	X		X	X		
Mississippi	X	X	X	X	X	X	X	X	X
Missouri	X		X	X		X	X		X
New Hampshire	X		X		X	X	X	X	X
New Jersey	X		X	X	X	X	X	X	
New Mexico			X	X		X	X	X	X
New York	X		X		X	X	X	X	
North Carolina	X		X	X			X		X
North Dakota	X	X	X	X		X	X		X
Ohio	X		X		X	X	X		X
Oregon	X		X		X	X	X		
Pennsylvania	X		X		X	X	X	X	
Rhode Island	X		X	X		X	X	X	X
South Carolina	X			X			X		X
Tennessee	X	X	X	X	X	X	X	X	
Utah	X	X	X	X	X	X	X		X
Virginia	X		X	X	X	X	X	X	
Washington	X		X	X			X		
West Virginia	X	X	X	X			X	X	X
Wisconsin	X	X	X		X	X	X	X	X
	<b>86%</b>	<b>25%</b>	<b>86%</b>	<b>58%</b>	<b>53%</b>	<b>69%</b>	<b>97%</b>	<b>64%</b>	<b>53%</b>

Notes: Table 3 acquired from the Multi-State Filer Project Appendix of Cooperating States,

[http://www.multistatefiling.org/p\\_checklist.htm](http://www.multistatefiling.org/p_checklist.htm).

**Statistical averages not obtained from any source.**

**Table 4:  
2005 Average Charitable Contributions as a Percentage of Adjusted Gross Income per  
Individual Return**

Alabama	3.14%
Alaska	1.65%
Arizona	2.49%
Arkansas	3.33%
California	2.52%
Colorado	2.50%
Connecticut	2.21%
Delaware	2.31%
District of Columbia	3.79%
Florida	2.35%
Georgia	3.28%
Hawaii	1.92%
Idaho	3.09%
Illinois	2.27%
Indiana	2.21%
Iowa	2.08%
Kansas	2.50%
Kentucky	2.31%
Louisiana	2.13%
Maine	1.73%
Maryland	3.03%
Massachusetts	2.11%
Michigan	2.39%
Minnesota	2.46%
Mississippi	3.04%
Missouri	2.42%
Montana	2.15%
Nebraska	2.59%
Nevada	2.42%
New Hampshire	1.70%
New Jersey	2.06%
New Mexico	1.91%
New York	2.85%
North Carolina	2.94%
North Dakota	1.51%
Ohio	2.07%

Oklahoma	3.64%
Oregon	2.49%
Pennsylvania	2.09%
Rhode Island	1.69%
South Carolina	3.02%
South Dakota	2.22%
Tennessee	2.88%
Texas	2.35%
Utah	5.09%
Vermont	1.68%
Virginia	2.48%
Washington	2.21%
West Virginia	1.42%
Wisconsin	2.03%
Wyoming	3.05%
<b>U.S Average</b>	<b>2.47%</b>

Notes: Information compiled from the Internal Revenue Service. Individual Income and Tax Data, by State and Size of Adjusted Gross Income, Tax Year 2005, <http://www.irs.gov/taxstats/article/0,,id=171535,00.html>.

**Table not acquired from any source.**

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Acknowledgments: CPPA and Ms. Usry would like to thank the reviewers for their input, suggestions, and thoughtful review of this paper.

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Part 1 " Approaches to the Regulation of Charitable Organizations. Since the earliest years of the twentieth century, three principal strategies for the regulation of charitable solicitations have been employed in a rough sequence: first, licensing and endorsement; second, application of fundraising standards; and third, public disclosures. Licensing and Endorsement. Some of the earliest efforts to control fundraising involved municipal and state licensing. Various authorities were empowered by ordinance or statute to assess the merit of proposed fundraising appeals and, when approved, to grant Many states require charitable nonprofits, as well as any paid professional "fundraising counsel," or consultant hired to assist the nonprofit with fundraising activities, to register with the state before the nonprofit solicits any donations from residents of that state. Every nonprofit that raises funds using the internet and social media should be familiar with the Charleston Principles (adopted in several states). Disclosure statements, state-by-state (Perlman and Perlman). Category