Regulation of US Charitable Solicitations Since 1954

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Abstract  A major shift in the climate for the solicitation of charitable donations in the United States occurred in the second half of the twentieth century. Starting with legislation passed by the Legislatures of New York and Massachusetts in 1954 and eventually including 40 largely similar laws in force today, state governments grew to playing a predominant part in the regulation of appeals for public support for charitable activities. State regulators, voluntary oversight and advocacy groups, accounting standards-setting bodies, and the data-collection activities of the Internal Revenue Service all influenced the development of the body of regulations which now shape the process of seeking support for nonprofits’ work. This article summarizes the effect of earlier innovations in the field of fundraising and then examines the interplay of public and private actors in the course of the creation of the present regulatory climate.

Résumé  Un changement d’ambiance majeur s’est produit aux États-Unis durant la seconde moitié du 20ème siècle en ce qui concerne des sollicitations de dons de bienfaisance. Débutant avec les lois adoptées par les législatures de New York et du Massachusetts en 1954 pour finalement englober 40 lois largement similaires en vigueur aujourd’hui, les gouvernements des états en sont venus à jouer un rôle prédominant dans la régulation des appels au soutien public des activités de bienfaisance. Les organismes de réglementation des états, les groupes d’encadrement et de défense des intérêts des bénévoles, les organismes de normalisation comptable et les activités de collecte de données de l’administration fiscale (Internal Revenue Service) ont tous influencé le développement du corps réglementaire qui définit aujourd’hui le processus de recherche de soutiens destinés au travail bénévole. Cet article résume l’effet des innovations passées dans le domaine de la collecte de
fonds puis examine l’interaction entre les acteurs publics et privés au cours de l’élaboration du dispositif réglementaire actuel.


**Resumen** En la segunda mitad del siglo XX, se produjo un cambio de importancia en el campo de las donaciones benéficas en los Estados Unidos. Comenzando con la legislación aprobada por las Asambleas Legislativas de Nueva York y Massachusetts en 1954 e incluyendo con el tiempo 40 leyes muy similares en vigor en la actualidad, los gobiernos estatales llegaron a desempeñar una parte predominante en la regulación de los llamamientos de apoyo público para actividades benéficas. Los reguladores estatales, los grupos de defensa y supervisión voluntarios, los organismos establecedores de normas responsables, y las actividades de recopilación de datos del Internal Revenue Service (Secretaría de Hacienda) todos ellos influyeron en el desarrollo del cuerpo reglamentario que ahora da forma al proceso de búsqueda de ayuda para el trabajo de las organizaciones sin ánimo de lucro. Este documento resume el efecto de las primeras innovaciones en el campo de la recaudación de fondos y examina después la interacción de los actores públicos y privados en el curso de la creación del presente clima regulatorio.

**Keywords** Charitable solicitations · Regulation by US states · Voluntary oversight organizations · Accounting rules and standards · Fraud and abuse of charitable status

**Background and Introduction**

The history of regulation of charitable solicitations in the United States divides sharply in the middle of the twentieth century. Until 1954, such regulation as there was appeared primarily in municipal ordinances, initially centered on controlling door-to-door solicitations. Nonprofit oversight organizations joined in as public concern grew with the proliferation of appeals and the possibilities of abuse. Opposition to independent fundraising was also a feature of a growing number of community-based
federated fundraising efforts, sometimes augmented by complementary municipal ordinances such as the Seattle, Washington, rule that required licensing of all compensated fundraising except if conducted by the Seattle Community Fund—declared invalid by the Washington State Supreme Court in 1940.

In 1954, the states of New York and Massachusetts passed the first state statutes requiring registration prior to solicitation by commercial firms (Council of State Governments 1954, p. 13). By 1964, similar statutes were found in 25 additional states and the District of Columbia (Cutlip 1965, p. 534). 39 states and the District of Columbia regulate fundraising to some degree today (Multi-State Filer Project 2011). This specific attention to fundraising in these states is in addition to the provisions of state law concerned with other activities of nonprofit organizations and charities. It is usually the subject of separate charitable solicitations acts.

As the practice of soliciting support from the public for charitable organizations of all sorts becomes more widespread around the globe, the history of efforts in the United States to shape the practices of fundraisers and their beneficiaries may be useful as background for other societies’ policy development processes. This US experience suggests some of the enduring challenges affecting such efforts. The present state of fundraising regulation reveals both what can be accomplished and what has, at least so far, eluded the best efforts of policy makers, public policy advocates, and leaders among both the commercial fundraising firms and the nonprofit recipients of donated support.

In general, the requirements of the 40 current US state statutes are quite similar. Common features include:

- Broad definitions of terms such as “charitable,” “solicitation,” and “revenue;”
- An emphasis on the act of requesting a charitable contribution (i.e., in contrast to the receipt, uses, or impact of donations);
- Coverage of all solicitations for charitable purposes addressed to the state’s residents regardless of the location of the solicitor or of the purported beneficiaries; and
- Registration and reporting requirements for both nonprofits that solicit on their own behalf and for others who assist with or engage in solicitations on a commercial basis.

A résumé of the details of each jurisdiction’s current requirements and other information about state charitable solicitations programs is provided by the Multi-State Filer Project, a result of cooperation between the Association of Direct-Response Fundraising Counsel (ADRFCO) and the National Association of State Charities Officials (NASCO) (Multi-State Filer Project 2011).

At the start of the twentieth century, charitable organizations and fundraising were embedded in local communities. Even institutions with multiple local operations using a single name (such as the Young Men’s Christian Association) drew on local supporters to underwrite their work. An exception, one that in a way proves the rule, might be found in fundraising directed to donors with ties of a different sort—alumni of a college or university, such as Harvard’s campaign of 1904–1905 that raised some $2.4 million to augment salaries of its liberal arts professors (Bethell 2000).
Fund Raising in the United States: Its Role in America’s Philanthropy, by Scott M. Cutlip, published in 1965, documents the interactions among evolving techniques of increasingly far-reaching fundraising, the growing professionalism of the public relations industry, and attempts to prevent abuses of public generosity during the half-century that led up to the passage of the New York and Massachusetts statutes. Four elements stand out in this history:

- The spread and increasingly sophisticated techniques of “popular philanthropy;”
- A variety of local experiments with “coordinating committees” and “federated” fundraising arrangements;
- The creation, during World War I, and the subsequent growth and influence of the organization that came to be known as the National Charities Information Bureau1; and
- The invention and multiplication of for-profit firms engaged in the management of fundraising campaigns (often called “professional” or “commercial” fundraisers).

The next section briefly summarizes these developments and their importance in setting the stage for the late twentieth century framework now characteristic of the regulation of charitable solicitations.

Fundraising Regulation Before 1954

In the early years of the century, short-term efforts to raise a defined sum for a specific purpose became an increasingly familiar element of the calendar in American cities and towns. The techniques employed in these “whirlwind campaigns” were refined, and standardized, by staff from the international field office of the Young Men’s Christian Association (YMCA). These specialists were dispatched to assist the local leadership of a Y with fundraising. The increasingly familiar, and effective, script included several key elements: a large challenge gift arranged in advance and announced at the launch—often with a caveat that the funds would only be forthcoming if the full campaign goal could be met on time. A roster of community notables who would form the campaign leadership, while teams of volunteers would canvass workplaces, neighborhoods, and civic institutions. A countdown clock, showing progress and the time remaining for reaching the goal, prominently featured—sometimes erected in the town square, sometimes printed on the front page of the local newspaper each day. Though the participation of elites and contributions from major industrial and commercial firms were important to the success of the effort, the distinctive innovation that transformed fundraising was the mobilization of contributions from a large number of relatively small givers. Hence the label “popular philanthropy”—intended as a favorable contrast to the traditional view of philanthropy as strictly the province of a limited group of affluent individuals.

1 This organization used several names during its half-century of existence. For simplicity it is identified throughout by the initials NCIB.
The dramatic potential of a whirlwind campaign can be illustrated by reference to the November 1913 campaign for the YMCA and the YWCA of New York City. Organized by Charles Sumner Ward, head of the Finance Bureau of the International Committee of the YMCA, this campaign was still $126,498 short of its $4 million goal on the last day of its 2-week span. By the end of the next day, the goal had been met with a total of $4,095,000 from 17,400 donors. The elements were all present: a $350,000 leadership gift from John D. Rockefeller; a leadership committee of notables; a campaign clock over the intersection of Wall and Broad Streets; and daily newspaper coverage. This concentrated activity was all organized behind the scenes by experienced campaign managers (Cutlip 1965, p. 85).

The First World War—Federal Intervention and Fundraising Successes

The basic structure of such a fundraising effort need not, indeed could not, be restricted to one sort of organization as beneficiary. As successes like the one in New York were reported, other institutions, with other leadership, followed the model, often with equally dramatic success. By the 1910s, for-profit firms were putting these proven techniques to work on behalf of clients such as colleges, hospitals, and religious institutions. The outbreak of World War added new causes in the form of relief for refugees and support for the war effort. When the United States entered combat, the fundraising by the Ys, the American Red Cross, and scores of other organizations became even more intense, with campaign after campaign calling on the energies of volunteers and the generosity of donors. At the same time, the provision by multiple agencies of fundamentally similar services to troops, displaced persons, and devastated communities led to duplication, gaps, and rivalries of a predictable and damaging nature.

The result was a limited form of federal intervention. The War Department, with help from the White House, called on the largest and best-known relief agencies to coordinate their activities. Not without a struggle, seven such groups came to an agreement to organize a collaborative fundraising campaign, to be known as the United War Fund. As it happened, this campaign, scheduled to last for only 2 weeks, got underway just as the Armistice was being negotiated. Also, in that fall of 1918, an influenza epidemic began to be felt throughout the country. The campaign went ahead—emphasizing the continuing need for extraordinary efforts in light of the plight of refugees and the disruptions of demobilization. On the final day, it was announced that this nation-wide application of the whirlwind techniques had raised more than $200 million—equivalent to about $2.8 billion in 2011 (using http://www.shadowstats.com/inflation_calculator). The American Red Cross (ARC) also engaged in concerted, but separate, fundraising yielding a total during the war years of over $400 million in support for its work, including participation in relief activities.

The idea of a federated campaign was not entirely new in 1918. Experiments with fundraising (and allocation) coalitions had been tried in several places in the late nineteenth and early twentieth centuries, but “the first modern [community] chest is credited to Cleveland, Ohio, which organized its ‘Federation of Charities and Philanthropy’ in 1913.” (Community Chests and Councils 1938) Cutlip reports that
this effort was given early support by Cleveland resident John D. Rockefeller. After
the war, an American Association for Organizing Charity spread the idea to many
other cities and, by 1937, there were 448 Community Chests and Councils across
the country raising in that year an estimated $80,000,000 (Community Chests and
Councils 1938). In 1970, the Association of Community Chests and Councils, after
several intermediate alterations, changed its name to United Way of America.

The idea was not universally welcomed, however. The American Red Cross,
described by President Wilson in 1918 as “recognized by law and international
convention as the public instrumentality for war relief” at the start of WWI, and
committed to the view that memberships as well as donations were essential to its
success, resisted efforts to combine its fundraising with others’ until the last quarter of
the twentieth century (Wilson 1918; Dulles 1950). Other well-established national
organizations, notably the March of Dimes, also refused to join in federated campaigns
at both the local and the national levels, insisting that the mobilization of volunteers to
deliver their messages resulted in useful public education and more successful
campaigns. Smaller and newer organizations, especially those that were based in
marginal communities or engaged in controversial services, were excluded by
admission standards and other restrictions from community-wide fundraising cam-
paigns. At the national level, the rift between the “independents” and the “federateds”
would be a continuing source of tension and friction throughout the developments in
fundraising until nearly the end of the twentieth century (Seeley 1957, Chap. 13).

Another idea with roots in Cleveland also developed into an organization serving
the whole nation as a result of the intensity and multiplication of fundraising
activities during World War I. Cleveland’s federated war relief charity received,
like others, a very large number of requests from organizations to support their
activities and found itself with no practical way of determining the legitimacy of the
organizations or the urgency of their requests. Out of this concern grew a meeting of
representatives from several cities in Cleveland in the summer of 1918. At that
meeting, it was decided to set up a National Investigation Bureau of War Charities
(later known as NCIB).

When the end of the War led to no reduction in the frequency of calls on people’s
generosity, this new organization shifted its attention to reviews of large fundraising
campaigns as they were announced. Over time, the NCIB refined its approach to
providing information for donors. It published increasingly detailed “standards” for
assessment of organizations making appeals. It applied these standards to
information obtained from organizations and campaigns to publish evaluations
which were distributed to its members—organizations and individuals who paid
annual dues to receive this guidance for their donations (New 1983). As will be
discussed below, in the post-WWII era, the NCIB became an active participant in
discussions about how to report accurately the revenues and expenses of
organizations with major fundraising activities.

Fundraising as a Commercial Activity

In the offices that the United War Fund had set up in New York City, the
experienced fundraisers for the YMCA—seconded to this work during the campaign
of 1918—considered the future of fundraising after the war. (These conversations, and much more on the theme of these paragraphs, are reported in detail in Chap. 5 of Cutlip 1965, titled “Fund Raising Becomes a Business”.) In May of 1919, with offices in the same building, two of these campaigners opened a commercial fundraising firm, Ward & Hill Associated—led by Charles S. Ward and Harvey J. Hill. As Cutlip (1965, p. 158) describes it, from this firm “came five of today’s largest fund-raising organizations and scores of trained fund raisers—a development that would bring profound changes to American philanthropy.” The International Committee of the YMCA then appointed Ward’s long-time assistant to be head of its new central fundraising resource, the Financial Service Bureau, which continued the work of assisting membership and capital campaigns for Ys across the country.

In addition to the staffers from the United War Fund offices, two other early twentieth century movements contributed personnel, experience, and a record of success to the founding of commercial fundraising firms. The Liberty Loans campaigns, which produced almost $14 billion in underwriting from the public for the nation’s war effort, were the foundation for the John Price Jones firm. Its technical contributions to the growing industry were a focus on meticulous planning of campaigns and the recruitment of top-rank celebrities (Douglas Fairbanks, Mary Pickford, Charles Chaplin, Lillian Russell) as campaign spokespersons. The American City Bureau—in spite of the civic overtones of its name, a commercial firm—had its start in active promotion of memberships in the rapidly growing number of Chambers of Commerce that built on the reformist energies of the Progressive Era. In later years, ACB extended its connections with community leaders to assisting in the fundraising campaigns of Community Chests. Fundraising by this firm was clearly modeled on the techniques employed in the efforts of the YMCA team, but the ACB organization brought to the field the practice of basing its fees on a percentage of the amounts raised in early dues payments for new chambers—in contrast to the salaried employees of the Y’s Financial Service Bureau and the fixed fees negotiated by Jones, Ward, and other commercial fundraising firms.

It was a characteristic of the pioneers in the fundraising industry that they relied greatly on the media of mass communication that came to dominate the cultural landscape in the twentieth century. Some of the firms had separate divisions for publicity and campaigning, some marketed public relations as a stand-alone service alongside the business of managing fundraising on behalf of their clients. The lesson drawn from Liberty Loans campaigning was that a successful large-scale effort depended on both careful organization of the process of finding and persuading supporters and crafting of a powerful message underlining the worthiness of the cause. During the 1920s, this side of the work was advanced, in a way that was only loosely connected to fundraising per se, by the National Publicity Council and the Health Education Section of the American Public Health Association, aided by financial and intellectual support from the Russell Sage Foundation (Routzahn 1920). Combining public education with efforts to secure funds for the work of voluntary agencies was to become, later in the century, a major source of controversy in the design of nonprofit accounting for revenues and expenditures and the efforts to control what were seen as “excessive” fundraising costs.
National Fundraising—The March of Dimes

In the interval between the two World Wars, the techniques that make popular philanthropy possible continued to be refined and extended. One of the most remarkable demonstrations of the success of the new techniques of fundraising can be found in the history of the National Foundation for Infantile Paralysis. From an initial effort in the late 1920s to support a spa for treatment of victims of the disease, the evolving organization grew into a national institution raising millions of dollars for research, patient care, public education about the disease, and more fundraising. The interest of President Franklin D. Roosevelt was, of course, a factor in its successes. Its long-term director, Basil O’Connor had been recruited from his position as a partner in Roosevelt’s law firm to head the project. An early nationwide activity was the promotion, starting in 1934, of “Birthday Balls” throughout the country on January 30, FDR’s birthday. The 1938 celebrations included a new element—a request to send dimes in support of the cause directly to the President at the White House as another form of celebrating his birthday. Thus was born “The March of Dimes.” The first appeal resulted in 2,680,000 dimes arriving in mail-sack after mail-sack at the White House! In the 1950s, the Foundation added the “Mothers March” to its other fundraising and educational activities. Local committees recruited volunteers and attempted to reach every household in the community during a period of 1 hour on one night of the year. This and other projects involved over 2 million volunteers in the work. The Salk and Sabin vaccines, developed with grant support from the Foundation, resulted in the virtual elimination of the disease by the end of that decade. The success of the National Foundation in capturing the public imagination and in managing the complicated affairs of a voluntary health agency of enormous scope inspired countless imitators (Cutlip 1965, pp. 382–393).

The Second World War

During World War II, the federal government became involved earlier and more directly than it had in the earlier conflict. President Roosevelt appointed an official committee, which furthered the initial efforts of a voluntary group to coordinate fundraising “to give aid and comfort to the fighting men and women, their families, and America’s allies and victims of war abroad.” The committee organized the National War Fund. It, together with the related Community War Chests, raised a total of some $744 million dollars during the years of the war—an amount that would be approximately $9.25 billion in 2011 terms (Cutlip 1965, p. 410). Two other developments during this stressful time are of note to the overall development of the field. First, the American Red Cross (ARC—one of the very few federally chartered nonprofits) operated its own successful fundraising campaigns. The special standing of the ARC is suggested by the meeting at the White House on the night of December 7, 1941, between President Roosevelt and Norman Davis, the head of the ARC (Cutlip 1965, p. 414). Prior to the outbreak of WWII, the ARC had negotiated agreements with the armed services designating it as the only nonprofit group authorized to provide direct services to service personnel on active duty.
overseas. In fact, President Roosevelt had earlier “heartily endorsed” a resolution of the Red Cross Central Committee which required local ARC chapters to avoid participating in local war chest joint fundraising efforts (Dulles 1950, p. 357). On its own, ARC raised $667 million (about $8.29 billion in today’s funds) during the war years.

Second, during these war-time campaigns, the long standoff between organized labor and both the federated campaign movement and the ARC was largely resolved in a way which gave labor organizations a larger voice in the distribution of funds raised in “united” campaigns and greater recognition of labor’s role in the success of both Community Chest and ARC fundraising efforts (Cutlip 1965, pp. 417–418). During the Great Depression of the 1930s, the Red Cross had resisted calls for assistance in addressing the results of widespread unemployment. In the Community Chest movement, the large role played by business figures had given short shrift, many labor leaders felt, to the fact that a large portion of the funds accumulated in such campaigns came from workers’ pay packets through payroll deductions (Cutlip 1965, p. 301; Brilliant 1990). In the post-war years, the involvement of organized labor in federated campaigning was to be one of many elements of tension between the Community Chest movement and the national fundraising organizations.

Fundraising After World War II

The World War I campaigns attracted the attention of ambitious fundraisers and began the commercialization of “popular philanthropy.” The results of war-relief campaigns during the Second World War demonstrated again the power of the combination of broad public relations and meticulous campaign planning as a means of raising funds for good works—and, unfortunately, as a means of generating income for less well-intentioned operations.

The years following the War saw widespread prosperity in the United States. One measure of the impact of this prosperity on charitable contributions can be found in the growth in the sums raised by the American Cancer Society. As Cutlip (p. 427) notes, “In 1943, the American Society for the Control of Cancer [the organization’s original name] raised $350,000 in its annual fund drives; in 1961, the American Cancer Society raised $36,942,955—or more than a hundred times the sum raised before it turned to intensive promotion and high-pressure fund raising.” (The Bureau of Economic Analysis, http://www.bea.gov, reports that per capita personal income grew by 110% in that same interval.) In addition to the striking increase in the success of the fundraising efforts following the recruitment of professional advisors to manage the campaigns, the Cancer Society’s approach also laid the groundwork for what was to become one of the enduring points of contention in the regulation of fundraising through much of the balance of the century. By linking the society’s campaign to the work of the Women’s Field Army—a “mobilization of American women to vanquish this disease” created by the General Federation of Women’s Clubs in the 1930s—the fundraising efforts also included a broad educational campaign that, with more than 2,000,000 volunteers at work, reached far into the life of communities throughout the nation. By the 1970s, the question of
how much of the expense of a fundraising campaign could be attributed to this sort of educational function became a major point of contention for regulators, professional fundraisers, and the accounting profession.

Charity “Rackets”

That question gained greater salience as attention to the darker side of successful fundraising became more common. Scott Cutlip’s Fund Raising provides detailed narratives of a succession of “the cheats in fund raising” between 1953 and 1963. These were revealed by newspaper exposés, postal inspections, congressional investigations, and, most notably, the hearings before a special joint committee of the Legislature of the State of New York chaired by Senator Bernard Tompkins. Based on testimony by F. Emerson Andrews of the Russell Sage Foundation, the Committee’s final report, published in 1954, summarized the situation in these words:

The generosity of our citizens has been consistently and flagrantly abused by a small minority of frauds operating as ‘charities’ which have mulcted New Yorkers out of an annual amount probably in excess of $25,000,000. In addition, an even vaster sum of dollars contributed by the public is cut down to pennies before reaching the intended beneficiaries by excessive fund raising and administrative costs of inefficient charities. (Quoted in Cutlip 1965, pp. 442–444)

Similar conclusions were reached by a legislative investigation in Massachusetts.

The unwholesome fact that so many worthy and necessary fund-raising activities conducted in Massachusetts every year fall short of their objectives while a well-trained guild of racketeering promoters and solicitors reap rich profits from their charitable instincts of our people by diverting into their own pockets the lion’s share of money collected in myriads of uncontrolled and unchecked money-raising campaigns which burst out like a constant rash over the physiognomy of our state has so impressed itself upon current public opinion that the Massachusetts Legislature is compelled to face the problem, recognize it for what it is, and to move in a general direction toward an effective solution. (Quoted in Council of State Governments 1954, p. 13)

These two states passed laws to require registration by commercial fundraisers and reporting of the results they achieved for their clients. (Council of State Governments 1954; Newman 1955) The number of states with statutes that regulate charitable solicitations in some way has since grown to 39, plus the parallel rules in the District of Columbia. (For a list, and details of the current requirements, see Multi-State Filer Project 2011).

As the Drafting Committee of State Officials of the Council of State Governments wrote in the “Explanatory Statement” introducing its recommended proposals concerned with “Solicitations of Funds for Charitable Purposes” in 1954, the statutes passed in that year were a “sound, initial approach to the problem, benefitting by experience, and doing the most necessary thing first.” The statement
contrasts this approach to that already adopted “in Maryland, Pennsylvania, Virginia and some other states, spelling out in detail what organizations must do to solicit funds in those states, together with an administrative structure to pass upon the eligibility of fund-raising activities.” New York and Massachusetts simply required registration and reporting from every fundraising effort; the other states granted licenses to nonprofit organizations to raise funds that were conditioned on approval by state officials on criteria that often included a limit (such as Pennsylvania’s 15% of funds raised) on the fees that could be paid to solicitors. The registration rules adopted by Massachusetts and New York have come to be the standard in charitable solicitations regulation today, but in the years between the 1950s and 2011 the licensing approach grew rapidly in prevalence before being barred by rulings of the U.S. Supreme Court.

The legislative committees’ reports quoted above touch on the five elements that sparked sustained public and legislative concern with fundraising practices: “shortfalls” in local fundraising efforts, “excessive” fees and “profits” for solicitors, “myriads” of campaigns, “inefficient” organizations and the risk of “frauds” betraying donors’ good intentions, and “compelling” negative reactions from both ordinary donors and community leaders to the campaigns—both worthy and less-so—that filled the calendar in the years after the Second World War.

Neither New York nor Massachusetts included a limit on fundraising or other administrative expenses in their 1954 statutes. This omission was not to last. By 1980, they had joined 24 other states in imposing some sort of limit on the extent to which the proceeds of fundraising could be committed to expenses and profits and away from charitable purposes. (Hopkins 1980, Chap. 3) “Excessive” costs and “frauds” are, of course, offensive in their own right in the context of providing support to worthy causes. Placing limits on the cost of fundraising also served the interests, though, of the defenders of local federated campaigns (known for much of this period as Community Chests) against what they saw as threats to the provision of community services arising from national campaigns supporting work done elsewhere. Establishing such limits turned out to be fraught with its own difficulties, leading to much of the controversy and ill-will that could be found within the specialized arena of charities regulation in the second half of the twentieth century.

Nongovernmental Attention to Fundraising Issues

Private and voluntary attention to the possibility of abuses in fundraising and related activities continues, of course, to this day. Its evolution in the post-war era was, though, increasingly a response to the growing prevalence of governmental regulation. The decades of the 1960s and 1970s saw intensive work by a variety of nongovernmental actors on two quite different, but nonetheless interrelated, projects. One was a search for consistent accounting rules that could be used for reliable reports of fundraising and administrative expenses. The other involved efforts to establish more consistent regulations among the states with charitable solicitations statutes so as to reduce the administrative burdens on fundraising organizations and provide regulators and the public with more useful information. Two themes dominated these developments. In accounting, the question was how to
present useful information about fundraising in financial reports—especially when fundraising was conducted by a variety of methods and often closely linked with activities that could arguably be described as advancing the organization’s mission, providing a public service. In regulation, the question was whether to impose a fixed limit on fundraising costs or when and how to require disclosure of such costs to prospective donors and the general public.

Responding to reports of frauds and increasing governmental attention, the American Association of Fund-Raising Counsel (AAFRC), a trade association of fundraising consultants founded 20 years earlier, opened its first office, in New York City, and hired a full-time executive director from the staff of one of its member firms in 1954. The association began, in 1956, issuing a comprehensive annual report on philanthropic support of all kinds called Giving USA. From its earliest days, Giving USA included an annual compilation of legislative activity related to charitable solicitations. (This report is now prepared in association with the Center on Philanthropy at Indiana University-Purdue University in Indianapolis.) AAFRC also responded to concerns about unethical practices by commercial firms by publishing a “Fair Practice Code” to guide its members and set standards for the industry (Cutlip 1965, pp. 340–343; Giving USA Foundation 2011).

The first “National Conference on Solicitations” was held in 1954 as well, under the auspices of the Cleveland Chamber of Commerce and the National Charities Information Bureau (NCIB). A short account of the second conference in the Social Service Review for June (1955, p. 200) reported that the sessions “seemed more concerned about the multiplicity of campaigns than about charitable fraud. One speaker told his listeners that the public is beginning to revolt. Another, a newspaperman, considered it more important ‘to protect one charity, or one health or welfare organization from the greed of another’ than to ‘guard against thievery’ in a minority of appeals.”

At the end of the decade, with the support of the Rockefeller Foundation, Robert H. Hamlin directed “an exploratory study by an ad hoc citizens committee” of the evolving relationship of “voluntary agencies” (i.e., in this context, the members of the National Health Council and similar organizations raising money on a national scale) and the financing and provision of research and related services by the federal government (Hamlin 1961). This project arose out of the observation that “The strife which centered on ‘federated’ versus ‘independent’ fund-raising campaigns was fast becoming intolerable.” (p. ii) The committee’s view was that the “remarkable growth” in charitable contributions…

…could not have been achieved without creating major problems. Foremost among these is the fact that the proliferation of agencies and the expansion of their activities have not always paralleled the public need or interest. Furthermore the machinery of many voluntary agencies has become antiquated, patched up, and at times jealously self-centered. This inefficient machinery impairs the capacity of the agencies to provide needed services. It unnecessarily diffuses the dedicated efforts of contributors and volunteers. It threatens in time to undermine the valuable freedom of the agencies, as well as the devoted participation of millions of Americans. (p. 2)
The Hamlin committee’s report, titled *Voluntary Health and Welfare Agencies in the United States*, offered two major recommendations when it was published in 1961. The first was that the committee’s “functions should be continued and expanded by the establishment of a National Commission on Voluntary Health and Welfare Agencies…to provide a thorough evaluation of the role of voluntary agencies in modern society.” The second major recommendation of the Ad Hoc Committee for immediate action was “the development of standardized accounting for voluntary agencies.” The report notes that the American Institute of Certified Public Accountants (AICPA) had agreed to undertake the project, “subject to…adequate financing.” (Hamlin 1961, pp. 35–37) The necessary financial support was not, however, found and the AICPA was not involved in the resulting project to develop uniform accounting standards (Meek 1974, p. 2803).

The Hamlin report prompted a period of intense discussion of accounting standards. Responding to the Hamlin report and other calls for more clarity in accounting and financial reporting, the National Health Council along with the National Social Welfare Assembly, 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. Importantly, in terms of the developments to come in this area, the “Black Book” included the requirement that “the expenses of all activities that are an integral and inseparable part of an appeal for financial support” should be reported as fund raising. Further discussion emphasizes that the expenses of any “informational material or activity…distributed or conducted primarily as part of an organized fund-raising effort or in preparation therefore, or primarily for individuals soliciting financial support for an agency or likely to contribute to it,” are to be classified as fundraising. (National Health Council 1964, pp. 62, 66) According to Wilson Levis (personal communication) NCIB was the primary advocate for this standard which became known as the “Primary Purpose Rule” (PPR).

For many organizations, applying the PPR results in higher reported fundraising expenses than accounting methods based on allocating “joint costs” among the various purposes of an activity with multiple goals. “Joint costs” are expenses related to an activity which cannot be uniquely connected to one of the functional expense categories—program, management and general, or fundraising. The cost of mailing an envelope enclosing both educational materials and a fundraising appeal is a simple example of a cost that might be allocated in part to each. Cost allocation would, for example, allow reporting some of the expenses of the Women’s Field Army deployed by the American Cancer Society as support for educational activities, i.e., “program,” and reporting as “fundraising” the costs of preparing the direct appeals for donations and of processing the receipts.

In 1974, three important publications appeared which offered guidance in the development of financial reports by nonprofit organizations, including standards for the calculation of fundraising costs. The National Health Council issued the second edition of the “Black Book” and the United Way of American published its *Accounting and Financial Reporting Guide* for use throughout its affiliated organizations. Both included the PPR as the method for reporting fundraising costs. In the same year, the AICPA published its first *Audits of Voluntary Health and...*
Welfare Organizations which used language for guidance on fundraising costs that, in the opinion of some accountants, allowed the allocation of joint costs and thus “weakened” the PPR standard in the “Black Book.” At the time the PPR was considered by NCIB, the Philanthropic Advisory Service of the Better Business Bureau (PAS), state charity regulators, and most nonprofit accountants to be the established standard for the preparation of financial reports. There was, however, a growing climate of resistance to the PPR as experience with the effect of the rule on charities’ financial reporting became more widespread.

By the end of the 1970s, the concept of cost allocation had gained increasing favor among accountants, in spite of the objections of the NCIB, PAS, and state charities regulators. This difference importantly affected efforts to establish a uniform reporting regime for charitable solicitations, since the method to be used to calculate the cost of fundraising activities was to be specified in the instructions for any proposed report. The AICPA published a discussion draft for a new set of standards in January of 1977 which proposed the allocation of joint costs for any activity which included fundraising along with the pursuit of other goals. A year later, this AICPA guidance was promulgated as Statement of Position (SOP) 78-10.

Another sign of growing private-sector interest in governments’ attention to fundraising was the National Health Council’s encouragement of more uniform state and municipal regulations (discussed more fully below) with the goal of avoiding conflicting and inconsistent requirements that would affect fundraising by campaigns that spanned a region or the entire country. The Council, founded in the 1920s, brings together the national voluntary health agencies, other nonprofit and professional organizations, and representatives of the health-care industry (http://www.nationalhealthcouncil.org).

Attention to New Government Regulation

Starting in the 1960s the National Health Council supported a campaign, carried out by local affiliates in many parts of the country, to enact laws or to revise existing laws regulating charitable solicitations. Its initial efforts focused on attempting to prevent restrictions on fundraising in the form of licensing requirements that impeded campaigns organized and conducted nationally. The intensity of local hostility to national campaigns can be sensed in the 1959 comment of Syracuse Herald-Journal editor Alexander F. (Casey) Jones quoted in Newsweek (1959): “We’re being duped. The health foundation racket has expanded to the point where there are 50 such organizations for ills of every part of the body… Here in Syracuse, our announced policy is that this community does not owe any health foundation one thin dime…..” The variety and ingenuity of these local efforts deserve a separate study of their own. For present purposes, here is one further example: in 1953, the Supreme Court of Ohio struck down an ordinance of the city of Dayton which had prohibited fundraising by the American Cancer Society on the ground that a local hospital already responded to that need. “We know of no law,” the court wrote, “which authorizes reasonable regulation to include the power to determine which of two equally charitable organizations may be permitted to solicit in a particular field…..” (Quandt 1975, p. 1162)
Starting in the 1950s, members of the National Health Council formed a committee to monitor state and local legislation while simultaneously assisting local chapters of the member organizations in resisting efforts to force them to participate in local federated fundraising campaigns. These meetings are documented in a remarkable archive maintained by the March of Dimes and accessed by William Suhs Cleveland in support of his research in the graduate school at Indiana University/Purdue University—Indianapolis (IUPUI) (Cleveland 2011). In 1965, the National Health Council published the first edition of Viewpoints: State Legislation Regulating Solicitation of Funds from the Public, presenting “guidelines, standards or principles that should be incorporated in state or local regulatory legislation.” (McMahon 1965) In 1973, its Ad Hoc Committee to Review State Legislation published a draft of “Model Legislation Regulating Charitable Organizations” with the goal of providing guidance to states where no charitable solicitations statutes had been enacted and offering suggestions to improve legislation that had not accomplished its purposes (Ohio, Office of the Attorney General 1974, p. 2763 ff.) The Council’s rationale for such statutes was reiterated in the 1971 and 1976 editions of Viewpoints. The Model Legislation’s proposals included uniform annual financial reporting based on the “Black Book” standards and included guidance on the PPR. Viewpoints also argued against limits on fundraising expenses based either on a percentage of contributions or some other financial measure.

State Regulatory Programs—Percentage Limitations on Costs

During the second half of the twentieth century, governmental attention to fundraising and related questions of nonprofit management rapidly increased. In the quarter century following the adoption of new registration statutes by New York and Massachusetts, similar statutes were adopted in dozens of other states. Beginning in the 1970s, the newly enacted or amended statutes increasingly set some sort of limitation on the cost of fundraising—directly, by specifying permissible fees for solicitors, or indirectly, by requiring that some portion of total revenue be “devoted to charitable purposes.” In spite of the intervention of the U.S. Supreme Court on the latter subject, by the fourth quarter of the century, government—especially state—regulation had become the dominant influence in the regulatory environment.

During the 1970s, several of the officials responsible for administering the state charitable solicitations laws took advantage of the meetings of the Trust Law Committee of the National Association of Attorneys General (NAAG) to begin the exchange of ideas and the sharing of information growing out of their work. This committee did not provide a completely appropriate setting for these discussions—not least because several of the active state charities officials were not housed in the office of their states’ attorneys general. Toward the end of the decade, an effort got underway to form a separate professional association to be called the National Association of State Charities Officials (NASCO) (Ormstedt 2001 and personal communication 2010). A top priority was to campaign for the preservation of the PPR and the rejection of SOP 78-10’s approach to allocation of joint costs.

By the mid-1970s, the National Health Council had become less engaged in promoting consistency among state regulations and reliance on the “Black Book” as
the accepted accounting standard. The promotion of consistent regulation by the states was to some extent taken up by AAFRC, whose members included many firms engaged in fundraising campaigns in multiple states. Their interest in consistent regulations was, of course, directly related to their costs of administration wherever there were significant differences among the states. AAFRC, in fact, prepared another “model act” and commended it for consideration by NASCO, but the proposal was never given detailed attention by the charities officials.

At the end of the 1970s, the standards for preparing and reviewing financial information for nonprofit organizations—particularly financial information pertaining to fundraising—were in flux and the subject of considerable disagreement among nonprofit executives, charities officials, accountants, and staff of oversight agencies such as NCIB and the PAS. Though much progress had been made over the preceding years in standardizing accounting practices in the field, there remained several different audit guides applying to different segments of the field.

Public concern with the diversion of funds from the object of charity to the raising of funds continued to be a theme of exposés of charities and “charities” in the press and occasional governmental investigations (Tivnan 1983). By 1980, when Bruce Hopkins published his study of controls on solicitations, titled *Charities Under Siege*, 15 states had adopted laws that prohibited fundraising with costs exceeding a specified ratio and 11 others had adopted other approaches to encouraging “efficiency” in fundraising. In New Hampshire, the limit applied to the overall expense of fundraising as a proportion of the organization’s annual expenditures. Elsewhere, the limitation applied to the compensation paid to commercial entities or consultants assisting in fundraising activities or specified a ratio that had to be committed to program services (Hopkins 1980 Chap. 3).

The United States Supreme Court Enters the Debate

This approach to state regulation was ended in the 1980s, though, by three decisions of the U.S. Supreme Court. Put simply, the court ruled that fundraising activities are constitutionally protected speech and any governmentally imposed constraints must be narrowly constructed to serve an identifiable public purpose. In particular, it is unconstitutional 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 at the time of solicitation (Harris et al. 1989; Knowles 1996; Fremont-Smith 2006; Copilevitz 1997).

The first of these decisions, *Village of Schaumburg v. Citizens for a Better Environment* (44 U.S. 629 1980), struck down limits based on a fixed ratio imposed by an Illinois municipality. In this decision, the Court said:

Charitable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, dissemination and propagation of views and ideas, and advocacy of causes—that are within the First Amendment’s protection. While soliciting financial support is subject to reasonable regulation, such regulation must give due regard to the reality that solicitation is characteristically intertwined with informative and perhaps
persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and to the reality that without solicitation the flow of such information and advocacy would likely cease. Moreover, since charitable solicitation does more than inform private economic decisions and is not primarily concerned with providing information about the characteristics and costs of goods and services, it is not dealt with as a variety of purely commercial speech.

*Secretary of State v. Joseph H. Munson Co.* (47 U.S. 947 1984) rejected a Maryland statute that imposed more flexible limits. Finally, *Riley v. National Federation of the Blind* (487 U.S. 781 1988) found that a North Carolina law requiring “point of solicitation” disclosure of fund-raising costs was unconstitutional as well. In its opinion in *Riley*, the Court explored some possible reasons for “high” fundraising costs that could not be considered “fraud”:

[T]here are several legitimate reasons why a charity might reject the State’s overarching measure of a fundraising drive’s legitimacy—the percentage of gross receipts remitted to the charity. For example, a charity might choose a particular type of fundraising drive, or a particular solicitor, expecting to receive a large sum as measured by total dollars rather than the percentage of dollars remitted. Or, a solicitation may be designed to sacrifice short-term gains in order to achieve long-term, collateral, or noncash benefits. To illustrate, a charity may choose to engage in the advocacy or dissemination of information during a solicitation, or may seek the introduction of the charity’s officers to the philanthropic community during a special event (e.g., an awards dinner). Consequently, even if the State had a valid interest in protecting charities from their own naiveté or economic weakness, the Act would not be narrowly tailored to achieve it.

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 actually 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. States (and other jurisdictions) are, though, not prevented from requiring reports on a consistent basis of the revenues and expenses of charitable organizations and publishing summaries of those reports for the information of prospective donors and, for that matter, anyone with an interest.

**The 1984 Model Act**

In 1984, another effort to develop a model act was organized by NASCO with staff support provided by the NCIB. “A Model Act Concerning the Solicitation of Funds for Charitable Purposes” was published in 1986 and endorsed by both NAAG and NASCO (National Association of Attorneys General 1986). This Model Act was, among other things, an attempt to reconstruct the state solicitations regulation regime in light of the limits on state action implied by *Schaumburg* and *Munson*. (*Riley* had not been decided when the model act was published.) Major features of the NASCO Model Act were:
• A definition of “charitable organization” that included any organization or person who “in any manner employs a charitable appeal as a basis of any solicitation.”
• A solicitation or request “shall be deemed to have taken place whether or not” any contribution is made.
• Distinguishing between the roles of “fund raising counsel” who do not make solicitations or employ people to do so and “paid solicitors” who are compensated to perform any service in connection with making solicitations.
• A requirement that charitable organizations file an annual registration statement and an annual financial report that includes “a statement of functional expenses at least broken into program, management and general, and fund raising.”
• A registration requirement for paid solicitors.
• Filing requirements for contracts with both fund raising counsel and paid solicitors.
• A requirement that financial reports showing gross revenue and itemized expenses be filed with the regulator for each solicitation campaign at its conclusion or on each anniversary of its commencement if the campaign lasts more than 1 year.
• Disclosure at the point of solicitation of the identity of the charitable organization and the fact that a financial statement for the preceding fiscal year (showing a breakdown of functional expenses consistent with the required annual financial report) is available on request.
• A disclosure by paid solicitors at the point of solicitation of that status and of the percentage that will be paid to the soliciting organization from any contribution or an estimate of the percentage of total revenues from the campaign that will be retained as a fee.

The complete text of the Model Act was printed, along with comments from a Private Sector Advisory Group, in Philanthropy Monthly in October of 1986. The Advisory Group welcomed the model act but objected to the requirement of a disclosure of fees by paid solicitors “in the form of a single percentage figure.” (As noted above, the decision of the U.S. Supreme Court in Riley declared such requirements unconstitutional.) With the exception of the requirement for point-of-solicitation disclosure of fundraising costs, elements of this Model Act appear in many state statutes in force today.

Accounting Rules Get More Attention

Annual reports by AAFRC (in Giving USA) consistently reported ever higher totals for charitable giving across the entire country. Concern among observers about “excessive” fundraising (or, occasionally, both fundraising and management) expenses continued as a counterpoint to the increases in the total amounts raised in campaigns for charitable causes. To some degree, the attention paid to this subject was related to the tensions between local (usually federated) fundraisers and the increasingly active national fundraising activities (often associated with the members of the National Health Council). It is hard to measure the costs of
fundraising activities that involve a variety of techniques and rely on the efforts of large numbers of volunteers. Differences in the applicable accounting rules may result in significantly different presentations of the distribution among the categories of functional expenses. The PPR tended to suggest that the fundraising expenses of national—often direct-mail and, later, telemarketing—campaigns were higher than would have been the case if some related costs could be allocated.

AICPA SOP 78-10 explicitly opened the possibility of allocation of joint costs in fundraising activities among the categories of functional expenses—program, management and general, and fundraising. NCIB, PAS, and state charities officials saw in SOP 78-10 a loophole through which organizations with high fundraising costs might return to the mid-century practices which many thought permitted serious underreporting of the actual cost of some organizations’ fundraising. Proposals for resolving the resulting disputes among the accountants, regulators, oversight agencies, and nonprofit executives took two forms. NCIB, PAS, and the regulators, in general, wanted to hold to a strict interpretation of the PPR as defined in the “Black Book” while establishing uniform standards that would apply to all soliciting organizations. Others urged that while allocation might be acceptable there was nevertheless a need for uniform standards in order to avoid unfair comparisons—and resulting pressure toward use of the most “favorable” methods of accounting—among organizations, but resisted the all or nothing requirement of the PPR.

In 1979, NASCO formed a “State Data System Committee” of state charity officials to work with NCIB on its project to computerize annual charity reports filed with the states. NCIB sought to establish a National Center of Charitable Statistics to encourage more consistent and reliable reporting of information about nonprofits’ finances. In 1980, the NASCO Committee and NIB issued a draft of a “Uniform Annual Report.” It soon became apparent that expanding the project to involve the IRS, and link to its annual reports on Form 990, would improve the result. NCIB then worked with the IRS and NASCO to develop the “Uniform Federal/State Form 990” agreement of 1981.

As reported by Wilson Levis, the NCIB staff member with responsibility for many of these projects, NCIB developed a PC-based software program titled “Charities Registration and Auditing System” (CRAS) during 1982, which relied on data from the Form 990 to produce standardized reports (personal communications). With CRAS, a state charities official could easily compare key data points drawn from the 990s of active fundraising organizations for use in considering investigations or for providing information to the public. Seven states (Connecticut, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, and Pennsylvania) used CRAS in the administration of their charitable solicitations programs. NCIB also raised funds to provide technical assistance to California, Illinois, and New York for upgrading their mainframe computer programs to be consistent with the new Form 990.

The value of Form 990 to the regulators was, though, diminished as the CRAS system highlighted incomplete or unreliable data in the submissions to the IRS. This frustration led to an effort by NASCO and others beginning in 1989 to support improvements in the completion of the form (the “Quality Reporting Project”) and
to advocacy with the state charities officials for more widespread reliance on the 990 as an incentive to more careful preparation of the form (Philanthropy Monthly 1991).

NCIB encouraged NASCO to include in its 1984 Model Act a requirement that reports to state charities officials be based on the Form 990. There was resistance from some states with concerns about the state not retaining its local authority for establishing reporting requirements. In the end, NASCO’s Model Act did, though, include a provision that states might “accept” a copy of the form in lieu of a state-specific financial report (National Association of Attorneys General 1986).

The shift in accounting standards contained in SOP 78-10 led many to the conclusion that “The Primary Purpose Rule is Dead.” For example, an article with that title in Philanthropy Monthly concluded “As a practical matter of fact, the primary purpose rule has been dead for a long time” (Robinson 1986). Throughout the 1980s and 1990s 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. In the third (1988) edition of the “Black Book” the PPR was explicitly replaced by a treatment of joint costs that aligned with SOP 87-2 (National Health Council 1988, p. 7). In the opinion of NCIB, PAS, state charities officials, and many others, this version of the approach to the allocation of joint costs offered too many opportunities for misidentifying 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. Like the earlier AICPA documents, SOP 98-2 required that an activity which included fundraising must meet three criteria if any of its costs were to be allocated. Its purpose must be to achieve some part of the organization’s mission. The audience must be selected because of a need for the information provided or an ability to assist in the achievement of the organization’s mission in some way other than providing funds. And the content must call for specific action on the part of the recipient that will help achieve the mission. In this revision, though, the grounds for allocation to other classes of expenditure of any costs connected with a fundraising activity were limited. The key provision reads “A rebuttable presumption exists that the audience criterion is not met if the audience includes prior donors or is otherwise selected based on its ability or likelihood to contribute to the entity.”

SOP 98-2 is the standard for allocation of joint costs that is in force today. When applied by a nonprofit organization, it is used to classify expenses for reporting to the Internal Revenue Service (IRS) and to the interested public in Form 990 and when auditors review the financial statements of nonprofit and voluntary agencies. As such, it also guides the financial reports made to many of the state charities regulators (Barber 1998).

Changes in Fundraising Technologies

Beginning in the 1990s and, of course, increasing since, various forms of fundraising on the Internet have become important as sources of support for
nonprofits’ activities—Google returned “about 22,000,000” pages containing the phrase “donate now” on October 9, 2011. Recently, 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 Haiti in January 2010 (Hamblenn 2010). The agenda for the NASCO 2011 conference focused attention on the increasing use of “social media” (such as Facebook and Twitter) for distributing fundraising appeals (National Association of Attorneys General 2011). 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.

In *United States v. Thomas*, the Third Circuit Court of Appeals ruled in 1966 that an online purveyor of pornography was liable for prosecution not only under the laws of the state where the publication of the web pages occurred (California) but also under the laws of another state (Tennessee) where the material violated local statutes. *Thomas* thus confirmed the principle that use of the World Wide Web for commercial transactions—including, presumably, charitable solicitations—can be regulated across state boundaries (Usry 2008, pp. 18–19; Johnston 1999, pp. 138–139).

In an attempt to address the many questions about state-level charities enforcement that arise in connection with fundraising on the Internet, NASCO established a committee following its 1999 annual meeting in Charleston, South Carolina, to explore the policy implications. This committee’s work led to “The Charleston Principles,” published in 2001, to guide both fundraisers and regulators concerning the application of charitable solicitation statutes to online fundraising. This document re-affirms the requirement that all 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 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.” 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 (National Association of State Charities Officials 2001).

Recently, the U.S. Supreme Court has confirmed that calculated dishonesty in fundraising appeals can be prosecuted as fraud. In *Madigan, Attorney General of Illinois v. Telemarketing Associates*, a unanimous Court confirmed in 2003 that “States may maintain fraud actions when fundraisers make false or misleading representations designed to deceive donors about how their donations will be used.” 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 (Fremont-Smith 2006; Peters 2003).
Charity “Rackets” Continue

The Federal Trade Commission (FTC) has a long history of successfully prosecuting fundraising frauds committed by individuals and business corporations; its jurisdiction is limited to the activities of commercial firms and does not extend to nonprofit corporations. These prosecutions document in revealing detail the techniques used in unscrupulous campaigns and, in the form of the penalties imposed, the significant amounts of money that can be realized by such criminal activities. 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 nonprofits or purported nonprofits on whose behalf funds were solicited, and 31 individuals” (http://www.ftc.gov/opa/2009/05/charityfraud.shtm).

And in 2010, the FTC settled a complaint against the Civic Development Group, LLC, et al. The press announcement reported:

Under the settlements, the defendants are permanently banned from telemarketing and soliciting charitable donations, and prohibited from making false claims about anything they sell. 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 (http://www.ftc.gov/opa/2010/03/cdg.shtm).

Concluding Remarks

In 1990, when Scott Cutlip’s Fund Raising was reprinted, the author provided a new introduction. In it, he quoted his own comment from the “Epilogue” in the 1965 edition: “It is the hard, lamentable fact that the citizen still, after some fifty years of public fund raising, does not have adequate information so that he may objectively evaluate the countless appeals he gets in the clamor of today’s fund raising.” In 1990, he added that fifteen years further on, the same conclusion could still be drawn.

The present attempt to carry the story of the evolution of regulation of charitable solicitations forward from the 1960s to the present does not suggest that a solution has been found to the challenge that faces a willing and curious donor. No reliable guide exists that might show how to choose with confidence among the multitude of appeals for support that arrive in every form from a friend’s face-to-face request to
Join in contributing to some cause to a Twitter message from a stranger asking for a donation in response to some far-away emergency.

Fundraising has certainly grown in sheer volume over this half-century. The presence of distinct “campaigns” is much less noticeable today among the more or less continuous development efforts have become characteristic of organizations that depend on public generosity for their operations. Some standardized financial information is available for a substantial range of US-based organizations as a result of the requirement that the IRS Form 990 be made much more readily available through the Internet as well as in paper copies on request. Though there are still complaints about accuracy, there is some evidence that the information provided in 990s is more reliable today than in the past—especially when the Form is filed, as is increasingly common, through an online link with the Internal Revenue Service. An emphasis on outcome measurement by larger supporters—both grant-making foundations and government funding agencies—has made certain measures of the extent of community-service efforts more visible. Attention to the governance of nonprofit organizations by both governmental authorities and private-sector observers has encouraged stronger oversight by volunteer leadership, especially in the larger and more visible groups. “Charting Impact,” a recent initiative of INDEPENDENT SECTOR, PAS and the online publisher of 990s known as Guidestar, is calling attention to the responsibility of boards of directors to pay closer attention to the results achieved by the organizations they oversee (http://www.chartingimpact.org).

The volume and significance of the work done by nonprofit organizations lend urgency to the search for reliable ways to assess the value and the efficacy of their activities. That thought applies to every aspect of nonprofits’ work, of course, from the skills of front-line workers delivering essential services to the expertise of specialized professionals undertaking scientific research or preserving cultural legacies. It applies without question to the responsibilities of those who protect nonprofits assets, both tangible and intangible, from all manner of waste. And it applies with special force to the conduct of fundraising.

Charitable fraud is different from other forms of fraud. The typical commercial or financial fraud is built upon a foundation of greed—the victim is lured by expectations of gain. The typical charities fraud is, in contrast, built upon a foundation of generosity—the victim is deceived by a false appeal to altruism. This distinction underlies the special indignation occasioned by accounts of dishonorable fundraising such as the notes from FTC prosecutions mentioned earlier. And it explains the existence of laws that focus on the practices of fundraisers and require disclosure of financial and other related information.

It is also clear that the existence of those laws is not sufficient to prevent outrageous abuse. On June 29, 2011, the Attorney General of New York, a state with a long history of regulating charitable solicitations, announced a comprehensive lawsuit against an organization known as the Coalition Against Breast Cancer. The complaint described numerous alleged violations of New York’s statutes governing the fiduciary duties of nonprofit boards and officers and the Executive Law concerning charitable solicitations over a period of more than a decade; the civil lawsuit is still pending (New York Supreme Court 2011). Less than 2 months later, on August 16, Attorney General Schneiderman announced guilty pleas by two
organizers of a different non-existent but very public “coalition”—this one “for breast cancer cures” (Schneiderman 2011).

This article is a product of an ongoing research project to document and explore the evolution of the policies embedded in charitable solicitations regulation in the United States. Much remains to be done to bring together the various elements of this history, from accounting, law, legislation, court decisions, and policy debates on one side and from the continuous development of new techniques of fundraising on the other. Better understanding of these sources will assist everyone involved in fundraising—regulators, practitioners, donors and observers alike—to make better use of the framework that is in place today, and to design alterations that offer stronger promise that the results will make charity fraud more difficult and wise donation decisions easier.

Acknowledgments An earlier version of this paper was presented at “Reforming Fundraising Regulation” at the Australian Centre for Philanthropic and Nonprofit Studies, Queensland University of Technology, on April 19, 2011. Thanks are due for the comments received at that time and from three anonymous reviewers. I would also like to thank Frances Huehls for her good advice and generous assistance accessing the materials of the Joseph and Matthew Payton Philanthropic Studies Library at Indiana University-Purdue University Indianapolis and the reference librarians and other staff at Suzzallo Library, University of Washington. I have been assisted while doing the research on which this paper is based by Lucy Grace Barber, Evelyn Brody, William Suhs Cleveland, Marion Fremont-Smith, Carolyn Hojaboom, Dave Horn, Bill Huddleston, Terry Knowles, Wilson (“Bill”) Levis, Valerie Lynch, David Ormstedt, Seth Perlman, Geoff Peters, Steven Rathgeb Smith, Reed Stockman, Robert S. Tigner, and others. I am, of course, responsible for any errors or omissions which remain after their good attentions.

References


Note: all URLs checked October 16, 2011.